10-28-86
Vol. 51 No. 208
Pages 39355-39504

# federal register

Tuesday
October 28, 1986

**Briefings on How To Use the Federal Register—**
For information on briefings in Washington, DC, New York, NY, and Pittsburgh, PA, see announcement on the inside cover of this issue.

**FEDERAL REGISTER** Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

**How To Cite This Publication:** Use the volume number and the page number. Example: 51 FR 12345.

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

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

**WHO:** The Office of the Federal Register.

**WHAT:** Free public briefings (approximately 2 1/2 hours) to present:

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

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

### WASHINGTON, DC

**WHEN:** November 18 at 9:30 a.m.

**WHERE:** National Archives Theater, 8th and Pennsylvania Avenue NW., Washington, DC

**RESERVATIONS:** Laurice Clark, 202–523–3419.

### NEW YORK, NY

**WHEN:** December 5 at 10:00 a.m.

**WHERE:** Room 305A, 26 Federal Plaza, New York, NY

**RESERVATIONS:** Arlene Shapiro or Stephen Colon, New York Federal Information Center, 212–264–4810.

### PITTSBURGH, PA

**WHEN:** December 8 at 1:30 p.m.

**WHERE:** Room 2212, William S. Moorehead Federal Building, 1000 Liberty Avenue, Pittsburgh, PA

**RESERVATIONS:** Kenneth Jones or Lydia Shaw
Pittsburgh: 412–644–INFO
Philadelphia: 215–597–1707, 1709

# Contents

Federal Register

Vol. 51, No. 208

Tuesday, October 28, 1986

**Administrative Conference of the United States**
PROPOSED RULES
Recommendations:
Federal agency hiring of private attorneys, 39378

**Agency for International Development**
NOTICES
Agency information collection activities under OMB review, 39432

**Agricultural Marketing Service**
PROPOSED RULES
Dairy products; grading, inspection, and standards:
Swiss and Emmentaler cheese, 39381

**Agricultural Stabilization and Conservation Service**
RULES
Marketing quotas and acreage allotments:
Feed grain, rice, cotton, and wheat—
Amendments, 39480

**Agriculture Department**
*See* Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Forest Service

**Antitrust Division**
NOTICES
National cooperative research notifications:
Corporation for Open Systems International, 39434

**Commerce Department**
*See also* International Trade Administration; National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 39406

**Committee for the Implementation of Textile Agreements**
NOTICES
Cotton, wool, and man-made textiles:
China, 39408
India, 39407

**Customs Service**
RULES
Tariff classifications:
Prefinished hardboard lap siding, 39368
PROPOSED RULES
Caribbean Basin Initiative; duty-free treatment; eligibility:
Oil country tubular goods from Panama, 39395

**Defense Department**
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Options, 39456
Subcontract competition, 39456
NOTICES
Meetings:
U.S. Court of Military Appeals Code Committee, 39409

**Drug Enforcement Administration**
NOTICES
*Applications, hearings, determinations, etc.:*
Drug Mart Prescription Dept., Inc., 39434
Elliot, Thomas Parker, D.O., 39435
Sokoloff, Terrence M., D.D.S., 39435

**Economic Regulatory Administration**
NOTICES
Natural gas exportation and importation applications:
Tricentrol United States, Inc., et al., 39409

**Employment and Training Administration**
NOTICES
Labor surplus area classifications:
Annual list additions, 39435

**Energy Department**
*See also* Economic Regulatory Administration; Federal Energy Regulatory Commission
RULES
Financial assistance:
Research grants, 39365

**Environmental Protection Agency**
RULES
Air quality implementation plans; approval and promulgation; various States:
Kentucky, 39375
PROPOSED RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Florida, 39400
NOTICES
Grants; debarments, suspensions, and voluntary exclusions under EPA assistance programs, 39419
Radiation protection programs:
Radiofrequency radiation; controlling public exposure, etc., 39423
Water pollution; effluent guidelines for point source categories:
Ethanol-for-fuel, 39422
Low-Btu coal gasification, 39421

**Executive Office of the President**
*See* Presidential Documents

**Farm Credit Administration**
RULES
Farm credit system:
Borrower/stockholder rights, 39486

**Federal Election Commission**
NOTICES
Meetings; Sunshine Act, 39452

**Federal Energy Regulatory Commission**
NOTICES
Natural gas certificate filings:
United Gas Pipe Line Co. et al., 39409
Oil pipelines, interstate; tentative valuations, 39413
Preliminary permits surrender:
Prospect Associates Co., 39417

*Applications, hearings, determinations, etc.:*
Arkla Energy Resources et al., 39418
Brooklyn Union Gas Co. et al., 39418
Colorado Interstate Gas Co., 39419
Mesa Operating Ltd. Partnership, 39413
Panhandle Eastern Pipe Line Co. et al., 39414
Pogo Producing Co., 39417
Transcontinental Gas Pipe Line Corp., 39417

**Federal Maritime Commission**
NOTICES
Agreements filed, etc., 39423

**Federal Reserve System**
NOTICES
Meetings; Sunshine Act, 39452

**Fish and Wildlife Service**
RULES
Endangered and threatened species:
Loach minnow, 39468
NOTICES
Marine mammal permit applications, 39430

**Food and Drug Administration**
RULES
Color additives:
[Phthalocyaninato(2-)] copper—
Contact lenses coloring, 39370
Food additives:
Adjuvants, production aids, and sanitizers—
Olefin polymers; correction, 39371
GRAS or prior-sanctioned ingredients:
Sodium oleate and sodium palmitate, 39372
NOTICES
GRAS or prior-sanctioned ingredients:
Monsanto Co., 39423

**Forest Service**
NOTICES
Environmental statements; availability, etc.:
Sierra National Forest, CA, 39406

**General Services Administration**
PROPOSED RULES
Acquisition regulations:
Contracts; voiding and rescinding, 39404
Federal Acquisition Regulation (FAR):
Options, 39456
Subcontract competition, 39456

**Geological Survey**
NOTICES
Organization, functions, and authority delegations (Freedom of Information Act, affirmative disclosure provisions), 39430

**Health and Human Services Department**
*See* Food and Drug Administration; National Institutes of Health; Public Health Service; Social Security Administration

**Immigration and Naturalization Service**
PROPOSED RULES
Aliens:
Employment authorization, 39385

**Interior Department**
*See also* Fish and Wildlife Service; Geological Survey; Land Management Bureau; Minerals Management Service; Surface Mining Reclamation and Enforcement Office
NOTICES
Oil, gas, and potash leasing and development:
Designated Potash Area, Eddy and Lea Counties, NM, 39425

**International Development Cooperation Agency**
*See* Agency for International Development

**International Trade Administration**
NOTICES
Antidumping and countervailing duties:
Administrative review requests, 39407
Meetings:
Computer Peripherals, Components, and Related Test Equipment Technical Advsiory Committee, 39406

**International Trade Commission**
NOTICES
Meetings; Sunshine Act, 39452

**Interstate Commerce Commission**
NOTICES
Meetings; Sunshine Act, 39452

**Justice Department**
*See also* Antitrust Division; Drug Enforcement Administration; Immigration and Naturalization Service
RULES
Privacy Act; implementation, 39373
NOTICES
Pollution control; consent judgments:
P.C. & J. Contracting Co., Inc., 39433
Western Processing Co., Inc., et al., 39434
Shampoo and hair products bearing counterfeit "Nexxus" trademarks; notice of destruction, 39433

**Labor Department**
*See* Employment and Training Administration; Mine Safety and Health Administration; Occupational Safety and Health Administration

**Land Management Bureau**
NOTICES
Environmental statements; availability, etc.:
Range Creek Elk Herd Unit, UT, 39429
Meetings:
Lewistown District Grazing Advisory Board, 39428
Roswell District Grazing Advisory Board, 39427
Oil and gas leases:
Alaska, 39427
Opening of public lands:
Oregon, 39429
Realty actions; sales, leases, etc.:
California, 39428
Idaho, 39427
Wyoming, 39428

**Mine Safety and Health Administration**
NOTICES
Safety standard petitions:
Climax Molybdenum Co., 39435
FMC Wyoming Corp., 39436
General Chemical Corp., 39436
Pathfinder Mines Corp., 39437

**Minerals Management Service**
NOTICES
Outer Continental Shelf; development operations coordination:
Chevron U.S.A. Inc., 39432

**National Aeronautics and Space Administration**
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Options, 39456
Subcontract competition, 39456
NOTICES
Meetings:
Aeronautics Advisory Committee, 39439
Life Sciences Advisory Committee, 39440

**National Credit Union Administration**
NOTICES
Agency information collection activities under OMB review, 39440

**National Institutes of Health**
NOTICES
Meetings:
National Cancer Institute, 39424

**National Oceanic and Atmospheric Administration**
RULES
Fishery conservation and management:
Atlantic mackerel, squid, and butterfish, 39377
PROPOSED RULES
Marine mammals:
Commercial fishing operations—
Taking and importing; general permit, 39405
NOTICES
Meetings:
North Pacific Fishery Management Council, 39407

**Nuclear Regulatory Commission**
PROPOSED RULES
Production and utilization facilities; domestic licensing:
Emergency planning and preparedness; potential impacts of earthquakes, 39390
Light water reactors regulatory requirements; review availability, 39394
Rulemaking petitions:
Committee to Bridge the Gap, 39390
NOTICES
Environmental statements; availability, etc.:
Yankee Atomic Electric Co., 39441
Meetings:
Reactor Safeguards Advisory Committee, 39441
Regulatory guides:
Issuance, availability, and withdrawal, 39440

**Occupational Safety and Health Administration**
NOTICES
State plans; standards approval, etc.:
Alaska, 39437
Puerto Rico, 39438
Utah, 39439

**Personnel Management Office**
RULES
Life insurance; basic, standard, additional, and family optional:
Assignment of Federal judges ownership, 39361
NOTICES
Agency information collection activities under OMB review, 39442
Excepted service:
Schedules A, B, and C; positions placed or revoked—Update, 39442

**Postal Service**
RULES
International Mail Manual:
Express Mail Service—
Cayman Islands, 39374

**Presidential Documents**
PROCLAMATIONS
Special observances:
Adult Immunization Awareness Week, National (Proc. 5561), 39359
Housing Week, National (Proc. 5560), 39357
EXECUTIVE ORDERS
Central American democracies and Nicaraguan Democratic Resistance, U.S. assistance; authority delegation (EO 12570), 39355

**Public Health Service**
*See also* Food and Drug Administration; National Institutes of Health
RULES
Grants:
Hospitals and medical facilities construction and Hill-Burton direct and guaranteed loans; user charges for modification requests, 39376
PROPOSED RULES
Grants:
Health education assistance loan program, 39464
Health professions student loan program, 39460
NOTICES
Organization, functions, and authority delegations:
Food and Drug Administration, 39424

**Securities and Exchange Commission**
NOTICES
Meetings; Sunshine Act, 39452
Self-regulatory organizations; proposed rule changes:
Municipal Securities Rulemaking Board, 39444
National Association of Securities Dealers, Inc., 39444
Self-regulatory organizations; unlisted trading privileges:
Midwest Stock Exchange, Inc., 39444
Philadelphia Stock Exchange, Inc., 39447
*Applications, hearings, determinations, etc.:*
Sun Life Assurance Co. of Canada (U.S.) et al., 39447

**Small Business Administration**
NOTICES
Disaster loan areas:
Wisconsin, 39449
Meetings; regional advisory councils:
Florida, 39449
Iowa, 39450
Louisiana, 39450
New York, 39450

**Social Security Administration**
PROPOSED RULES
Social security benefits:
Wage coverage, 39397

**Surface Mining Reclamation and Enforcement Office**
NOTICES
Agency information collection activities under OMB review, 39432

**Textile Agreements Implementation Committee**
*See* Committee for the Implementation of Textile Agreements

**Treasury Department**
*See also* Customs Service
NOTICES
Notes, Treasury:
H-1993 series, 39450

**United States Institute of Peace**
NOTICES
Meetings; Sunshine Act, 39452

**Separate Parts In This Issue**

**Part II**
Department of Defense; General Services Administration; National Aeronautics and Space Administration, 39456

**Part III**
Department of Health and Human Services, Public Health Service, 39460

**Part IV**
Department of Health and Human Services, Public Health Service, 39464

**Part V**
Department of the Interior, Fish and Wildlife Service, 39468

**Part VI**
Department of Agriculture, Agricultural Stabilization and Conservation Service, 39480

**Part VII**
Farm Credit Administration, 39486

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

**CFR PARTS AFFECTED IN THIS ISSUE**

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

**1 CFR**
Proposed Rules:
Ch. III ..... 39378

**3 CFR**
Proclamations:
5560 ..... 39357
5561 ..... 39359
Executive Orders:
12570 ..... 39355

**5 CFR**
870 ..... 39361
871 ..... 39361
872 ..... 39361
873 ..... 39361
874 ..... 39361

**7 CFR**
713 ..... 39480
Proposed Rules:
58 ..... 39381

**8 CFR**
Proposed Rules:
109 ..... 39385

**10 CFR**
600 ..... 39365
Proposed Rules:
50 (3 documents) ..... 39390–39394

**12 CFR**
614 ..... 39486
615 ..... 39486
618 ..... 39486

**19 CFR**
175 ..... 39368
Proposed Rules:
175 ..... 39395

**20 CFR**
Proposed Rules:
404 ..... 39397

**21 CFR**
74 ..... 39370
178 ..... 39371
182 ..... 39372
186 ..... 39372

**28 CFR**
16 ..... 39373

**39 CFR**
10 ..... 39374

**40 CFR**
52 ..... 39375
Proposed Rules:
62 ..... 39400

**42 CFR**
53 ..... 39376
Proposed Rules:
57 ..... 39460
60 ..... 39464

**48 CFR**
Proposed Rules:
7 ..... 39456
17 ..... 39456
52 ..... 39456
503 ..... 39404

**50 CFR**
17 ..... 39468
655 ..... 39377
Proposed Rules:
216 ..... 39405

Federal Register
Vol. 51, No. 208
Tuesday, October 28, 1986

# Presidential Documents

Title 3—

The President

## Executive Order 12570 of October 24, 1986

## Delegating Authority To Implement Assistance for Central American Democracies and the Nicaraguan Democratic Resistance

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Military Construction Appropriations Act, 1987, enacted by section 101(k) of the Joint Resolution Making Continuing Appropriations for the Fiscal Year 1987 (Public Law 99–500), the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 *et seq.*), and section 301 of title 3 of the United States Code, and in order to delegate certain functions concerning the designation of funds to be transferred and operation of accounts, it is hereby ordered as follows:

**Section 1.** Pursuant to section 205, the account for which funds are made available by title III of the Military Construction Appropriations Act, 1987, is designated the account from which funds made available by title II of the Urgent Supplemental Appropriations Act, 1985 (Public Law 99–10) are transferred.

**Sec. 2.** The Secretary of State is authorized to perform the following functions vested in the President by sections 205 and 206 of title II of the Military Construction Appropriations Act, 1987:

(a) Pursuant to section 205, the authority to designate the account to which funds transferred from the funds appropriated by the Supplemental Appropriations Act, 1985 (Public Law 99–88), under the heading "Assistance for Implementation of a Contadora Agreement," are deposited, and the amount transferred; and

(b) The authority to implement section 206 utilizing the funds described in section 3 of this Order.

**Sec. 3.** The Secretary of Defense is authorized to perform the function, vested in the President by section 206 of title II of the Military Construction Appropriations Act, 1987, of designating the accounts from which unobligated funds, made available by the Department of Defense Appropriations Act, 1986 (as contained in Public Law 99–190), are transferred.

Ronald Reagan

THE WHITE HOUSE,
*October 24, 1986.*

[FR Doc. 86–24546
Filed 10–27–86; 11:53 am]
Billing code 3195–01–M

# Presidential Documents

**Proclamation 5560 of October 25, 1986**

## National Housing Week, 1986

**By the President of the United States of America**

**A Proclamation**

The housing industry has played a major role in our economic prosperity, especially since World War II. Thanks to our free enterprise system, to the vision of many entrepreneurs, and to sound government policies, the housing industry has created millions of jobs, increased demand for goods and services, and generated billions of dollars for our economy.

Because of this economic activity, millions of Americans have been able to provide safe, secure, and affordable housing for their families. Our communities, our Nation, and the institution of the family itself are much the stronger thereby. The policies of all levels of government should be committed to continuing this situation.

It is most appropriate that Americans recognize the social and economic benefits the housing industry provides our Nation, and that we remain grateful for the free market system that provides Americans with affordable housing opportunities.

The Congress, by Public Law 99–419, has designated the week of October 19 through October 26, 1986, as "National Housing Week" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of October 19 through October 26, 1986, as National Housing Week, and I call upon the people of the United States to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of October, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-24547
Filed 10-27-86; 11:54 am]
Billing code 3195-01-M

# Presidential Documents

**Proclamation 5561 of October 25, 1986**

## National Adult Immunization Awareness Week, 1986

**By the President of the United States of America**

**A Proclamation**

Influenza and pneumonia are among the principal killers of American adults, especially the elderly. Fewer than 12 percent of the adult population are vaccinated against these diseases or against other highly infectious diseases such as measles, rubella, diphtheria, and hepatitis B. Fewer than half of Americans over sixty are vaccinated against tetanus.

Inoculation against infectious diseases is a major factor in preventive health care. The Surgeon General of the United States has repeatedly called on our Nation to prevent the massive costs associated with health care through programs of health promotion and disease prevention. Many studies by the United States Public Health Service confirm the soundness of this directive. Inoculation with vaccines approved as safe and effective by the United States Food and Drug Administration, and readily available to the public, could save the lives of tens of thousands of American adults this year.

In recognition of the importance of adult immunization and the benefits that can flow from heightened public awareness, the Congress, by Public Law 99–528, has designated the week of October 26 through November 1, 1986, as "National Adult Immunization Awareness Week" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of October 26 through November 1, 1986, as National Adult Immunization Awareness Week. I call upon all government agencies and the people of the United States to observe this week with appropriate activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of October, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 86-24548
Filed 10-27-86; 11:55 am]
Billing code 3195-01-M

# Rules and Regulations

Federal Register
Vol. 51, No. 208
Tuesday, October 28, 1986



## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 870, 871, 872, 873, and 874

### Assignment of Federal Employees' Group Life Insurance by Federal Judges

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing revised regulations to implement section 208 of Pub. L. 98–353, the Bankruptcy Amendments and Federal Judgeship Act of 1984, which permits Federal judges to assign ownership of their Federal Employees' Group Life Insurance (FEGLI) to another person. The regulations describe judges' and assignees' rights and responsibilities regarding assignments.

**EFFECTIVE DATE:** November 28, 1986.

**FOR FURTHER INFORMATION CONTACT:** Mary Ann Mercer, (202) 632–3772.

**SUPPLEMENTARY INFORMATION:** On February 28, 1985, OPM published interim regulations in the **Federal Register** [50 FR 8095] with a request for comments from interested parties before publishing final rules. OPM received two comments, one from an individual and one from a Federal agency. The individual viewed assignments of life insurance by Federal judges as costly and discriminatory against other Federal employees. The right of judges to assign life insurance coverage is not granted by OPM's regulations but is a matter of law which the regulations are intended to implement. Consequently, it is beyond the scope of these regulations to consider the merits of assignments of life insurance for Federal judges.

The Federal agency favored the regulations and offered the following suggestions for improvement—

(1) The agency questioned the treatment of assignments made between the effective date of Pub. L. 98–353, the Bankruptcy Amendments and Federal Judgeship Act of 1984 (July 10, 1984), referred to as "the Act" in this Supplementary Information, and the effective date of the interim regulations (February 28, 1985). The agency believes that the introduction to the interim regulations implies that assignments may be made only after the effective date of those regulations. Accordingly, the agency recommends that OPM specify in the final regulations that all assignments made after July 10, 1984, will be valid. We would like to clarify that the right to assign life insurance coverage became effective on July 10, 1984, the effective date of the Act. We have included the effective date of the law in the final regulations to make this clearer. However, OPM has no authority to validate assignments. A determination of validity must ultimately be made by the Internal Revenue Service (IRS), after the insured's death—at the time the assignee files his or her Federal income tax return. In determining whether, in its best judgment, an assignment will meet IRS requirements, the agency should have the judge complete the approved assignment form (discussed below) and, if necessary, refer to tax laws, case laws, and IRS regulations.

(2) The agency questioned whether an assignment could be made to a trust or other entity. IRS has determined that an irrevocable trust is a valid assignee for estate tax purposes. The omission of trusts in the interim regulations was an oversight. In the final regulations, trustee and other entities are included under the definition of "person."

(3) The agency questioned the possibility of a judge's naming contingent assignees in the event the original assignee predeceases the judge. Although the interim regulations provide that an assignor must give up all rights of ownership in the insurance upon assignment, they are silent concerning contingent assignments. For an assignment to be valid, the judge must relinquish all interest in the assigned insurance so that all rights of the assignment may be immediately exercised by the assignee. When a contingent assignment has been made, it is questionable whether the judge has in fact relinquished all interest in the insurance. In many cases, the judge is simply attempting to retain a measure of control over distribution of the money. Thus, the issue of who holds the incidents of ownership becomes clouded.

The validity of a contingent assignment cannot be determined in advance. Such determinations can only be made under IRS statutes in effect at the time of the insured's death. Should disputes arise over these issues, the potential assignee(s) (generally the insured's family) could be faced with unpleasant and costly court proceedings. After discussing the matter with IRS, we have concluded that contingent assignments are of questionable validity for estate tax purposes and should not be accepted. Consequently, contingent assignments made after the effective date of these final regulations will be prohibited (§ 874.201(b)).

Judges who have made a contingent assignment since the effective date of the law have been given the opportunity to submit corrected assignments. However, a number of judges have expressed a desire to continue the contingent assignment without change. Therefore, contingent assignments submitted between the effective date of the law and the effective date of the final regulations will be accepted. This concession has been made because an assignment of insurance ownership must be in effect 3 years prior to the insured person's death before insurance proceeds can be considered a gift to the assignee, rather than part of the insured's estate. OPM does not wish to penalize judges who have made a contingent assignment by requiring a new assignment and a new 3-year waiting period. Nevertheless, those judges who have submitted a contingent assignment have been cautioned that the assignment may be considered invalid by IRS at the time of their death.

(4) The agency questioned assignments made prior to the interim regulations which show dollar amounts rather than percentage shares. The regulations require that assignments to two or more individuals specify percentage shares for each assignee (§ 874.201(c)). Because dollar amounts do not accommodate subsequent increases in the amount of insurance, judges with assignments by dollar amounts have been requested to

resubmit the assignment showing percentage shares. Assignments in which the shares are stated as "equal" or as a fraction need not be voided.

(5) The regulations provide that an assignment will automatically include increases in insurance coverage when the insured cancels a previous waiver of insurance (§ 874.201(d)). The agency suggested that the final regulations similarly provide for increases in coverage elected during an open season. The agency further suggested that the regulations state that the right to increase the amount of insurance coverage remains with the judge and does not transfer to the assignee. We have adopted both of these suggestions.

(6) The agency questioned the need for an assignment form and the requirement for witnessing (§ 874.301). OPM has worked with IRS to develop an assignment form (Standard Form 1382) that will increase the chances that the assignment will meet IRS requirements at the time of the insured's death. There are advantages to using an assignment form. A special form will serve as a guide to the agency, the judge, and the assignee in the assignment process and will lessen the possibility that the agency or the judge will inadvertently omit pertinent information. Further, a standardized format will simplify the collection and retrieval of information needed by the agency and by IRS. A witnessing requirement emphasizes the importance of the assignment and helps to ensure that the assignor is fully aware of the consequences of the decision. Although the assignment form is prescribed for assignments made after the effective date of the final regulations, we recommend that judges who have already made an assignment complete the form as well. In such cases, the form will have no adverse effect on the effective date of the assignment. It will merely supplement the original letter of assignment and should accompany the original letter when it is forwarded to the insurer upon the insured's death. All assignments submitted before the publication of these final regulations, including contingent and unwitnessed assignments, will be accepted without a completed Standard Form 1382 insofar as they otherwise comply with the requirements of the regulations. Assignments submitted after the effective date of the final regulations must be submitted on Standard Form 1382.

(7) The agency suggested that the term "employing office" referred to in §§ 874.301 and 874.302 be identified specifically as the Administrative Office of the United States Courts (Administrative Office). It further suggested that OPM require that the assignment forms for annuitants and compensationers be forwarded to the Administrative Office as they are for employees, because judges of the Administrative Office continue to receive some salary when they retire or receive Federal Workers' compensation. We have kept the general term "employing office" because two other court systems, the United States Tax Court and the United States Court of Military Appeals, employ judges affected by these regulations. In addition, the regulations no longer require that assignment forms for annuitants and compensationers be forwarded to the appropriate retirement system. The assignment form is to be forwarded to the employing office for processing as are other documents related to the judge's insurance and retirement.

(8) The agency questioned the implication in § 874.401 that judges in effect become "annuitants" whose basic insurance coverage must reduce after retirement under 5 CFR 874.401. The agency raised the question because certain groups of judges are considered to be "employees" under the Federal Employees' Group Life Insurance law (5 U.S.C. 8701(a)(5)) even though they have retired from office. One such group includes judges who "retire from the [judicial] office" under 28 U.S.C. 371(a). The United States District Court for the District of Colorado, in the case of *Fred M. Winner* v. *Loretta Cornelius, et al.*, Civil Action No. 85–LW–1103, and the United States District Court for the Eastern District of Kentucky, in the case of *Bernard T. Moynahan* v. *United States, et al.*, Civil Action No. 85–147, both found that judges retiring under 28 U.S.C. 371(a) are entitled by law to continue the full amount of life insurance coverage in effect at the time they retire. Thus, § 874.401 does not apply to judges retiring under 28 U.S.C. 371(a). Similarly, § 874.401 does not apply to judges retiring under 28 U.S.C. 371(b) and 372(a), or judges of the United States Tax Court retiring under 26 U.S.C. 7447. The section does, however, apply to judges of the United States Court of Military Appeals retiring under 5 U.S.C. 8339(d)(6). Consequently, we have retained the provision at § 874.401, but have clarified it at §§ 871.601 and 872.601 to reflect the status of these judges.

A definition for "employing office" has been added to the regulations so that there will be no question about where the judge must submit the assignment. Minor technical and editorial changes have been made to the regulations for clarity.

**E.O. 12291, Federal Regulations**

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

**Regulatory Flexibility Act**

I certify that, within the scope of the Regulatory Flexibility Act, this regulation will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 5 CFR Parts 870, 871, 872, 873, and 874**

Administrative practice and procedures, Government employees, Life insurance, Retirement, Workers' compensation.

U.S. Office of Personnel Management.

**Constance Horner,**

*Director.*

Accordingly, OPM is adopting (with changes) its interim regulations which were published at 50 FR 8095 on February 28, 1985, amending Parts 870 through 873 and adding Part 874, as final regulations to read as follows:

1. The authority citation for Parts 870, 871, 872, and 873 continues to read as follows:

**Authority:** 5 U.S.C. 8716.

## PART 870—[AMENDED]

2. Section 870.103 is amended by revising the definitions of the terms "assign and assignment", "assignee", and "judge", and by adding the terms "employing office", and "person" to read as follows:

**§ 870.103 Definitions.**

"Assign" and "assignment" refer to a judge's irrevocable transfer to another person of all incidents of ownership of FEGLI coverage (except family optional insurance).

"Assignee" means the person to whom a judge irrevocably transfers ownership of basic life insurance and, if applicable, standard optional life insurance and additional optional life insurance.

"Employing office" means the office of the agency to which jurisdiction and responsibility for life insurance actions for a judge have been delegated.

(a) For judges of the following courts, the employing office is the Administrative Office of the United States Courts:

(1) All United States Courts of Appeals;

(2) All United States District Courts;
(3) The Court of International Trade;
(4) The Claims Court; and
(5) The District Courts in Guam, the Northern Mariana Islands, and the Virgin Islands.

(b) For judges of the United States Court of Military Appeals, the employing office is the Washington Headquarters Services.

(c) For judges of the United States Tax Court, the employing office is the United States Tax Court.

"Judge" means an individual appointed as a Federal justice or judge under Article I or Article III of the Constitution. Administrative law judges, bankruptcy judges, and magistrates are not judges for purposes of assignment of FEGLI coverage.

"Person" means an individual, corporation, or a trustee.

3. Section 870.801 is revised to read as follows:

### Subpart H—Assignments of Life Insurance

**§ 870.801 Assignments.**

Section 208 of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. 98–353, effective July 10, 1984, permits Federal judges to irrevocably assign their Federal Employees' Group Life Insurance coverage to another person. Part 874 of this chapter, Assignment of Life Insurance, describes how a judge may assign all incidents of ownership in insurance coverage (except family optional insurance under Part 873) to another person under the Act. It also describes the effects of such assignment, procedures for making an assignment, and related matters.

## PART 871—[AMENDED]

4. Section 871.104 is revised to read as follows:

**§ 871.104 Definitions.**

The terms defined under § 870.103 of this chapter have the same meanings in this part.

5. Section 871.601, is revised to read as follows:

**§ 871.601 Amount of insurance.**

(a) The amount of standard optional life insurance continued during receipt of annuity or compensation reduces by 2 percent a month, effective at the beginning of the second calendar month after the date the insurance would otherwise have stopped or the insured's 65th birthday, whichever is later, until a maximum reduction of 75 percent is achieved.

(b) Judges retiring under 28 U.S.C. 371(a) and (b), 28 U.S.C. 372(a), and 26 U.S.C. 7447 are considered employees under the Federal Employees' Group Life Insurance law. Insurance for these judges continues without interruption or diminution upon retirement. The amount of standard optional insurance for a judge who elects to receive compensation in lieu of annuity will be computed in accordance with paragraph (a) of this section.

6. Section 871.701 is revised to read as follows:

### Subpart G—Assignments of Life Insurance

**§ 871.701 Assignments.**

Section 208 of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. 98–353, effective July 10, 1984, permits Federal judges to irrevocably assign their Federal Employees' Group Life Insurance coverage to another person. Part 874 of this chapter, Assignment of Life Insurance, describes how a judge may assign all incidents of ownership in insurance coverage (except family optional insurance under Part 873) to another person under the Act. It also describes the effects of such assignment, procedures for making an assignment, and related matters.

## PART 872—[AMENDED]

7. In § 872.601, a paragraph (c) is added to read as follows:

**§ 872.601 Amount of insurance.**

(c) Judges retiring under 28 U.S.C. 371(a) and (b), 28 U.S.C. 372(a), and 26 U.S.C. 7447 are considered employees under the Federal Employees' Group Life Insurance law. Insurance for these judges continues without interruption or diminution upon retirement. The amount of additional optional insurance for a judge who elects to receive compensation in lieu of annuity will be computed in accordance with paragraph (a) of this section.

8. Section 872.701 is revised to read as follows:

### Subpart G—Assignments of Life Insurance

**§ 872.701 Assignments.**

Section 208 of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. 98–353, effective July 10, 1984, permits Federal judges to irrevocably assign their Federal Employees' Group Life Insurance coverage to another person. Part 874 of this chapter, Assignment of Life Insurance, describes how a judge may assign all incidents of ownership in insurance coverage (except family optional insurance under Part 873) to another person under the Act. It also describes the effects of such assignment, procedures for making an assignment, and related matters.

## PART 873—[AMENDED]

9. Section 873.102 is revised to read as follows:

**§ 873.102 Payment of benefits.**

(a) Upon the death of an insured family member, family optional insurance benefits will be paid to the employee, annuitant, or compensationer responsible for withholdings under § 873.401, except as provided in paragraph (b) of this section.

(b) Notwithstanding an assignment of life insurance under Part 874, if the employee, annuitant, or compensationer dies after the insured family member's death and before benefits are paid under this part, family optional insurance will be paid to the person(s) eligible for basic insurance benefits under 5 U.S.C. 8705(a).

10. Part 874 is revised to read as follows:

## PART 874—ASSIGNMENT OF LIFE INSURANCE

### Subpart A—Definitions of Terms

Sec.
874.101 Definitions.

### Subpart B—Coverage

874.201 Assignments permitted.

### Subpart C—Assignment Procedures

874.301 Making an assignment.
874.302 Effective date of assignment.
874.303 Waiver of insurance.
874.304 Notification of current addresses.
874.305 Reconsideration.

### Subpart D—Assignments for Annuitants and Compensationers

874.401 Annuitants and compensationers.

### Subpart E—Amount of Insurance and Withholdings and Contributions

874.501 Amount of insurance.
874.502 Withholdings and contributions.

### Subpart F—Termination and Conversion

874.601 Termination.
874.602 Eligibility to convert.
874.603 Rates for converted insurance.
874.604 Notification of conversion rights.

### Subpart G—Designations of Beneficiary

874.701 Designations and changes of beneficiary.

**Authority:** 5 U.S.C. 8716.

## Subpart A—Definitions of Terms

### § 874.101 Definitions.

The terms defined under § 870.103 of this chapter have the same meanings in this part.

## Subpart B—Coverage

### § 874.201 Assignments permitted.

(a) A judge may irrevocably relinquish ownership of basic life insurance, standard optional life insurance, and additional optional life insurance coverage under this chapter by assigning it to one or more persons. If a judge owns more than one of these types of coverage—both basic and standard optional, for example—he or she must assign all the insurance. A judge may not assign only a portion of such coverage. Family optional insurance may not be assigned.

(b) A judge may not name contingent assignees in the event the primary assignee predeceases the insured judge.

(c) If the assignment of the insurance is to two or more persons, the judge must specify percentage shares, rather than dollar amounts or types of insurance, to go to each assignee.

(d) If a judge who has made an assignment later elects increased insurance coverage under § 871.205 or § 872.203(c) of this chapter, or during an open season period, the increased coverage will be considered covered by the already-existing assignment. The right to increase coverage remains with the judge and does not transfer to the assignee.

(e) A judge who assigns ownership of insurance continues to be the insured individual, but the assignee assumes those rights of an insured employee that are specified in this part.

(f) Once assigned, the value of the insurance increases or decreases according to any automatic increase or decrease in the value of the coverage as provided for by Parts 870, 871, and 872 of this chapter.

## Subpart C—Assignment Procedures

### § 874.301 Making an assignment.

To assign basic insurance and, if applicable, standard optional insurance and additional optional insurance, a judge must make a written request for an approved assignment form (Standard Form 1382). To effect an assignment, the judge must then complete and submit the signed and witnessed form indicating the intent to irrevocably assign all incidents of ownership in the insurance. The completed form must be submitted to the employing office. Assignments submitted prior to October 28, 1986, will be accepted without a Standard Form 1382.

### § 874.302 Effective date of assignment.

An assignment under this part is effective on the date the properly completed, signed, and witnessed, assignment form is received by the employing office.

### § 874.303 Waiver of insurance.

The assignee assumes all rights to waive insurance under this chapter according to the provisions of §§ 870.204, 871.204, and 872.204 of this chapter. When the insurance is assigned to two or more people, all assignees must agree to the waiver. A waiver or cancellation of basic insurance in accordance with the provisions of § 870.204 of this chapter terminates all insurance under this chapter.

### § 874.304 Notification of current addresses.

Each assignee and each beneficiary of an assignee is responsible for keeping the office where the assignment is filed advised of his or her current address.

### § 874.305 Reconsideration.

A judge or an assignee may ask OPM to reconsider any determination that he or she believes denies an entitlement related to assignments under 5 U.S.C. 8706(f) or this Part of this chapter. The process and time limits for requesting reconsideration are specified in § 870.205 of this part.

## Subpart D—Assignments for Annuitants and Compensationers

### § 874.401 Annuitants and compensationers.

(a) If a judge assigns basic insurance coverage under this chapter and later becomes eligible to continue such insurance coverage while receiving annuity or workers' compensation, as provided in §§ 870.601(a) and 870.701(a) of this chapter—

(1) The judge may, at the time he or she retires or becomes eligible to receive workers' compensation, elect increased lifetime insurance coverage as provided in §§ 870.601(c) (3) and (4) and 870.701(c) (3) and (4) of this chapter.

(2) After the judge has made the election described in paragraph (a)(1) of this section, the assignee (or, in cases of multiple assignees, all of the assignees acting together) may, at any time, elect to terminate all or part of the basic insurance coverage as provided in §§ 870.601(c) (1) and (4) and 870.701(c) (1) and (4) of this chapter.

(b) Judges retiring under 28 U.S.C. 371 (a) and (b), 28 U.S.C. 372(a), and 26 U.S.C. 7447 are considered employees under the Federal Employees' Group Life Insurance law. Insurance for these judges continues without interruption or diminution upon retirement. The amount of basic insurance for a judge who elects to receive compensation in lieu of annuity will be computed in accordance with § 870.702 of this chapter.

## Subpart E—Amount of Insurance and Withholdings and Contributions

### § 874.501 Amount of insurance.

The amount of insurance is based on the judge's basic pay as specified in Subpart C of Parts 870, 871, and 872 of this chapter.

### § 874.502 Withholdings and contributions.

Subject to the provisions of Subpart D of Parts 870, 871, and 872 of this chapter, premium payments for assigned insurance are withheld from the salary, annuity, or compensation of the judge.

## Subpart F—Termination and Conversion

### § 874.601 Termination.

Assigned insurance terminates under the conditions stated in Subpart E of Parts 870, 871, and 872 of this chapter.

### § 874.602 Eligibility to convert.

(a) When a judge's insurance terminates under the conditions described in Subpart E of Parts 870, 871, or 872 of this chapter, an assignee has the right to convert all or a portion of his or her group insurance to an individual policy on the judge. The conditions specified in Subpart E of those parts apply to assignees who elect to convert.

(b) When insurance is assigned to more than one assignee, each assignee has the right to convert all or part of his or her share of the insurance. Any assignee who does not convert loses all interest in the insurance.

(c) When multiple assignees have been named and they wish to convert the assigned insurance to individual policies on the judge in accordance with this subpart, the maximum amount of insurance each assignee will be able to convert will be determined by the dollar amount corresponding to the assignee's share of total insurance under this chapter. If such amount is not a multiple of $1,000, it will be rounded up to the next thousand dollar amount.

### § 874.603 Rates for converted insurance.

Rates for converted life insurance are based on the insured judge's attained age and class of risk at the time the conversion policy is issued.

**§ 874.604 Notification of conversion rights.**

The employing office will notify each assignee of his or her conversion right at the time the assigned group insurance terminates.

### Subpart G—Designations of Beneficiary

**§ 874.701 Designations and changes of beneficiary.**

(a) Each assignee or the legally appointed guardian of an assignee may, as part of the assignment process, designate a beneficiary or beneficiaries to receive insurance proceeds upon death of the insured judge and may also subsequently change the beneficiaries. A surviving beneficiary will receive the designated amount of assigned insurance upon death of the insured judge. Assignees may designate themselves the primary beneficiaries and name some other person(s) as contingent beneficiaries to receive insurance benefits only in the event that the assignees predecease the insured judge.

(b) Assigned insurance will be paid to an assignee's estate if the assignee predeceases the insured judge and—

(1) An assignee does not designate a beneficiary, or

(2) An assignee's designated beneficiary predeceases the insured judge.

(c) An assignment automatically cancels a judge's prior designation of beneficiary.

(d) The provisions of § 870.901 (a) through (e) of this chapter apply to designations of beneficiary filed by assignees.

[FR Doc. 86-24256 Filed 10-27-86; 8:45 am]
BILLING CODE 6325-01-M

## DEPARTMENT OF ENERGY

### 10 CFR Part 600

### Financial Assistance Rules; Policy and Procedural Requirements for Research Grants

**AGENCY:** Energy Department.

**ACTION:** Final rule.

**SUMMARY:** The final rule being issued today by the Department of Energy (DOE) implements a limited revision of Subparts A and B of the Financial Assistance Rules to change certain requirements related to the award and administration of research grants. These changes reflect the Department's recognition of the uniqueness of the research grant instrument and the organizational characteristics of those non-Federal entities performing research. The effect of these revisions is to reduce the administrative burden on the research grantee; however, when appropriate, the revisions have been applied to all DOE grantees.

**EFFECTIVE DATE:** November 28, 1986 and will apply to awards with budget periods beginning on or after November 28, 1986.

**FOR FURTHER INFORMATION CONTACT:**

Edward Sharp, Business and Financial Policy Branch (MA-421.2), U.S. Department of Energy, Washington, DC 20585, (202) 252-8192

Christopher Smith, Office of the Assistant General Counsel for Procurement and Finance (GC-34), U.S. Department of Energy, Washington, DC 20585, (202) 252-1526

**SUPPLEMENTARY INFORMATION:**

Table of Contents

I. Introduction
II. Discussion of Comments on Proposed Rules
III. Review under Executive Order 12291
IV. Review under the Regulatory Flexibility Act
V. Review under the Paperwork Reduction Act
VI. Review under the National Environmental Policy Act
VII. Intergovernmental Review
VIII. Public Comments

### I. Introduction

On August 13, 1985 (50 FR 32684), DOE published proposed rules to amend its Financial Assistance Rules, 10 CFR Part 600, by reducing certain requirements presently imposed on the recipients of research grants. Written comments were to be submitted by September 12, 1985.

In response to the notice, DOE received comments from a nonprofit association of research universities' representatives and from two universities.

### II. Discussion of Comments on Proposed Rules

One commenter suggested that § 600.108(b) be changed to incorporate the substance of § 605.14 (b) through (d) of the Office of Energy Research's (OER's) Special Research Grant Final Rule (10 CFR Part 605).

If adopted, this change would permit a grantee, without prior approval from DOE, (1) to obligate up to 10 percent in excess of the amount awarded by DOE for a budget period and (2) to fund such excess either by use of unobligated funds remaining from the prior budget period or by charging the amount in excess of 100 percent against the subsequent continuation or renewal award (should a subsequent award not be made, DOE is under no obligation to provide the excess funds to the grantee). The commenter felt that instead of a piecemeal promulgation of these authorities by various program components of DOE, they should be adopted on a Department-wide basis.

The other commenters recommended that § 600.108(c) be changed to conform to § 605.14(c) and permit an automatic carryover of up to 10 percent of the amount awarded in a subsequent budget period from amounts unobligated in the current budget period. They argued that unless this change were made, the goal of the proposed rule of increasing the number of methods for carryovers would have no real effect since, in some manner, DOE officials would still have to approve the carryover. One commenter further felt that administrative efficiency would be enhanced by adoption of a uniform carryover policy for all DOE research grants.

DOE agrees with the points made by the commenters. Therefore, in order to increase the flexibility given to, and reduce the burden on, research grantees and to reduce the number of differences between what is authorized for research grants funded under this rule and grants funded under 10 CFR Part 605, DOE has modified § 600.108 as suggested. These changes incorporate virtually verbatim the provisions contained in § 605.14 (b) through (d) of the OER Special Research Grant Final Rule. As a result of the changes to § 600.108, a conforming change has been made to § 600.103(g).

DOE has also clarified the requirements of § 600.106(d) with respect to requests for extensions and liberalized the timeframe for submission of extension requests. The clarification pertains to § 600.106(d)(2) and requires the extension request to be submitted prior to the expiration of the current budget period. A provision has also been added to this paragraph allowing the Contracting Officer, under certain specified conditions, to accept and approve such requests up to 30 days after the budget period expiration without the need for a deviation from these rules.

Other minor changes have been made based on comments by DOE staff.

### III. Review Under Executive Order 12291

This rule has been reviewed under Executive Order 12291 (February 17, 1981). DOE has concluded that it is not a "major rule" because its promulgation will not result in: (1) An annual effect on the economy of $100 million or more; (2) A major increase in costs or prices for consumers, individual industries,

Federal, State, or local government agencies, or geographic regions; or (3) Significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States based enterprises to compete in domestic or export markets.

In accordance with requirements of the Executive order, this rulemaking has been reviewed by the Office of Management and Budget (OMB).

### IV. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164) which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities; i.e., small businesses, small organizations, and small governmental jurisdictions. DOE has concluded that the rule would only affect small entities as they apply for and receive grants and does not create additional economic impacts on small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

### V. Review Under the Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under clearance number 1910–0400.

### VI. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of these wholly procedural rules clearly would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.* (1976)), the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508), and the DOE guidelines (10 CFR Part 1021) and, therefore, does not require an environmental impact statement pursuant to NEPA.

### VII. Intergovernmental Review

DOE research grants are generally not subject to the intergovernmental review requirements of E.O. 12372 as implemented by 10 CFR Part 1005. However, certain grant applications may be. All applications from governmental or nongovernmental entities which involve research, development, or demonstration activities are subject to the provisions of the Executive order and 10 CFR Part 1005 when such activities: (1) Have a unique geographic focus and are directly relevant to the governmental responsibilities of a State or local government within the geographic area, (2) necessitate the preparation of an Environmental Impact Statement under NEPA, or (3) are to be initiated at a particular site or location and require unusual measures to limit the possibility of adverse exposure or hazard to the general public.

### VIII. Public Comments

In the preamble to the proposed rule, DOE invited public comments on information collection requirements to be sent to Mr. Vartkes Broussalian at OMB and Mr. Howard Raiken at DOE. No comments were received.

### List of Subjects in 10 CFR Part 600

Administrative practice and procedure, Cooperative agreements/energy, Copyright, Debarment and Suspension, Educational institutions, Energy, Grants/energy, Hospitals, Indian tribal governments, Individuals, Inventions and patents, Nonprofit organizations, Reporting and recordkeeping requirements, Small businesses.

In consideration of the foregoing, the Department of Energy hereby amends Chapter II of Title 10 of the Code of Federal Regulations by amending Part 600 as set forth below.

Issued in Washington, DC October 8, 1986.

**G.L. Allen,**

*Deputy Director, Procurement and Assistance Management Directorate.*

## PART 600—[AMENDED]

For the reasons set out in the preamble, Part 600 of Chapter II, Title 10 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 600 continues to read as follows:

**Authority:** Secs. 644 and 646, Pub. L. 95–91, 91 Stat. 599, (42 U.S.C. 7254 and 7256); Pub. L. 97–258, 96 Stat. 1003–1005 (31 U.S.C. 6301–6308), unless otherwise noted.

2. Section 600.3 is amended by adding in alphabetical sequence a definition of the word "Research" after the definition of "Renewal Award" and before the definition of "Secretary" to read as follows:

**§ 600.3 Definitions.**

* * * * *

"Research" means any scientific or engineering activity which (1) constitutes a systematic, intensive study directed specifically toward greater knowledge or understanding of the subject studied and contributes to a continuing flow of new knowledge; or (2) is directed toward applying new knowledge to meet a recognized need, and which may contribute to producing an adequate supply of suitably trained scientists or enable the grantee to strengthen its research programs; and/or, (3) applies such knowledge toward the production of useful materials, devices and systems or methods, including design, development and improvement of prototypes and new processes to meet established requirements.

* * * * *

3. Section 600.20 is amended by revising paragraph (c) to read as follows:

**§ 600.20 Legal authority and effect of an award.**

* * * * *

(c) DOE funds awarded under a grant or cooperative agreement shall be obligated as of the date the DOE Contracting Officer signs the award; however, the recipient is not authorized to incur costs under an award prior to the beginning date of the budget period shown in the award except as may be authorized in accordance with § 600.103(g) or § 600.108 of this part. The duration of the DOE financial obligation shall not extend beyond the expiration date of the budget period shown in the award unless authorized by a DOE Contracting Officer by means of a continuation or renewal award or other extension of the budget period.

4. Section 600.102 is amended by revising paragraph (b)(1) to read as follows:

**§ 600.102 Grant applications.**

* * * * *

(b) * * *

(1) Applicants for research grants, other than State, local, or Indian tribal governments, will employ DOE budget forms ERF 4620.1 and ERF 4620.1A. All other applicants shall use the budget formats contained in OMB Circular A–102, as duplicated in the DOE Uniform Reporting System for Federal Assistance.

* * * * *

5. Section 600.103 is amended by adding a new paragraph (b)(6) and by revising paragraph (g) to read as follows:

**§ 600.103 Cost determinations.**

* * * * *

(b) * * *

(6) Notwithstanding the provisions of paragraphs (b)(2) through (b)(5) of this section, the recipient of a research grant shall obtain the prior written approval

of the Contracting Officer before undertaking any of the following:

(i) Acquisition of an item of equipment, or other capital asset not specifically contained in an approved budget, the cost of which is $500 or more, and in the case of special-purpose equipment, $1000 or more.

(ii) Foreign travel (for each separate trip), unless funds for each trip are specifically identified by destination and amount and are included in the approved budget. Foreign travel is any travel outside Canada and the United States and its territories and possessions or, for grantees located in another country, travel outside that country. Foreign travel will be approved only if it is directly related to the project objectives.

(iii) Expenditures for domestic travel exceeding the amount contained in an approved budget by 25 percent or $500, whichever is greater.

* * * * *

(g) *Preaward costs.* Except as provided for in § 600.108, costs incurred before the beginning date of a new, renewal, or continuation award are allowable only if authorized by program rule or if approved in writing, prior to incurrence, by a DOE Contracting Officer. Such written approval may be by letter or an award provision of an earlier budget period of a grant. DOE shall not be obligated to reimburse any authorized preaward costs if the anticipated award is not subsequently made.

* * * * *

6. Section 600.106 is amended by revising paragraph (d), redesignating paragraph (e) as (f), and adding new paragraph (e) to read as follows:

**§ 600.106 Funding.**

* * * * *

(d) *Extensions.* DOE may extend any budget period, including the final budget period of a project period, without the need for competition or a justification of restricted eligibility if:

(1) In the case of the final budget period of a project period, the additional time necessary is 18 months or less in total, or for all other budget periods the additional time necessary is 6 months or less in total, and

(2) The grantee submits a written request for an extension before the expiration date of the budget period in process and includes a justification for the extension along with an expenditure plan for the use of any additional funds requested. An expenditure plan need not be provided when no additional funds are requested, unless the grantee intends to rebudget funds in such a way as to require DOE prior approval or unless the grantee is instructed otherwise by the Contracting Officer.

(e) *Retroactive extensions.* DOE may retroactively extend an expired budget period provided that the request for such extension is submitted no later than 30 days after its expiration, the grantee can satisfactorily explain why the request was not submitted prior to the expiration date, and the Contracting Officer determines that the request would have been approved had it been submitted in a timely manner.

* * * * *

7. Section 600.108 is amended by revising paragraphs (b) and (c), redesignating existing paragraph (d) as paragraph (f), and adding new paragraphs (d) and (e) as follows:

**§ 600.108 Calculation of award.**

* * * * *

(b) *Excess funds.* During the term of the final budget period (or only budget period should the grant have only one) for which support is provided, a grantee must notify DOE whenever it becomes apparent to the grantee that the amount of DOE funding authorized is expected to exceed its needs by more than $5,000 or 5 percent of the DOE award, whichever is greater. DOE may reduce the award by an amount which does not exceed the total amount of excess funds.

(c) *Unobligated balances*—(1) *Other than research grants.* When the grantee has unobligated balances remaining at the end of a budget period (see § 600.116) such funds may be used in the subsequent budget period if such use is authorized in the terms and conditions of the award or is included in the total approved budget shown in an amended Notice of Financial Assistance Award.

(2) *Research grants.* When the grantee has unobligated funds remaining at the end of any budget period, the grantee may, as cited in paragraph (d) of this section, use these unobligated funds to increase the obligations in the subsequent budget period in an amount not to exceed 10 percent of the amount actualy awarded by DOE for that subsequent budget period. Such use of unobligated funds in the subsequent period up to the 10 percent level is subject only to the other specific prior approval requirements (e.g., general purpose equipment, foreign travel). Use of an amount in excess of 10 percent for *any* purpose must receive the prior approval of the DOE Contracting Officer.

(d) *Budget flexibility—research grants.* Under research grants, a grantee may, during a specific budget period, obligate up to 110 percent of the amount awarded by DOE for that budget period, without prior approval by DOE, except as set forth in paragraph (c)(2) above regarding other specific prior approval requirements. Obligations in excess of 110 percent of the amount awarded require prior DOE approval. (A prior approval made in accordance with the provisions of paragraph (c)(2) of this section would constitute such prior approval.) Such obligations shall, however, be incurred at the grantee's own risk, but obligations not in excess of 10 percent of the funding awarded by DOE for that budget period may be funded from unobligated funds remaining from the prior budget period to the extent they are available (see § 600.108(c)(2)). To the extent excess obligations are not funded from any unobligated balance from the prior budget period they may be charged against subsequent continuation or renewal awards. The authority to incur costs which may be charged against a subsequent budget period shall in no way require DOE to increase the level of funds to be awarded in the subsequent budget period in excess of the amount DOE has previously indicated will be awarded for that period. Further, even if the prior approval required by this paragraph for incurrences in excess of 110 percent has been obtained, the grantee shall not be entitled to reimbursement if a continuation or renewal award is not made, nor have any claim against DOE for any amount obligated by the grantee in excess of the total funds awarded by DOE.

(e) Nothing in paragraphs (c) or (d) of this section shall in any way require DOE to increase the total amount obligated for the project period.

* * * * *

8. Section 600.114 is amended by revising paragraphs (b)(1) (ii) and (iv) to read as follows:

**§ 600.114 Budget and project revisions.**

* * * * *

(b) * * *

(1) * * *

(ii) Except as provided in § 600.108(d) for budget flexibility in research grants, any revision which would result in the need for additional DOE funding.

* * * * *

(iv) Except for research grants, transfers among direct cost categories, or, if applicable, among separately budgeted programs, functions or activities which cumulatively exceed or are expected to exceed 5 percent of the current total approved budget, whenever the awarding party's share exceeds $100,000.

* * * * *

9. Section 600.115 is amended by revising paragraph (c)(2) to read as follows:

**§ 600.115 Performance reports.**

* * * * *

(c) * * *

(2) Annual performance reports shall be submitted within 90 days after the end of the 12-month period (generally the budget period) covered by the report or with, or as part of, any continuation or renewal application if so specified in either any pertinent program rules or the terms and conditions of award.

* * * * *

10. Section 600.119 is amended by revising paragraphs (c)(1) (i) and (ii) and adding a new paragraph (c)(1)(iii) to read as follows:

**§ 600.119 Procurement under grants and subgrants.**

* * * * *

(c) * * *

(1) * * *

(i) Except as provided in paragraph (c)(1)(iii) of this section, the value of the contract is expected to exceed $5,000 in the aggregate and the grantee or subgrantee is not a State government, local government, or Indian tribal government.

(ii) Except as provided in paragraph (c)(1)(iii) of this section, the value of the contract is expected to exceed $10,000 in the aggregate, and the grantee or subgrantee is a State government, local government, or Indian tribal government.

(iii) In the case of a research grant, the value of the contract is expected to exceed $25,000 in the aggregate, regardless of the grantee's or subgrantee's organizational type.

* * * * *

[FR Doc. 86-24365 Filed 10-27-86; 8:45 am]

BILLING CODE 6450-01-M

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 175

[T.D. 86-194]

## Tariff Classification of Prefinished Hardboard Siding

**AGENCY:** Customs Service, Treasury.

**ACTION:** Final interpretive rule.

**SUMMARY:** Customs has reached a decision regarding the tariff classification of certain imported prefinished hardboard lap siding. The current tariff classification was challenged administratively by the filing of a domestic interested party petition. That petition was denied by Customs. In the subsequent court proceeding contesting the denial by Customs, an alternative classification not previously considered was suggested. Customs was directed by the court to consider the alternative classification. Accordingly, Customs published a notice requesting public comments on the alternative classification. This document advises the public that the alternative classification has been adopted.

**DATES:** This decision will be effective with respect to merchandise entered, or withdrawn from warehouse, for consumption after 30 days from the date of publication in the Customs Bulletin.

**FOR FURTHER INFORMATION CONTACT:** Jeremy N. Baskin, Classification and Value Division, (202-566-8181).

**SUPPLEMENTARY INFORMATION:**

### Background

Customs has reviewed its position regarding the tariff classification of certain imported prefinished hardboard lap siding. The product in question is a plank of hardboard, 7/16-inch thick, and either 9 or 12 inches wide. Approximately 1 inch from the bottom, a hard plastic locking strip or "spline" is fixed into a groove in the back of each plank. The top edge of each plank is machined to form a groove or "rabbet", which fits the spline in the plank above. The planks are prefinished at the time of importation. Part of the manufacturing process involves the application of a newsprint paper face to the wet wood fiber mat, which mat has a water content of 70 percent. This occurs prior to compression and heat treatment which forms the hardboard planks, and prior to the sawing and finishing operations which form the prefinished siding. Acrylic latex paint is also applied to the planks prior to importation. The current tariff classification is under the tariff provision for "Other boards, of vegetable fibers (including wood fibers) . . .", in item 245.90, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), a duty-free provision.

Customs published a notice in the **Federal Register** on March 22, 1982 (47 FR 12258), acknowledging receipt of a petition from a domestic interested party filed under § 516, Tariff Act of 1930, as amended (19 U.S.C. 1516). The notice solicited public comments on the merits of the petition. The deadline for receipt of comments was subsequently extended by a **Federal Register** notice published on May 27, 1982 (47 FR 23249). The petitioner claimed that the proper classification of the siding should be under the tariff provision for other hardboard in item 245.30, TSUS. The current duty rate under item 245.30, TSUS, is 7.5 percent ad valorem.

In accord with the administration practice concerning the disposition of domestic interested party petitions as set forth in Part 175, Customs Regulations (19 CFR Part 175), by a ruling dated October 29, 1982, Customs informed the petitioner that the comments received in response to the notice had been considered and, upon review of the matter, it was decided to deny the petition and to continue to classify the imported siding in item 245.90, TSUS.

In response to the October 29, 1982, ruling, by letter of November 29, 1982, the petitioner filed notice of its intention to contest the decision in accordance with § 516(c), Tariff Act of 1930, as amended (19 U.S.C. 1515(c)), and § 175.23, Customs Regulations (19 CFR 175.23).

By publication of T.D. 83-104 in the **Federal Register** on May 11, 1983 (48 FR 21231), Customs informed the public of the petitioner's desire to contest the decision, and gave a detailed account of the proceedings to that date together with a full explanation of the reasons for denying the petition.

In the subsequent proceeding contesting the classification before the Court of International Trade, *American Hardboard Association v. United States and MacMillan Bloedel, Ltd.*, Party-in-Interest, Court No. 83-9-01301, a tariff classification not previously considered was suggested. On January 27, 1986, the Court remanded the case to Customs for a decision on the correctness of the current tariff classification as opposed to the newly suggested alternative classification under the provision for "Building boards . . . Laminated boards . . .", in item 245.80, TSUS. Materials classified under item 245.80, TSUS, are currently subject to a compound rate of duty of 1.4 cents per pound, plus 2.6 percent ad valorem.

Accordingly, in order to properly consider the issue, by notice published in the **Federal Register** of March 11, 1986 (51 FR 8338), Customs requested comments on classification of the siding in item 245.80, TSUS, as opposed to classification in item 245.90, TSUS. The merchandise was more fully described in a supplemental document published in the **Federal Register** of April 15, 1986 (51 FR 12712). The six comments received in response to these notices have been fully analyzed and are discussed below.

**Analysis of Comments**

Four comments supported the continued classification of the siding under item 245.90, TSUS. The remaining comments advocated the alternative classification of the product as laminated building boards under item 245.80, TSUS.

One commenter stated that the subject board is face finished rather than laminated. Headnote 2, Schedule 2, Part 3, TSUS, defines the term "face finished" as including boards that have been overlaid with paper. Because of this definition the commenter claims that the board cannot be considered laminated. Customs does not agree. Face finishing and lamination are unrelated concepts. The superior heading for both items 245.80 and 245.90, TSUS, which reads "Building boards, . . . , whether or not face finished", suggests that classification under those items is not based on face finishing. A face finished board is not precluded from classification as a laminated board.

One commenter cites the lexicographical definition of "laminate" and suggests that the subject merchandise cannot be included. The commenter notes that the noun "laminate" is defined as a product "composed of layers of firmly united material", or "consisting of laminae." "Lamina", the singular form of "laminae", is defined as a "thin plate or scale." The verb "laminate" is defined as "to make by uniting superimposed layers of one or more materials (as by means of adhesives or bolts)." The commenter concludes that the common meaning of the terms "laminate" or "laminated" does not cover the subject product because: (1) It does not consist of laminae because there are no thin plates or scales; (2) it is not made by uniting superimposed layers by means of adhesives or bolts; and (3) it is not composed of layers of firmly united material because there are not visible layers in the merchandise as a finished article.

Customs does not agree. No reasoning is provided to suggest why the newspaper applied to the wet mat layer during manufacture cannot be considered to be a thin plate. Synthetic resins which aid in the bonding process are added to the wet mat before heat and pressure are applied. Thus, the product is made by uniting the superimposed newsprint layer to the wet mat by means of an adhesive. There is nothing in the lexicographical definition cited that requires visible layers to be in evidence in a laminated building board.

Another commenter cites a lexicographical definition which claims the term laminated describes products that are "made by bonding or impregnating superimposed layers (as of paper, wood or fabric) with resin and compressing under heat." This common definition supports classification under item 245.80, TSUS, which covers laminated boards bonded in whole or in part with synthetic resins.

One commenter suggests that the commercial meaning of the term "laminated board" would not include the subject hardboard lap siding. He cites the U.S. Department of Commerce publication *Commercial Standard CS 251–63: Hardboard,* effective February 11, 1963, which describes laminated hardboard as follows:

> Hardboard laminated with an adhesive in multiple plies to obtain greater thickness. These products are used for special purposes where added thickness or two smooth surfaces are desired. Laminated hardboards are available for internal or external use.

The commenter concludes that in order to be a laminated hardboard, a product must have multiple plies of finished boards of the same material (such as wood), bonded together with an adhesive (such as glue). The commenter states that the boards are required to be in layers, and they must be in a finished form when bonded.

The commenter draws conclusions that are not evident from the commercial definition cited. The subject board is laminated with the newsprint layer to obtain a smoother surface that can be more easily finished. The commercial definition does not limit the product to include only finished boards of the same material bound together with an adhesive. Customs believes that the commercial definition of laminated hardboard includes the subject product.

One commenter notes that advertising literature published by the manufacturer of the subject board claims it to be manufactured by a process where "an exclusive oil-impregnated overlay is laminated to the hardboard surface under heat and pressure." The method of advertising or display of merchandise, while not determinative of classification, does have probative value. *Davis Products, Inc. v. United States,* 59 Cust. Ct. 226, 230, C.D. 3127 (1967). *New York Merchandise Co., Inc. v. United States,* 62 Cust. Ct. 38, 44, C.D. 3671 (1969). *Montgomery Ward & Co. v. United States,* 62 Cust. Ct. 718, 724, C.D. 385 (1969). The product undergoes a separate manufacturing step so that the newsprint layer can be added, thereby providing a quality enhancing characteristic not otherwise available in hardboard. The advertising literature has probative value supporting the conclusion that the subject hardboard lap siding is a laminated board.

One commenter presents expert testimony to support the conclusion that the product is not laminated. The expert witness defines a laminate as a structure that consists of (1) dissimilar finished materials that are fused together or bonded by means of an adhesive and that constitute distinct visible layers of comparable thicknesses, or (2) similar finished materials that are bonded together by means of an adhesive that constitutes distinct visible layers of comparable thicknesses. This definition is claimed to be accepted by the building industry as well as by scientific and academic communities. The layers must be visually distinguishable either to the unaided eye, or microscopically.

The common and commercial definitions of "laminate" do not support the conclusion that a laminate must have distinct visible layers of comparable thicknesses. The expert witness has admitted that he is unaware of any definition of laminate, other than his own, that contains the "comparable thickness" requirement. This fact contradicts his claim that his definition is accepted by the general public and building materials industry as well as by the academic and scientific communities.

Customs believes that the expert testimony is of limited value and does not serve to enhance the understanding of the definition of "laminated" as it applies to building boards.

The legislative history of item 245.80, TSUS, as noted by one commenter, indicates the intent of Congress in enacting the provision. The U.S. Tariff Commission, *Tariff Classification Study; Schedule 2—Wood and Paper* (November 15, 1960), page 64, notes:

> Most hardboard is presently classified in Paragraph 1413. However, if its surface is covered with a laminate of synthetic resin and paper, it is classifiable in Paragraph 1403 as a manufacture of pulp if in chief value of hardboard or in Paragraph 1539(b) if in chief value of the laminate.

The subject product is covered with a laminate of synthetic resin and paper. Both paragraphs 1403 and 1539(b) are cited in the *Tariff Classification Study* as sources for item 245.80, TSUS. Accordingly, Customs believes that the legislative history of item 245.80, TSUS, supports the conclusion that the subject product is classifiable under that item number.

Two commenters, one supporting the item 245.80, TSUS, laminated board

classification and one opposing, cite judicial precedent as supporting their respective positions. In *United States* v. *O.M. Baxter (Inc.)*, 16 Cust. Ct. 257, T.D. 42868 (1928), the court supports the proposition that laminated products are composed of laminae or layers.

In *Crown Abrasive Co., Inc.* v. *United States*, 34 Cust. Ct. 347, Abs. 58990 (1955), the court found a grinding disc to be laminated even though an expert witness admitted that the layers which formed the disc could not be discerned visually.

In *Sommers Plastic Products Co.* v. *United States*, 58 Cust. Ct. 409, C.D. 3002 (1967), the court found a three-layered polyvinly chloride sheeting material with a middle layer of foamed polyvinyl chloride resin to be a laminated product. At the time of manufacture of the product, the layer is applied as a foam, to later harden to a synthetic resin. The court referred to the foaming synthetic resin as a middle layer. Accordingly, a layer need not be in finished form at the time of construction in order for the finished product to be classifiable as a laminate. The *Crown Abrasive* and *Sommers* decisions contradict the definition offered by the expert witness which would require a laminate to be constructed of visually discernible layers of finished materials.

One commenter cites various administrative rulings, including Customs New York Ruling Letter dated March 8, 1981 (No. 800125), Customs Ruling Letter dated June 1, 1979 (No. 060298), and T.D. 67–6(4), as supporting the position that the subject lap siding is not laminated. However, these rulings confirm that the provisions of item 245.80, TSUS, apply to products that are laminated because of the presence of a synthetic resin bond.

### Decision

After careful analysis of the comments submitted, and further review of the matter, Customs finds that the subject hardboard lap siding, which is manufactured through a process whereby a newsprint face is overlaid on a wet wood fiber mat and combined with the mat through the application of heat and pressure, is classifiable as a building board, not specially provided for, whether or not face finished: laminated boards, bonded in whole or in part, or impregnated, with synthetic resins, under item 245.80, TSUS, dutiable at the rate of 1.4 cents per pound plus 2.6 percent ad valorem. By letter dated May 19, 1986, this decision was reported to the Court of International Trade.

### Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

**William von Raab,**

*Commissioner of Customs.*

Approved.

**Michael H. Lane,**

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 86–24312 Filed 10–27–86; 8:45 am]

BILLING CODE 4820–02–M

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 74

**[Docket No. 85C–0377]**

## Listing of Color Additives for Coloring Contact Lenses

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the color additive regulations to delete the current limitation on the level of [phthalocyaninato(2-)] copper used in coloring contact lenses. This action responds to a petition filed by Wesley-Jessen, Division of Schering Corp.

**DATES:** Effective November 28, 1986, except as to any provisions that may be stayed by the filing of proper objections: objections by November 28,1986.

**ADDRESS:** Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Mary J. Stephens, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

**SUPPLEMENTARY INFORMATION:**

### I. Intoduction

In a notice published in the Federal Register of September 19, 1985 (50 FR 38036), FDA announced that a color additive petition (CAP 5C0196) had been filed by Wesley-Jessen, Division of Schering Corp., 37 South Wabash Ave., Chicago, IL 60603, proposing that Part 74 of the color additive regulations (21 CFR Part 74) be amended to provide for the safe use of [phthalocyaninato(2-)] copper as a color additive in coloring contact lenses. The petition was filed under section 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 376). Since the filing of the petition, Wesley-Jessen has changed its address to 400 West Superior St., Chicago, IL 60610.

### II. Analysis of Data

In the Federal Register of August 2, 1983 (48 FR 34946), FDA listed [phthalocyaninato(2-)] copper for use in contact lenses at levels not to exceed 0.01 percent by weight of the contact lens material. In that document, the agency stated that the available evidence did not support the safety of the use of the color additive in contact lenses at higher levels.

Wesley-Jessen has now petitioned the agency to remove the limitation on the amount of [phthalocyaninato(2-)] copper that may be used to color contact lenses. In support of this petition, the petitioner submitted the results of an in vitro cytotoxicity study that was performed by directly exposing cultured mammalian cells to graded concentrations (0.01 to 0.06 percent) of [phthalocyaninato(2-)] copper. No cytotoxic responses were noted under the conditions of the test, even at the highest (0.06 percent) level tested.

Based on this data and on the other information available to the agency, FDA has concluded that it can amend § 74.3045 to eliminate the 0.01 percent limitation in the use of [phthalocyaninato(2-)] copper in contact lenses. The agency estimates, based on the data submitted by the petitioner and on other relevant information, that the upper limit of exposure to [phthalocyaninato(2-)] copper from its use in coloring contact lenses is 280 nanograms per day. The agency calculated this upper limit of exposure based on several factors. First, FDA estimated that the maximum use level of [phthalocyaninato(2-)] copper is 50 micrograms per lens. (See memorandum of February 19, 1985, from Food Additive Chemistry Evaluation Branch to Petitions Control Branch, Re: Color Additives in Contact Lenses, which is on file in the Dockets Management Branch (address above) under the docket number appearing in the heading of this document and is available for public review between 9 a.m. to 4 p.m., Monday through Friday.) Second, the agency made two worst case assumptions: (1) That the user will replace lenses tinted with the color additive once each year with a new pair of lenses tinted with the color additive at the maximum use level; and (2) that 100 percent of the color additive migrates from the lenses over the 1-year period. Because these assumptions are worst case, exposure to

[phthalocyaninato(2-)] copper from use in contact lenses is likely to be far less than 280 nanograms per day.

For example, in the lenses covered by the petition before the agency, the amount of [phthalocyaninato(2-)] copper added is usually 0.02 percent by weight of the contact lens material. If lenses weighing 33 milligrams each (the weight of the lens in the petition) are tinted with 0.02 percent [phthalocyaninato(2-)] copper, there would be approximately 6.6 micrograms of [phthalocyaninato(2-)] copper in each lens or approximately 13 micrograms in a pair of lenses. If 100 percent of the color additive migrated to the eye from the lenses in 1 year, the wearer would be exposed to approximately 36 nanograms of [phthalocyaninato(2-)] copper per day.

Based on the results of the cytotoxicity studies submitted by the petitioner, FDA finds that it can conclude to a reasonable certainty that no harm will result from the use of [phthalocyaninato(2-)] copper, even if no limits are set on the levels of that use. The finding of no cytotoxic effect at the 0.06 percent level of the color additive represents a safety margin of approximately 56,000 times the concentration that would be in the eyes if 36 nanograms of the additive migrated into the eyes per day. Moreover, it is 7,000 times the concentration that would be in the eyes if 280 nanograms (the worst case exposure) of the color additive migrated into the eye per day.

To ensure the safe use of [phthalocyaninato(2-)] copper, however, FDA is amending § 74.3045 to state that this color additive may be used to color contact lenses in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect.

### III. Conclusion

Based on the data contained in the petition and other relevant material, FDA concludes that the safety margin for use of this color additive is large enough to rule out any need for imposing a limitation on the amount of the color additive that may be present in the lens, beyond the limitation that only that amount necessary to accomplish the intended technical effect may be used. The agency further concludes, on the basis of data contained in the petition and other relevant data, that there is a reasonable certainty that no harm will result from the petitioned use of [phthalocyaninato(2-)] copper, and that this color additive is suitable for its intended use. The agency, therefore, is amending the color additives regulations by deleting the current limitation on the use of this color additive in contact lenses.

### V. Inspection of Documents

In accordance with § 71.15(a) (21 CFR 71.15(a)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 71.15(b), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

### VI. Environmental Assessment

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(2).

### VII. Objections

Any person who will be adversely affected by this regulation may at any time on or before November 28, 1986 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register.**

**List of Subjects in 21 CFR Part 74**

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 74 is amended as follows:

## PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 74 continues to read as follows:

**Authority:** Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

2. Section 74.3045 is amended by revising paragraph (c)(2) to read as follows:

**§ 74.3045 [Phthalocyaninato(2-)] copper.**

* * * * *

(c) * * *

(2) The color additive [phthalocyaninato(2-)] copper may be safely used for coloring contact lenses in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect.

* * * * *

Dated: October 21, 1986.

**John M. Taylor,**

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 86-24273 Filed 10-27-86; 8:45 am]

BILLING CODE 4160-01-M

---

**21 CFR Part 178**

**[Docket No. 86N-0277]**

## Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; Editorial Amendment; Correction

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a document that amended the food additive regulations by removing certain limitations on the use of an additive as a component of olefin polymers intended to contact food. This document corrects a typographical error.

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

**SUPPLEMENTARY INFORMATION:** In FR Doc. 86-20325 appearing on page 32211 in the issue of Wednesday, September 10, 1986, the following correction is made on page 32212: In the second column under § 178.2010 *Antioxidants and/or stabilizers for polymers* in paragraph (b) in the table in the last line, "320" is corrected to read "230".

Dated: October 17, 1986.

**Sanford A. Miller,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 86-24274 Filed 10-27-86; 8:45 am]

BILLING CODE 4160-01-M

## 21 CFR Parts 182 and 186

**[Docket No. 78N-0255]**

## Sodium Oleate and Sodium Palmitate; Affirmation of GRAS Status as Indirect Human Food Ingredients

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is affirming that sodium oleate and sodium palmitate are generally recognized as safe (GRAS) as indirect human food ingredients for use in paper and paperboard products used in food packaging. FDA is also affirming that sodium oleate is GRAS for use as a component of lubricants with incidental food contact. The safety of these ingredients has been evaluated under the comprehensive safety review conducted by the agency.

**EFFECTIVE DATE:** October 28, 1986.

**FOR FURTHER INFORMATION CONTACT:** Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of January 30, 1979 (44 FR 5905), FDA published a proposal to affirm that sodium oleate and sodium palmitate are GRAS for use in paper and paperboard products used in food packaging, and that sodium oleate is GRAS for use as a component of lubricants with incidental food contact. FDA published the proposal in accordance with its announced review of the safety of GRAS and prior-sanctioned ingredients.

Subsequently, in the **Federal Register** of June 3, 1986 (51 FR 19851), FDA published a tentative final rule in which FDA proposed to affirm that: (1) Sodium oleate and sodium palmitate are GRAS as indirect human food ingredients for use in paper and paperboard products used in food packaging and (2) sodium oleate is GRAS for use as a component of lubricants with incidental food contact, without the specifications listed in the January 30, 1979, proposal.

No comments were received in response to the tentative final rule on sodium oleate and sodium palmitate. The agency is therefore adopting §§ 186.1770 and 186.1771 without change.

The agency has determined under 21 CFR 25.24(b)(7) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as defined by the Order. The agency has not received any new information or comments that would alter its previous determination.

The agency's findings of no major economic impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which may be seen in the Dockets Management Branch (address above).

**List of Subjects**

*21 CFR Part 182*

Food ingredients, Spices and flavorings.

*21 CFR Part 186*

Food ingredients, Food packaging.

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 Food Safety and Applied Nutrition, Parts 182 and 186 are amended as follows:

## PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR Part 182 continues to read as follows:

**Authority:** Secs. 201(s), 402, 409, 701, 52 Stat. 1046-1047 as amended, 1055-1056 as amended, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10 and 5.61.

**§ 182.90 [Amended]**

2. In § 182.90 *Substances migrating to food from paper and paperboard products* by removing the entry for "Soap (sodium oleate, sodium palmitate)" from the list of substances.

## PART 186—INDIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

3. The authority citation for 21 CFR Part 186 continues to read as follows:

**Authority:** Secs. 201(s), 402, 409, 701, 52 Stat. 1046-1047 as amended, 1055-1056 as amended, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10 and 5.61.

4. By adding new §§ 186.1770 and 186.1771 to read as follows:

**§ 186.1770 Sodium oleate.**

(a) Sodium oleate ($C_{18}H_{33}O_2Na$, CAS Reg. No. 143-19-1) is the sodium salt of oleic acid (*cis*-9-octadecenoic acid). It exists as a white to yellowish powder with a slight tallow-like odor. Commercially, sodium oleate is made by mixing and heating flaked sodium hydroxide and oleic acid.

(b) In accordance with § 186.1(b)(1), the ingredient is used as a constituent of paper and paperboard for food packaging and as a component of lubricants with incidental food contact in accordance with § 178.3570 of this chapter, with no limitation other than current good manufacturing practice.

(c) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

**§ 186.1771 Sodium palmitate.**

(a) Sodium palmitate ($C_{16}H_{31}O_2Na$, CAS Reg. No. 408-35-5) is the sodium salt of palmitic acid (hexadecanoic acid). It exists as a white to yellow powder. Commercially, sodium palmitate is made by mixing and heating flaked sodium hydroxide and palmitic acid.

(b) In accordance with § 186.1(b)(1), the ingredient is used as a constituent of paper and paperboard for food packaging with no limitation other than current good manufacturing practice.

(c) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Dated: October 17, 1986.

Sanford A. Miller,

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 86-24275 Filed 10-27-86; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF JUSTICE

### 28 CFR Part 16

[AAG/A Order No. 19-86]

### Exemption of Records Systems Under the Privacy Act

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This document will redesignate a Code of Federal Regulation (CFR) section erroneously assigned to the Office of Legal Policy (OLP) and add exemption paragraphs which have already been promulgated but could not be added to the appropriate regulation in CFR because of the erroneous paragraph assignment. In addition, it will add to 28 CFR Part 16 exemption paragraphs for the Office of Intelligence Policy and Review (OIPR) which were inadvertently removed from the CFR when exemption paragraphs were published for the OLP.

Specifically, "§ 16.74 Office of Legal Policy Systems—Limited Access" is redesignated as "§ 16.73 Office of Legal Policy Systems—Limited Access." In addition, paragraphs (g) and (h) are added to the newly redesignated § 16.73. Finally, "§ 16.74 Exemption of Office of Intelligence Policy and Review Systems—Limited Access" is added.

This document has no effect on the public for two reasons. First, its only purpose is to correct administrative publication errors. Second, both the OLP and OIPR exemptions have already been properly promulgated by the publication of final rules in the Federal Register.

**EFFECTIVE DATE:** October 28, 1986.

**FOR FURTHER INFORMATION CONTACT:** J. Michael Clark (202) 272-6474.

**SUPPLEMENTARY INFORMATION:** Through a publication delay, the sequence in which final regulations were published caused exemption paragraphs to be erroneously removed and resulted in a redesignation which was unintended.

Specifically, the OIPR promulgated exemption of its systems of records by publication in the Federal Register on July 2, 1984 (49 FR 27143). The July 2, 1984, publication added "§ 16.73 Exemption of Office of Intelligence Policy and Review Systems—Limited Access." Subsequently, a rule was drafted redesignating § 16.73 as § 16.74, making § 16.73 available for assignment to the OLP. However, publication of this rule was delayed due to the necessity for an extended review of other more substantive proposals therein. Meanwhile, a final rule was published on January 8, 1986 (51 FR 750), to add "§ 16.73 Exemption of Office of Legal Policy Systems—Limited Access." As a result, "§ 16.73 Exemption of Office of Intelligence Policy and Review Systems—Limited Access" was erroneously removed. Finally, when the order containing the redesignation was published on April 24, 1986 (51 FR 15475), it erroneously redesignated "§ 16.73 Exemption of Office of Legal Policy Systems—Limited Access" as "§ 16.74 Exemption of Legal Policy Systems—Limited Access."

Unaware of the incorrect redesignation, the Department published a final rule on July 25, 1986 (51 FR 26686), to add paragraphs (g) and (h) to "§ 16.73 Exemption of Office of Legal Policy Systems—Limited Access" which, because of the error in redesignation, currently exists as § 16.74.

To correct the errors, we are redesignating "§ 16.74 Exemption of Office of Legal Policy Systems—Limited Access," as "§ 16.73 Exemption of Office of Legal Policy Systems—Limited Access;" we are adding paragraphs (g) and (h) to the newly redesignated § 16.73; and we are adding "§ 16.74 Office of Intelligence Policy and Review Systems—Limited Access."

This publication has no effect on the public for reasons already stated. Accordingly, it has been determined that it is impracticable and unnecessary to provide opportunity for public comment and that it is not in the public interest to delay the effective date of this rule. This determination is made in accordance with 5 U.S.C. 553 (b)(B) and (d)(3).

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, Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, the Department amends 28 CFR Part 16 as set forth below.

Dated: October 8, 1986.

**W. Lawrence Wallace,**

*Assistant Attorney General for Administration.*

## PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

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. 483a unless otherwise noted.

2. Section 16.74 is redesignated as § 16.73 and is further amended by adding paragraphs (g) and (h) to read as follows:

**§ 16.73 Exemption of Office of Legal Policy System—limited access.**

* * * * *

(g) The following system of records is exempt from 5 U.S.C. 552a (c)(3) and (4); (d); (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5); and (g):

(1) *Declassification Review System (JUSTICE/OLP-004).* These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552(j)(2), (k)(1), (k)(2), and (k)(5).

(h) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest on the part of the Department of Justice as well as the recipient agency. This would permit record subjects to impede the investigation e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel.

(2) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(3) From subsection (d) to the extent that information in this record system relates to official Federal investigations and matters of law enforcement and/or is properly classified pursuant to Executive Order 12356. Individual access to these records might compromise ongoing investigations, reveal confidential sources or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation, or

jeopardize national security or foreign policy interests. 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) From subsections (e) (1) and (5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information which may aid in establishing patterns of criminal activity. Moreover, it would impede the specific investigative process if it were necessary to assure the relevance, accuracy, timeliness, and completeness of all information obtained.

(5) From subsection (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the existence of the investigation and would therefore be able to avoid detection, apprehension, or legal obligations or duties.

(6) From subsection (e)(3) because to comply with the requirements of this subsection during the course of an investigation could impede the information gathering process, thus hampering the investigation.

(7) From subsections (e)(4) (G) and (H), and (g) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

3. Section 16.74 is added to read as follows:

**§ 16.74 Exemption of Office of Intelligence Policy and Review Systems—Limited access.**

(a) The following systems of records is exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f) and (g);

(1) Policy and Operational Records System (JUSTICE/OIPR-001);

(2) Foreign Intelligence Surveillance Act Records System (JUSTICE/OIPR-002);

(3) Litigation Records System (JUSTICE/OIPR-003); and

(4) Domestic Security/Terrorism Investigations Records System (JUSTICE/OIPR-004).

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

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because release of the disclosure accounting would put the target of a surveillance or investigation on notice of the investigation or surveillance and would thereby seriously hinder authorized United States intelligence activities.

(2) From subsections (c)(4), (d), (e)(4)(G), (e)(4)(H), (f) and (g) because these provisions contemplate individual access to records and such access would compromise ongoing surveillances or investigations and reveal the sources and methods of an investigation.

(3) From subsection (e)(2) because, although this office does not conduct investigations, the collection efforts of agencies that supply information to this office would be thwarted if the agency were required to collect information with the subject's knowledge.

(4) From subsections (e)(3) and (e)(8) because disclosure and notice would provide the subject with substantial information which could impede of compromise an investigation. For example, an investigatory subject could, once made aware that an investigation was ongoing, alter his manner of engaging in intelligence or terrorist activities in order to avoid detection.

[FR Doc. 86-24288 Filed 10-27-86; 8:45 a.m.]
BILLING CODE 4410-01-M

## POSTAL SERVICE

## 39 CFR Part 10

## Express Mail International Service to the Cayman Islands

**AGENCY:** Postal Service.

**ACTION:** Final action on Express Mail International Service to the Cayman Islands.

**SUMMARY:** Pursuant to an agreement with the postal administration of the Cayman Islands, the Postal Service intends to begin Express Mail International Service with the Cayman Islands at postage rates indicated in the tables below. Service is scheduled to begin on November 26, 1986.

**EFFECTIVE DATE:** November 26, 1986.

**FOR FURTHER INFORMATION CONTACT:** Leon W. Perlinn, [202] 268-2673.

**SUPPLEMENTARY INFORMATION:** By a notice published in the **Federal Register** on September 23, 1986 (51 FR 33792), the Postal Service announced that it was proposing to begin Express Mail International Service to the Cayman Islands. Comments were invited on published rate tables, which are proposed amendments to the International Mail Manual (incorporated by reference in the Code of Federal Regulations, 39 CFR 10.1), and which are to become effective on the date service begins.

No comments were received. Accordingly, the Postal Service states that it intends to begin Express Mail International Service with the Cayman Islands on November 26, 1986, at the rates indicated in the table below.

**List of Subjects in 39 CFR Part 10**

Postal Service, Foreign relations.

**PART 10—[AMENDED]**

The authority citation for Part 10 continues to read as follows:

**Authority:** 5 U.S.C. 552[a], 39 U.S.C. 401, 404, 407, 408.

THE CAYMAN ISLANDS EXPRESS MAIL INTERNATIONAL SERVICE

| Custom designed service [1] [2] up to and including | | On demand service [2] up to and including | |
|---|---|---|---|
| Pounds | Rate | Pounds | Rate |
| 1 | $31.00 | 1 | $23.00 |
| 2 | 34.80 | 2 | 26.80 |
| 3 | 38.60 | 3 | 30.60 |
| 4 | 42.40 | 4 | 34.40 |
| 5 | 46.20 | 5 | 38.20 |
| 6 | 50.00 | 6 | 42.00 |
| 7 | 53.80 | 7 | 45.80 |
| 8 | 57.60 | 8 | 49.60 |
| 9 | 61.40 | 9 | 53.40 |
| 10 | 65.20 | 10 | 57.20 |
| 11 | 69.00 | 11 | 61.00 |
| 12 | 72.80 | 12 | 64.80 |
| 13 | 76.60 | 13 | 68.60 |
| 14 | 80.40 | 14 | 72.40 |
| 15 | 84.20 | 15 | 76.20 |
| 16 | 88.00 | 16 | 80.00 |
| 17 | 91.80 | 17 | 83.80 |
| 18 | 95.60 | 18 | 87.60 |
| 19 | 99.40 | 19 | 91.40 |
| 20 | 103.20 | 20 | 95.20 |
| 21 | 107.00 | 21 | 99.00 |
| 22 | 110.80 | 22 | 102.80 |
| 23 | 114.60 | 23 | 106.60 |
| 24 | 118.40 | 24 | 110.40 |
| 25 | 122.20 | 25 | 114.20 |
| 26 | 126.00 | 26 | 118.00 |
| 27 | 129.80 | 27 | 121.80 |
| 28 | 133.60 | 28 | 125.60 |
| 29 | 137.40 | 29 | 129.40 |
| 30 | 141.20 | 30 | 133.20 |
| 31 | 145.00 | 31 | 137.00 |
| 32 | 148.80 | 32 | 140.80 |
| 33 | 152.60 | 33 | 144.60 |
| 34 | 156.40 | 34 | 148.40 |
| 35 | 160.20 | 35 | 152.20 |
| 36 | 164.00 | 36 | 156.00 |
| 37 | 167.80 | 37 | 159.80 |
| 38 | 171.60 | 38 | 163.60 |
| 39 | 175.40 | 39 | 167.40 |
| 40 | 179.20 | 40 | 171.20 |
| 41 | 183.00 | 41 | 175.00 |
| 42 | 186.80 | 42 | 178.80 |
| 43 | 190.60 | 43 | 182.60 |
| 44 | 194.40 | 44 | 186.40 |

[1] Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.

[2] Pickup is available under a Service Agreement for an added charge of $5.60 for each pickup stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

A transmittal letter making these changes in the pages of the International Mail Manual will be published in the Federal Register as provided in 39 CFR 10.3 and will be transmitted to subscribers automatically.

Fred Eggleston,

*Assistant General Counsel Legislative Division.*

[FR Doc. 86-24278 Filed 10-27-86; 8:45 am]

BILLING CODE 7710-12-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[A-4-FRL-3101-3]

### Approval and Promulgation of Implementation Plans; Kentucky: Federal Assistance Limitations [KY-006]

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** On July 16, 1986 (51 FR 25718), EPA proposed lifting the restrictions on federal assistance under sections 176(a) and 316(b) of the Clean Air Act which are in effect in Campbell and Kenton Counties, Kentucky. This action was based on EPA's proposed finding that Kentucky was making reasonable efforts to submit a revised State implementation plan (SIP) for the area as required by Section 172 of the Act. EPA received comments on the proposal from only two parties, both of which supported the proposed action. Based on this lack of negative comment, plus EPA's assessment that reasonable efforts continue to be made toward meeting the requirements of section 172, EPA today lifts the section 176(a) and 316(b) restrictions which have been in effect in Campbell and Kenton Counties.

**DATES:** This action is effective October 28, 1986.

**ADDRESSES:** Copies of the information on which this action is based may be obtained from:

Thomas P. Lyttle, Air Programs Branch, EPA Region 4, 345 Courtland Street, Atlanta, GA 30365

Kentucky Division of Air Pollution Control, 18 Reilly Road, Frankfort, KY 40601

**FOR FURTHER INFORMATION CONTACT:** Tom Lyttle, Air Programs Branch, EPA, Region 4, 345 Courtland Street, Atlanta, GA, 30365. Telephone (404) 347-2864, FTS 257-2864.

**SUPPLEMENTARY INFORMATION:** On July 16, 1986 (51 FR 25718), EPA proposed to remove restrictions on federal highway and sewage treatment funding, which have been in effect in Campbell and Kenton Counties, Kentucky. In 1980, Kentucky and the county governments failed to enact legal authority for an auto inspection/maintenance (I/M) program, which was required as part of the 1979 State Implementation Plan (SIP) for the Cincinnati ozone nonattainment area. EPA at that point found that the Commonwealth had failed to submit, and was not making reasonable efforts to submit, a SIP meeting all the requirements of section 172 of the Clean Air Act. In such circumstances, sections 176(a) and 316(b) allow certain highway and sewage treatment grant funds to be withheld. That action was taken by EPA on December 12, 1980 (45 FR 81752).

In 1985, the three Kentucky counties (Campbell and Kenton, plus Boone) in the Cincinnati ozone nonattainment area studied the feasibility of enacting a locally-operated anti-tampering/anti-misfueling program to meet the I/M requirement. This study determined that such a program could meet the requirements of the Clean Air Act and EPA policy for I/M in nonattainment areas. Ordinances were adopted in December 1985 by each county to establish the program and set up a single administrative agency for the three-county program. The counties provided additional information on the program which indicated that it should meet EPA requirements. The Commonwealth also committed to submit a revised 1982 SIP for the area which would meet all requirements of section 172. Based on these actions, EPA proposed on July 16, 1986, a finding that the Commonwealth and the counties, were making reasonable efforts to submit the required SIP revisions, and therefore, to lift the funding restrictions.

During the public comment period, EPA received comments from one of the county governments and the Cincinnati area planning agency. Both these groups supported the proposed action. Since the time of the proposal, the counties have proceeded with implementation of the program. The program startup date of September 2, 1986, was met and the program is now in operation. The Commonwealth has prepared a new 1982 SIP revision for the area. A draft copy of this SIP was provided to EPA in July and a formal submittal was made on September 23, 1986. Because there was no negative comment on the proposal, and there continues to be progress in implementing the I/M program and submitting the SIP, EPA concludes that reasonable efforts are still being made to submit a SIP which considers all elements of section 172 of the Act.

EPA will propose action and take public comments on the Kentucky SIP revision at a later date. If EPA's final action is approval of the revision, EPA will also remove the restriction on permits for major new or modified stationary sources of hydrocarbons. This restriction was imposed on the counties under section 110(a)(2)(I) of the Act on September 22, 1980 (45 FR 62810).

### Final Action

EPA today finds that the Commonwealth of Kentucky is making reasonable efforts to submit a revised SIP for the Kentucky portion of the Cincinnati ozone attainment area. Therefore, EPA removes the restrictions on highway and sewage treatment funding under section 176(a) and 316(b), respectively, which have been in effect in Campbell and Kenton Counties. EPA finds good cause for making this action effective immediately. A later effective date would delay the removal of funding restrictions and thereby unnecessarily penalize the State and local governments even though they are making reasonable efforts to comply with the requirements of the Act.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 29, 1986. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

### List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations.

Authority: 42 U.S.C. 7401-7642.

Dated: October 20, 1986.

Lee M. Thomas,

*Administrator.*

[FR Doc. 86-24319 Filed 10-27-86; 8:45 am]

BILLING CODE 6560-50-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Public Health Service**

**42 CFR Part 53**

## Hill-Burton Loan Guarantees and Direct Loans; User Charges for Modification Requests

**AGENCY:** Resources and Services Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes fees for processing requests to modify the terms of direct and guaranteed loans made for the construction of hospitals and medical facilities. The process fees are necessary to recover administrative costs.

**DATE:** These regulations are effective on October 28, 1986.

**ADDRESS:** Richard R. Ashbaugh, Assistant Surgeon General, Associate Director for Health Facilities, Bureau of Resources Development, 5600 Fishers Lane, Room 11–03, Rockville, Maryland 20857, Attention: Ms. Tuei Doong.

**FOR FURTHER INFORMATION CONTACT:** Ms. Tuei Doong, 301–443–3466.

**SUPPLEMENTARY INFORMATION:** On May 20, 1986, a Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** (51 FR 18462) proposing to amend the regulations (42 CFR Part 53, Subpart N) applicable to loan guarantees and direct loans under the Hill-Burton Act (Title VI of the Public Health Service Act) by adding a new § 53.156, establishing fees for the processing of requests for parity and for major and minor modifications of the terms of the loan and loan guarantee documents. A period of 30 days was provided for the public to comment on the proposed rule. No comments were received, and the amendment is adopted as proposed.

The amendment defines a request for parity and explains what constitutes a major or minor modification. Initially, the fee to process a major modification request is $4,500, the fee for a minor modification request is $1,500 and the fee for a parity request is $5,500. The fees represent the costs to the Federal Government of performing its review of the request. These costs include expenses for personnel, travel, and overhead. The rule provides for the fee to be submitted along with the request. The fee is refundable if a request is withdrawn within 10 business days of its receipt by the Department.

### Executive Order 12291 and Regulatory Flexibility Analysis

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules, which are defined in the order as any rule that has an annual effect on the national economy of $100 million or more, or certain other economic effects. The Secretary concludes that these regulations are not major rules within the meaning of the Executive Order, because they will not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria.

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal Government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each proposed rule with a "significant economic impact on a substantial number of small entities", an initial analysis must be prepared describing the proposed rule's impact on small entities.

During Fiscal Year 1985 the Department reviewed approximately 15 requests for Hill-Burton loan modifications. These reviews required an estimated total of 2,520 hours of staff time which is equivalent to 1.2 full-time equivalent or $69,000 in total, or about $4,000 per request. This sum is a small fraction of 1 percent of average hospital revenues of $8 million and thus would not represent a "significant" economic impact on a substantial number of small entities. The Secretary therefore certifies that a regulatory flexibility analysis is not required.

### Paperwork Reduction Act

Section 3504(h) of the Paperwork Reduction Act of 1980 requires that proposed rules containing information collection or recordkeeping requirements be subject to review and clearance by the Office of Management and Budget (OMB). This rule does not contain any new information collection or recordkeeping requirements and is therefore not subject to OMB clearance.

### List of Subjects in 42 CFR Part 53

Loan programs—health, fees.

Accordingly, the Assistant Secretary for Health of the Department of Health and Human Services, with the approval of the Secretary, is amending 42 CFR Part 53 as set forth below.

Dated: August 12, 1986.

**Robert E. Windom,**

*Assistant Secretary for Health.*

Approved: September 30, 1986.

**Otis R. Bowen,**

*Secretary.*

## PART 53—GRANTS, LOAN AND LOAN GUARANTEES FOR CONSTRUCTION AND MODERNIZATION OF HOSPITALS

1. The authority citation for 42 CFR Part 53 is revised and the citation following §53.155 is removed.

**Authority:** Secs. 215, 603, 609, 621, 623, Public Health Service Act as amended, 58 Stat. 690, 78 Stat. 451 and 456, 84 Stat. 344 and 346 (42 U.S.C. 216, 291c, 291i, 291j–1 and 291j–3; 31 U.S.C. 9701).

2. In Part 53, a new § 53.156 is added to Subpart N to read as follows:

### § 53.156 Fees for modification requests.

(a) Fees will be charged for the processing of requests for parity, and for major and minor modifications of the terms of documents evidencing and securing direct and guaranteed loans. In accordance with the requirements of the User Charge Statute, 31 U.S.C. 9701(b), the Secretary determines the amount of the application fee that must be submitted with each type of modification.

(1) As used in this section, a "request for parity" allows new debt to share lien position (i.e. collateral) with an existing Hill-Burton loan.

(2) As used in this section, a "major modification" is any modification involving the release of $100,000 or more of collateral; a corporate restructuring that involves a transfer of assets; master indenture requests; modifications to a sinking fund; defeasance requests and requests for additional secured indebtedness; and any, other modification that involves a comparably significant use of Department resources.

(3) As used in this section, a "minor modification" is any modification involving the release of less than $100,000 of collateral; an easement; and any other modification that involves a comparable use of Department resources.

(b) A request for modification is to be accompanied by a certified check or money order in the amount of the appropriate fee, payable to the U.S. Treasury. The fees for modification requests submitted on or after (insert date of publication) are as follows:

(1) $1,500 for a minor modification,

(2) $4,500 for a major modification, and

(3) $5,500 for a request for parity.

(c) A submitter may withdraw its request for modification within 10

business days following its receipt and receive a refund of the fee.

(d) If the Secretary determines that a change in the amount of a fee is appropriate, the Department will issue a notice of proposed rulemaking in the **Federal Register** to announce the proposed amount.

[FR Doc. 86-24218 Filed 10-27-86; 8:45 am]
BILLING CODE 4160-15-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 655

[Docket No. 60107-6045]

### Atlantic Mackerel, Squid, and Butterfish Fisheries

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

**ACTION:** Notice of *Loligo* increase.

**SUMMARY:** NOAA issues this notice, as required by the regulations, to increase the Optimum Yield (OY) specification for *Loligo* squid by 1,441 metric tons (mt). This increase is assigned to the Total Allowable Level of Foreign Fishing (TALFF), based on recommendations of the New England and Mid-Atlantic Fishery Management Councils (Councils). This action is intended to foster the objectives of the Fishery Management Plan for the Atlantic Mackerel Squid, and Butterfish Fisheries (FMP) of creating benefits for the U.S. fishing industry.

**DATES:** This notice is effective October 23, 1986. Comments are invited until November 7, 1986.

**ADDRESS:** Send comments to Salvatore A. Testaverde, Northeast Regional Office, NMFS, 2 State Fish Pier, Gloucester, MA 01930-3097. Mark on the outside of the envelope "Comments on *Loligo* Increase".

**FOR FURTHER INFORMATION CONTACT:** Salvatore A. Testaverde, 617-281-3600, ext 273.

**SUPPLEMENTARY INFORMATION:** Under 50 CFR 655.22, final initial annual specifications for squid were published on May 9, 1986 (51 FR 17189) for the fishing year April 1, 1986, to March 31, 1987. Amendment 2 of the FMP (51 FR 10547, March 27, 1986) changed the fishing year for squid to begin on January 1. On July 9, 1986, proposed adjustments to the final initial annual specifications were published (51 FR 24880) for the transitional squid fishing year ending December 31, 1986.

The regulations at § 655.21(b)(1)(v) provide that annual specifications may be adjusted by the Director, Northeast Region, NMFS (Regional Director) after consultation with the Mid-Atlantic Fishery Management Council.

In accordance with § 655.22(f), notice is hereby given that the current IOY for *Loligo* squid of 26,309 mt (51 FR 34644, September 30, 1986) is increased by 1,441 mt to 27,750 mt. This increase is assigned to the *Loligo* TALFF, which is increased from 1,559 mt to 3,000 mt. The proposed specifications, OY, and TALFF for the transitional fishing year are likewise adjusted by 1,441 mt for *Loligo*. As the *Loligo* IOY now equals the Allowable Biological Catch (ABC), no further adjustments can be made to the OY for the remainder of fishing year 1986. Bycatch TALFF specifications for *Illex* squid, Atlantic mackerel, and butterfish are also increased, in accordance with the formulas stated in the FMP. *Illex*, which has increased from 1,090 mt (51 FR 31774, September 5, 1986) to 1,234 mt as the result of prior allocations of squid, now increases to 1,378 mt. Likewise, Atlantic mackerel, which has increased from 30,000 mt (51 FR 24881, July 9, 1986) to 30,015 mt, now increases to 30,029 mt, and butterfish, which has increased from 90 mt to 138 mt, now increases to 181 mt.

The *Loligo* TALFF amount considers prior purchases of U.S.-processed or harvested squid by foreign joint venture partners. It also considers possibile future development of the U.S. fishing industry resulting from the availability of additional TALFF. This issue was debated before both Councils. An opportunity for further public comment is not possible before making this adjustment of TALFF, because delaying the release of the additional 1,441 mt of *Loligo* to TALFF potentially disadvantages U.S. harvesters, who are also selling squid to foreign vessels, without benefiting other interested members of the industry. Most of these members have participated fully in this decisionmaking process. However, public comments are invited for 15 days after the effective date of this notice.

### Other Matters

This action is taken under 50 CFR Part 655 and is in compliance with Executive Order 12291.

In view of the need to avoid unnecessary disruption of domestic and foreign fisheries, NOAA has determined that delaying the effective date of this notice is impracticable, unnecessary, and contrary to the public interest.

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

### List of Subjects in 50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

Dated: October 23, 1986.

**Carmen J. Blondin,**

*Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.*

[FR Doc. 86-24316 Filed 10-23-86; 3:13 pm]
BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 51, No. 208
Tuesday, October 28, 1986

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

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

**1 CFR Ch. III**

### Agency Hiring of Private Attorneys

**AGENCY:** Administrative Conference of the United States.

**ACTION:** Request for public comments.

**SUMMARY:** The Administrative Conference's Committee on Governmental Processes has under consideration a draft recommendation on federal agency hiring of private attorneys. Interested persons are invited to comment on the draft recommendation.

**DATE:** Comments due by Thursday, November 6, 1986.

**ADDRESS:** Send comments to David M. Pritzker, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037.

**FOR FURTHER INFORMATION CONTACT:** David M. Pritzker, 202–254–7065.

**SUPPLEMENTARY INFORMATION:** The Administrative Conference's Committee on Government Processes has under consideration a draft recommendation on federal agency hiring of private attorneys. The draft recommendation is based on a study prepared by the firm of Wolf, Block, Schorr and Solis-Cohen of Philadelphia, Pennsylvania, and a report on relevant ethical considerations by Professor Ronald D. Rotunda of the University of Illinois College of Law. Copies of each document are available from the Administrative Conference.

It has been reported in the press that federal agencies spend a substantial sum of money each year to retain private attorneys, amounting to tens of millions of dollars. Sometimes private attorneys are hired for large numbers of fairly routine tasks, sometimes for highly specialized and complex work. The Conference has studied the nature and extent of this activity, to determine whether improvements can be made in the procedures followed.

The proposed recommendation takes the position that there should be, in general, a strong presumption against an agency's hiring of outside counsel. However, it is recognized that there may be unusual circumstances or identifiable classes of agency activities for which such hiring is particularly appropriate. To deal with these special situations, the draft recommendation addresses the following topics:

- The desirability of drafting guidelines for retaining private attorneys;
- The desirability of agencies preparing periodic public reports concerning their use of outside counsel;
- Ethical considerations;
- Limitations on fees; and
- The applicability of the Competition in Contracting Act.

The Committee on Governmental Processes has decided to seek public comments on the draft recommendation, and will reconsider the draft at a meeting to be held on Wednesday, November 12. At that time, the committee will decide whether to approve a draft recommendation for consideration by the Administrative Conference at its Plenary Session scheduled for December 4 and 5, 1986. Comments should be sent to the address given above.

### Draft Recommendation: Agency Hiring of Private Attorneys

Recent press stories have headlined the assertion that, although the federal government employs more than 17,000 lawyers, tens of millions of dollars are spent each year by the government to obtain the services of attorneys in private practice. The Administrative Conference has studied the use of private attorneys by federal agencies, and has found that, in recent years, approximately eighty percent of the funds reported to be spent on outside counsel were spent by two banking regulatory agencies—the Federal Deposit Insurance Corporation (FDIC) and the Federal Home Loan Bank Board (FHLBB).[1] In fiscal year 1985, FDIC spent approximately $37 million for outside counsel and FHLBB spent approximately $13 million. These amounts were the result of these agencies' large caseload caused by the large number of bank and savings and loan failures.

Unlike most other agencies' expenditures for private attorneys, FDIC and FHLBB spend funds that are not appropriated by Congress. In connection with matters related to liquidations (which are the great majority of cases), the agencies are involved as receiver or liquidator of failed financial institutions and legal fees and other expenses are borne by the estate of the failed bank; in other matters, legal expenses come from fees paid by insured institutions and from interest on investments. Conduct of this litigation as a receiver or liquidator does not result in payments that would go into the United States Treasury. The bulk of these cases, whether routine or complex, arise on relatively short notice and in geographically dispersed parts of the United States, requiring attorneys with a knowledge of applicable state law. While FDIC and FHLBB have significantly expanded their legal staffs, they have found it more efficient to be able to hire private attorneys as needed in a particular location rather than to hire and train a greatly expanded full-time legal staff that is capable of responding to an unpredictable caseload.

A number of other agencies have spent smaller sums for litigation services, for other kinds of representation, and for general or specific legal advice or services. This activity is sometimes complex and specialized, but usually it tends to be for more routine tasks such as debt collection, real estate closings, labor disputes, or local land use problems. Among the regular users of private attorneys in the Veterans Administration, which employs them for collection of small debts in its loan guaranty program. Unlike other agencies whose practices the Conference has examined, the Postal Service Board of Governors has retained a private attorney for several years to serve generally as "counsel to the Governors."

The Conference has considered the variety of situations in which government agencies use private attorneys. Agencies without independent litigating authority cannot

[1] The Administrative Conference's study was generally limited to the hiring of outside counsel by legal offices in various agencies. The cited data do not, in general, reflect hiring of attorneys by other offices, discussed below.

hire outside counsel for the purpose of litigation. Agencies that have delegated litigating authority, based on a memorandum of understanding with the Department of Justice, can hire outside counsel only if specifically authorized to do so. The portion of this recommendation addressed to attorneys hired for non-litigation matters is limited to those attorneys with whom the agency establishes an attorney-client relationship. This would not include, for example, consultants hired to do independent research and reports, arbitrators paid by an agency to decide personnel or other disputes, persons hired to perform mediation or similar services in connection with negotiated rulemaking, or any other individual hired by an agency to do a particular task, who may be an attorney, but is not being hired either to represent the agency or to provide legal advice or services to it. This recommendation also does not apply to independent counsel appointed under the Ethics in Government Act, 28 U.S.C. 591–598.

The use of private counsel by government agencies raises several issues that have been studied by the Administrative Conference. These include the appropriate circumstances for hiring private attorneys; whether written procedures or guidelines are desirable; whether greater oversight is needed; whether there should be fixed limits on fees, and, if so, who determines them; and questions of professional ethics and procurement law. The principal ethical problem for outside attorneys involves simultaneous representation of adverse interests. An important additional question relates to an attorney or firm appearing before an agency in a non-adversarial role, on behalf of another client, while simultaneously acting as attorney for the agency in a different matter. Agencies must be very sensitive to each of these ethical issues.

Economic efficiency is not the only interest at stake in deciding whether to hire outside counsel. Whenever the United States is a party, citizens are entitled to expect that the professional and ethical standards applying to full-time government attorneys will be followed. There should be a special sensitivity to questions of appearances and propriety, so that no basis may be established for diminishing public confidence in the administration of justice or the integrity of the governmental process. In addition, the government needs to take consistent positions on issues of importance to more than one agency, and this may be more difficult with outside counsel. Agencies should also consider the possible effect on attorney morale of giving the most interesting and important cases to outside counsel.

At the present time, there are no formal government-wide standards for the hiring of private counsel, nor is there a single agency that monitors or approves such hiring. Nevertheless, among the offices surveyed by the Conference, most agencies seem to observe an informal but common set of procedures and standards including considerations of expertise, cost, location, and absence of conflicts of interest. The FDIC has adopted written standards and guidelines as to when to refer a matter to outside counsel, and criteria for selection based on relevent expertise, absence of conflicts of interest, ability to handle the expected volume of legal work, location, reputation, reasonableness of fee rates, availability of associates to handle related routine work at a reduced fee rate and any other factors deemed relevent under the individual circumstances. FHLBB uses a similar, but less detailed, set of guidelines.

The Conference believes that there should normally be a strong presumption against hiring outside attorneys, except in unusual circumstances or in classes of cases identified by the agencies concerned, where there may be good reasons for using outside counsel. Where agencies nevertheless choose to hire outside counsel, particularly in litigation, there is good reason to seek a degree of uniformity and oversight by the Department of Justice, and we recommend that the Department draft appropriate guidelines. This would serve the goal of an efficient and uniform system of makine use of the services of private attorneys, but with enough flexibility to meet the individual needs of the hiring agencies. Guidelines should incorporate the relevant requirements of professional ethics.

In addition to hiring of private counsel by agency counsel, the Conference has reason to believe that in a substantial number of instances agencies hire private attorneys through program offices, outside the purview of agencies' legal offices. We believe that it would be useful for all agency hiring of private attorneys to be monitored as to its extent and evaluated at a later time to determine the appropriateness and efficiency of this practice, and, therefore, we recommend periodic reports.

The Conference has also considered whether there should be a fixed cap on fees to be paid to private attorneys hired by agencies. In many instances it may be cost-effective to hire private counsel, especially when a large number of attorneys with expertise in specialized areas of the law may be necessary for short-term work in remote locations. In considering the size of fees, it is not clear that agencies always consider cost-effectiveness. If a fee cap is to be adopted, it is important that it be set at a realistic level. It may be appropriate to set more than one level, depending on whether the legal tasks are routine or complex. Agencies, in hiring private counsel, can appropriately take into consideration the attorney's willingnesss to negotiate fees, seeking the lowest possible fees consistent with securing the skills and efficiency required.

The Conference's study found that many agencies hiring private attorneys do not regularly follow the provisions of the Competition in Contracting Act of 1984. We believe that agencies hiring outside counsel should be governed by the same procurement procedures that are applicable to the hiring of consultants who are not attorneys, including the Competition in Contracting Act.

**Recommendation**

*1. Presumption Against Hiring Outside Counsel*

(a) There should be a general presumption against a federal agency hiring outside counsel except in unusual circumstances, or in specifically identified classes of activities for which such hiring is particularly appropriate.

(b) To the extent that agencies can predict the expected growth of their caseloads, they should expand or continue to expand their in-house legal staffs to meet their excepted needs.

(c) To the extent that agencies cannot develop the necessary legal resources in-house, they should explore the possibility of acquiring the expertise from other agencies of the government. Individual agencies should try to anticipate those needs in order to be able to obtain the use of other government agency counsel in a timely and efficient manner.

*2. Hiring of Private Attorneys for Litigation*

A. Litigation Subject to the Authority of the Department of Justice

(a) All memoranda of understanding between agencies and the Department of Justice delegating independent litigating authority to agencies should be made available to the public.

(b) The Department of Justice, after consultation with other federal agencies that have used private attorneys and with agencies having special concerns such as the Office of Personnel Management, and after providing reasonable opportunity for public input, should adopt publicly available guidelines for the hiring and use of private counsel. The guidelines should vest the authority to hire and to supervise private counsel in the individual agencies having either independent or delegated litigating authority, subject to such conditions as the Attorney General deems necessary to protect the interests of the United States. The guidelines should identify, to the extent possible, the special circumstances or particular classes of cases in which the hiring of private counsel would be appropriate, the criteria by which the awarding of such contracts should be governed, ethical considerations, and the recordkeeping required to provide adequate documentation of services rendered. Criteria should include consideration of ore than two sources, fee comparisons (but fees alone should not be determinative), location, expertise in the relevant legal area, actual and potential conflicts of interest, available resources, and the results of any prior work for federal agencies. Where the Department of Justice has staff available, other agencies should not hire outside counsel merely because they lack sufficient internal staff resources.

(c) As part of the guidelines, a notification requirement may be necessary. For example, agencies could be required to notify the Attorney General (or his designee) in advance of hiring outside counsel. In appropriate cases it may be necessary to establish a requirement of prior approval. Each agency that hires outside counsel for litigation should also prepare a public report annually, to be sent to the Attorney General, listing the cases and attorneys involved, the hours spent, and the rates charged. For routine cases involving small amounts, aggregate figures should be acceptable. The Attorney General should review these annual reports to determine whether modifications to the guidelines or other actions are necessary to ensure the appropriate and efficient use of private counsel.

(d) To the extent that an agency's appellate litigation is currently subject to the control of the Solicitor General, where outside attorneys are hired in connection with appeals, they too must be subject to the same control.

B. Special Consideration Applicable to Litigation by Agencies That Regulate Financial Institutions.

(a) For banking regulatory agencies acting in their role as receiver or liquidator of failed financial institutions, use of private attorneys appears to be appropriate to a far greater extent than for other agencies, because of the wide variety of locations in which such litigation occurs and the unpredictable nature of the number and location of such cases. This is especially true for relatively small cases that are in state courts, where the issues mostly concern matters of local law.

(b) In major bank cases involving issues of federal law, heard in federal courts, and having an expected impact beyond the particular case, the use of private attorneys may be less appropriate.

C. Agencies with Independent Litigating Authority

If an agency has independent litigating authority, the agency should issue its own publicly available guidelines modeled on the Department of Justice guidelines, including annual public reports.

*3. Use of Private Attorneys Other Than for Litigation*

(a) For those limited situations where outside counsel is needed for non-litigation matters, agencies should follow guidelines similar to those recommended above for litigation, sugject to appropriate modification based on consultation with the Office of Personnel Management (OPM). In addition, annual public reports should be prepared on the use of outside counsel by any office in the agency for representation and legal advice or services, similar to those recommended above for outside counsel hired for litigation, and submitted to OPM. OPM should review these annual reports to determine whether modifications to the guidelines or other actions are necessary to ensure the appropriate and efficient use of private counsel.

(b) OPM should establish a procedure for sharing information among agencies on the kinds of legal resources available within the government.

*4. Ethical Considerations*

(a) Private attorneys employed by federal agencies should be reminded at the time of hiring of the statutory provisions and any applicable guidelines relevant to conflict of interest and other potential ethical problems. Such provisions and guidelines should be explicitly referenced in the agency's contracts with outside counsel.

(b) Agencies should require outside counsel whom they hire to disclose all representations involving possible conflicts of interest. Outside counsel should be required to sign statements indicating that they are aware that certain kinds of work cannot be undertaken while they represent the agency.

(c) The Attorney General and the Office of Government Ethics should provide guidance on the applicability of 18 U.S.C. 205–208 to agency hiring of outside counsel. Subject to that guidance, Department of Justice and agency guidelines should provide that for purposes of disqualification because of the prohibition against simultaneous or sequential representation of opposing parties, different departments or independent agencies of the federal government should normally be considered to be different clients.[2] The guidelines should provide that in unusual situations, where an agency's activities have some special relationship with those of one or more other agencies, the definition of "client" should be modified appropriately to include any other such agency.[3] The guidelines should also make clear that all lawyers in the firm, including all branch offices of the firm, are subject to the same restrictions on simultaneous or sequential representation, and that these restrictions apply not merely to litigation, but to all matters in which an attorney-client relationship has been established.

(d) The guidelines should also address the varying circumstances in which an attorney or firm may appear before an agency other than as an adversary of the agency, for example, where the attorney is seeking agency action favorable to another client. The guidelines should identify those situations where such an appearance should be prohibited.

(e) If a private attorney represents a particular agency frequently, then their attorney-client relationship should be considered as a continuing one. In such a situation, neither the attorney nor the attorney's firm should represent another client in a matter involving the client agency [without the agency's explicit consent], even if, at the time, the

[2] The Department of Justice should consider, in accordance with Recommendation 84–5, 1 CFR 305.84–5, whether to issue a regulation that explicitly preempts any state rule of attorney practice that is in conflict with the regulation.

[3] This consideration might be of special concern if, for example, the Office of Management and Budget were to hire private counsel.

attorney is not representing or advising the agency on a specific matter.

*5. Limitations on Fees*

No generally applicable fee cap should be established for hiring of private counsel. A fixed cap on hourly rates paid by agencies to private attorneys may be appropriate for routine legal tasks. A higher fee cap may be appropriate for unusual or complex legal work. However, such limits, if adopted, should be set at realistic levels, in line with fees typically charged for similar services in the same locale, so that agencies hiring outside counsel will be able to obtain the needed degree of expertise.

*6. Procurement Procedures*

Agencies should establish procedures to ensure that outside counsel are hired subject to the same procurement procedures that are applicable to the hiring of consultants who are not attorneys, including the Competition in Contracting Act.

**Jeffrey S. Lubbers,**

*Research Director.*

October 23, 1986.

[FR Doc. 86-24366 Filed 10-27-86; 8:45 am]

BILLING CODE 6110-01-M

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 58

### Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes revisions in the United States Standards for Grades of Swiss Cheese, Emmentaler Cheese. The revisions would provide greater specificity in describing the factors that are used in determining the various grade levels. In addition, these changes would improve the clarity and grading accuracy of the standards. Also, editorial and format changes would be accomplished at the same time to update the standards so that they will be consistent with other dairy product grade standards. This proposed revision has been developed with the cooperation of the National Cheese Institute.

**DATE:** Comments are due on or before December 29, 1986.

**ADDRESS:** Comments should be sent to Director, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC, 20250.

**FOR FURTHER INFORMATION CONTACT:** Richard W. Webber, Head, Standardization Section, Dairy Division, Agricultural Marketing Service, Washington, DC, 20250 (202) 447-7473.

**SUPPLEMENTARY INFORMATION:** This proposed rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum 1512-1 and has been classified a "non-major" rule under criteria contained therein. Also, pursuant to this Executive Order it has been determined that there would be no effect on trade-sensitive activities.

The Administrator of the Agricultural Marketing Service has determined that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because it is a voluntary standard and the revision will not increase costs to those utilizing the standard.

In accordance with the United States Department of Agriculture policy for regulatory review, the Dairy Standardization Section conducted a review of the United States Standards for Grades of Swiss Cheese, Emmentaler Cheese. The objective of the review was to obtain both current and historical information to support the criteria of the standard as written, or to support any changes necessary for modernization of the standard that might become apparent from the review. The review was designed to obtain as much information as possible from as many varied sources as possible.

The review consisted of several phases. First, a computer search of the National Agricultural Library resources pertaining to Swiss cheese was conducted. From this search, a number of articles and texts were selected having a direct bearing on the review. Next, the cheese industry was contacted for input via the National Cheese Institute.

The most recent figures indicated in Dairy Products (Da 2-1), a publication of the Agricultural Statistics Board, National Agricultural Statistics Service, USDA, show that the average annual production of Swiss cheese for the years 1972-1978 was 227.7 million pounds, 209.5 million pounds in 1983, 208.0 million pounds in 1984, and 222.9 million pounds in 1985. The Commodity Credit Corporation does not purchase Swiss cheese under the dairy price support program.

The current United States Standards for Grades of Swiss Cheese, Emmentaler Cheese were last revised in July 1966. Since then, a number of technological advances have taken place within the dairy industry. However, analysis of the indepth review of the Standard has shown that the established general grading factors have withstood the test of time and continue to adequately classify into grades the product currently produced.

This proposal would: 1. Establish a new sampling procedure that will greatly improve grading accuracy.

Under the present standard at least two full trier plugs are taken from each flat face of the cheese to evaluate all factors in determining the correct grade. Eye formation and texture are two factors that are very important in determining the overall quality of Swiss cheese. Because of the natural variation within the cheese of these two factors, the current sethod of plugging doesn't always give a true picture as to the quality of the cheese. It is being proposed that the sample be cut approximately in half, exposing two cut surfaces. These two cut surfaces would be used to evaluate eye formation and texture. This method, which is used within the industry, would greatly improve grading accuracy.

2. Describe in more detail the factors (e.g., flavor, eyes, texture, color) used in determining the various cheese grades.

Grade standards, to be of maximum value, should be based on factors that can be uniformly applied. Grade standards need to be complete, specific, and informative so that they lend themselves to a high degree of standardization when applied by experienced personnel under effective supervision. 1n the present standard the terms "free from off-flavors", " may possess off-flavors", "free from objectionable flavors". and "free from offensive flavors" are used. These ambiguous terms have great potential for individual interpretation which can lead to non-uniform application of the standard. In addition there is a lack of specificity as to how to evaluate and rate the other factors in determining the overall grade. The proposal would provide specificity, detail, and definitions that will greatly assist in uniform application of the standard in determining quality. Finally, salt has been deleted as a basis for determining U.S. Grades because it is no longer an important grade factor.

3. Eliminate the categories "current make" and "cured" as they relate to the age of the cheese when determining the U.S. Grade on the basis of body, eyes and texture, and salt.

Under the present standard when determining body, eyes and texture, and salt there is considerable overlap when the age of the cheese was to be taken into consideration. Because these factors are evaluated essentially the same for any age cheese the cure categories are being eliminated.

4. Eliminate U.S. Grade D.

The intent of the grade standard is to cover quality attributes of Swiss cheese intended for consumer or institutional use. Since cheese covered by U.S. Grade D is utilized in pasteurized process cheese this grade category is being eliminated from the grade standard.

5. Modernize the language and format of the standards.

The proposal would provide consistency in language, format, and definitions between the various grade standards for cheese. This will assist graders in understanding and applying this grade standard.

A separate document, "Probable Causes of Certain Characteristics in Swiss Cheese" has been developed. This material is not part of the Swiss cheese grade standard. It is intended to assist the cheesemaker, inform the cheese grader, and educate the consumer as to the probable cause of certain characteristics found in Swiss cheese. Copies can be obtained from the same source as indicated under **"FOR FURTHER INFORMATION CONTACT."**

USDA grade standards are voluntary standards that are developed to assist the orderly marketing process. Dairy plants are free to choose whether or not to use these grade standards. USDA grade standards for dairy products have been developed to identify the degree of quality in the various products. Quality in general refers to usefulness, desirability, and value of a product —its marketability—but the precise definition of quality depends on the individual commodity. When Swiss cheese is graded, the regulations governing the grading service of manufactured or processed dairy products, which require all graded dairy products to be produced in a USDA-approved plant, would be in effect. These regulations also require a charge for grading services provided by USDA.

All written submissions made pursuant to this notice will be made available for public inspection at the Dairy Division, Agricultural Marketing Service, Washington, DC, 20250, during regular business hours.

**List of Subjects in 7 CFR Part 58**

Food grades and standards, Dairy products.

**PART 58—[AMENDED]**

In consideration of the foregoing, it is proposed to amend 7 CFR Part 58, by revising Subpart N, to read as follows:

**Subpart N—United States Standards for Grades of Swiss Cheese, Emmentaler Cheese**

**Definitions**

Sec.
58.2570 Swiss cheese, Emmentaler cheese.
58.2571 Styles.

**U.S. Grades**

58.2572 Nomenclature of U.S. grades.
58.2573 Basis for determination of U.S. grades.
58.2574 Specifications for U.S. grades.
58.2575 U.S. grade not assignable.

**Explanation of Terms**

58.2576 Explanation of terms.

**Authority:** Agricultural Marketing Act of 1946, Sec. 203 and 205, 60 Stat. 1087, as amended, and 1090, as amended; 7 U.S.C. 1622 and 1624.

## Subpart N—United States Standards for Grades of Swiss Cheese, Emmentaler Cheese[1]

### Definitions

**§ 58.2570 Swiss cheese, Emmentaler cheese.**

(a) For the purpose of this subpart, the words "Swiss" and "Emmentaler" are interchangeable.

(b) Swiss cheese is cheese made by the Swiss process or by any other procedure which produces a finished cheese having the same physical and chemical properties as cheese produced by the Swiss process. It is prepared from milk and has holes, or eyes, developed throughout the cheese. It contains not more than 41 percent of moisture, and its solids contain not less than 43 percent of milkfat. It is not less than 60 days old and conforms to the provisions of 21 CFR 133.195, "Cheese and Related Cheese Products," Food and Drug Administration.

**§ 58.2571 Styles.**

(a) *Rind.* The cheese is completely covered by a rind sufficient to protect the interior of the cheese.

(b) *Rindless.* The cheese is properly enclosed in a wrapper or covering which will not impart any objectionable flavor or color to the cheese. The wrapper or covering is sealed with a sufficient overlap or satisfactory closure to exclude air. The wrapper or covering is of sufficiently low permeability to water vapor and air so as to prevent the formation of a rind and contact with air during the curing and holding periods.

[1] Compliance with these standards does not excuse failure to comply with the provisions of the Federal Food, Drug and Cosmetic Act.

### U.S. Grades

**§ 58.2572 Nomenclature of U.S. grades.**

The nomenclature of the U.S. grades is as follows:

(a) U.S. Grade A.
(b) U.S. Grade B.
(c) U.S. Grade C.

**§ 58.2573 Basis for determination of U.S. grades.**

(a) The determination of U.S. grades of Swiss cheese shall be on the basis of rating the following quality factors:

(1) Flavor,
(2) Body,
(3) Eyes and texture,
(4) Finish and appearance, and
(5) Color.

(b) The rating of each quality factor shall be established on the basis of characteristics present in a randomly selected sample representing a vat of cheese. In the case of institutional cuts, samples may be selected on a lot basis. To determine flavor and body characteristics, a full No. 8 trier plug shall be drawn from a point that is approximately half way between the center of the flat surface and the outside edge of the cheese. To determine eyes and texture as well as color characteristics, the wheel or block shall be divided approximately in half, exposing two cut surfaces. A U.S. grade may be assigned to institutional size packages. In some instances, it may not be possible to obtain a full No. 8 trier plug. When this occurs, U.S. grade determination may be assigned on a smaller portion. The exposed surfaces of these size packages may be used to determine eye and texture as well as color characteristics.

(c) The final U.S. grade shall be established on the basis of the lowest rating of any one of the quality factors.

**§ 58.2574 Specifications for U.S. grades.**

(a) *U.S. grade A.* U.S. grade A Swiss cheese shall conform to the following requirements (See Tables I, II, III, IV, and V of this section):

(1) *Flavor:* Shall be a pleasing and desirable characteristic Swiss cheese flavor, consistent with the age of the cheese, and free from undesirable flavors.

(2) *Body:* Shall be uniform, firm, and smooth.

(3) *Eyes and texture:* Shall be properly set and possess. well-developed round or slightly oval-shaped eyes which are uniformly distributed. The majority of the eyes shall be 1 1/16 to 1 3/16 inch in diameter. The cheese may possess the

following eye characteristics to a very slight degree: dull, rough, and shell; and the following texture characteristics to a very slight degree: checks and picks.

(4) *Finish and appearance*— (i) *Rind.* The rind shall be sound, firm, and smooth, providing good protection to the cheese. The surface of the cheese may exhibit mold to a very slight degree. There shall be no indication that mold has penetrated into the interior of the cheese.

(ii) *Rindless.* Rindless blocks of Swiss cheese should not be less than 6½ inches nor more than 8½ inches in height, reasonably uniform in size, and well shaped. The wrapper or covering shall adequately and securely envelop the cheese, be neat, unbroken, and fully protect the surface of the cheese, but may be slightly wrinkled. The surface of the cheese may exhibit mold to a very slight degree. There shall be no indication that mold has penetrated into the interior of the cheese.

(5) *Color:* Shall be natural, attractive, and uniform.

(b) *U.S. grade B.* U.S. grade B Swiss cheese shall conform to the following requirements (See Tables I, II, III, IV, and V of this section):

(1) *Flavor:* Shall be a pleasing and desirable characteristic Swiss cheese flavor, consistent with the age of the cheese, and free from undesirable flavors. The cheese may possess the following flavors to a slight degree: acid, bitter, feed, and utensil.

(2) *Body:* Shall be uniform, firm, and smooth. The cheese may possess a slight weak body.

(3) *Eyes and texture:* Shall possess well-developed, round or slightly oval-shaped eyes. The cheese may possess the following eye characteristics to a very slight degree: dead eyes, small eyed, and nesty; and the following to a slight degree: one sided, uneven, rough, dull, shell, overset and underset. The cheese may possess the following texture characteristics to a slight degree: checks, picks and streuble.

(4) *Finish and appearance*—(i) *Rind.* The rind shall be sound, firm, and smooth, providing good protection to the cheese. The cheese may exhibit the following characteristics to a slight degree: soiled, uneven, huffed and mold. There shall be no indication that mold has penetrated into the interior of the cheese.

(ii) *Rindless.* Rindless blocks of Swiss cheese should not be less than 6½ inches nor more than 8½ inches in height. The wrapper or covering shall adequately and securely envelop the cheese, be neat, unbroken and fully protect the surface, but may be slightly wrinkled. The cheese may exhibit the following characteristics to a slight degree: huffed, uneven, and mold. There shall be no indication that mold has penetrated into the interior of the cheese.

(5) *Color:* Shall be natural, attractive and uniform.

(c) *U.S. grade C.* U.S. grade C Swiss cheese shall conform to the following requirements (See Tables, I, II, III, IV, and V of this section):

(1) *Flavor.* Shall possess a characteristic Swiss cheese flavor which is consistent with the age of the cheese. The cheese may possess the following flavors to a slight degree: barny, flat, fruity, rancid, malty, metallic, old milk, onion, sour, weedy, whey-taint, and yeasty; and the following to a definite degree: acid, bitter, feed, and utensil.

(2) *Body:* Shall be uniform and may possess the following characteristics to a slight degree: coarse, pasty, and short; and to a definite degree the cheese may be weak.

(3) *Eyes and texture:* The cheese may possess the following eye characteristics to a slight degree: afterset, dead eyes, small eyed, large eyed, irregular, nesty, cabbage, collapsed, and frog mouth; and the following to a definite degree: one sided, uneven, dull, rough, shell, overset and underset. The cheese may possess the following texture characteristics to a slight degree: gassy, splits and sweet holes; and the following to a definite degree: checks, picks and streuble.

(4) *Finish and appearance*—(i) *Rind.* The rind shall be sound, providing good protection to the cheese. The cheese may exhibit the following characteristics to a slight degree: checked rind, soft spots, and weak rind; and the following to a definite degree: soiled, uneven, huffed and mold. There shall be no indication that mold has penetrated into the interior of the cheese.

(ii) *Rindless.* The wrapper or covering shall adequately and securely envelop the cheese, be unbroken, fully protect the surface and may be wrinkled. The cheese may exhibit a very slight soiled surface and contain soft spots to a slight degree. The cheese may possess the following characteristics to a definite degree: huffed, uneven and mold. There shall be no indication that mold has penetrated into the interior of the cheese.

(5) *Color:* The cheese may possess the following color characteristics to a slight degree: acid cut, bleached, colored spots, dull or faded, mottled and pink ring.

TABLE I.—CLASSIFICATION OF FLAVOR

| Identification of flavor characteristics | U.S. grade | | |
|---|---|---|---|
| | A | B | C |
| Acid | | S | D |
| Barny | | | S |
| Bitter | | S | D |
| Feed | | S | D |
| Flat | | | S |
| Fruity | | | S |
| Rancid | | | S |
| Malty | | | S |
| Metallic | | | S |
| Old Milk | | | S |
| Onion | | | S |
| Sour | | | S |
| Utensil | | S | D |
| Weedy | | | S |
| Whey-Taint | | | S |
| Yeasty | | | S |

S—Slight. D—Definite.

TABLE II.—CLASSIFICATION OF BODY

| Identification of body and texture characteristics | U.S. grade | | |
|---|---|---|---|
| | A | B | C |
| Coarse | | | S |
| Pasty | | | S |
| Short | | | S |
| Weak | | S | D |

S—Slight. D—Definite.

TABLE III.—CLASSIFICATION OF EYES AND TEXTURE

| Identification of eyes and texture | U.S. grade | | |
|---|---|---|---|
| | A | B | C |
| Afterset | | | S |
| Cabbage | | | S |
| Checks | VS | S | D |
| Collapsed | | | S |
| Dead | | VS | S |
| Dull | VS | S | D |
| Frog mouth | | | S |
| Gassy | | | S |
| Irregular | | | S |
| Large eyed | | | S |
| Nesty | | VS | S |
| One sided | | S | D |
| Overset | | S | D |
| Picks | VS | S | D |
| Rough | VS | S | D |
| Shell | VS | S | D |
| Small eyed | | VS | S |
| Splits | | | S |
| Streuble | | S | D |
| Sweet holes | | | S |
| Underset | | S | D |
| Uneven | | S | D |

VS—Very Slight. S—Slight. D—Definite.

TABLE IV.—CLASSIFICATION OF FINISH AND APPEARANCE

| Identification of finish and appearance characteristics | U.S. grade | | |
|---|---|---|---|
| | A | B | C |
| Checked rind | | | S |
| Huffed | | S | D |
| Mold on rind surface | VS | S | D |
| Mold under wrapper or covering | VS | S | D |
| Soft spots | | | S |
| Soiled surface (Rind) | | S | D |
| Soiled surface (Rindless) | | | VS |
| Uneven | | S | D |
| Weak rind | | | S |

VS—Very Slight. S—Slight. D—Definite.

TABLE V.—CLASSIFICATION OF COLOR

| Identification of color characteristics | U.S grade | | |
|---|---|---|---|
| | A | B | C |
| Acid cut | | | S |
| Bleached surface | | | S |
| Colored spots | | | S |
| Dull or faded | | | S |
| Mottled | | | S |
| Pink ring | | | S |

S—Slight.

**§ 58.2575 U.S. grade not assignable.**

Swiss cheese shall not be assigned a U.S. grade for one or more of the following reasons:

(a) Fails to meet the requirements for U.S. Grade C.

(b) Produced in a plant found on inspection to be using unsatisfactory manufacturing practices, equipment, or facilities, or to be operating under unsanitary plant conditions.

(c) Produced in a plant which is not USDA approved.

**Explanation of Terms**

**§ 58.2576 Explanation of terms.**

(a) With respect to style:

(1) *Rind*—Cheese which has formed a thick inedible, protective layer by drying the cheese surface with the addition of salt.

(2) *Rindless*—Cheese which has been protected from rind formation and which is packaged with an impervious type of wrapper or covering enclosing the cheese.

(3) *Institutional size packages*—Multipound, wrapped portions of cheese, generally cut from a larger piece, intended for use by restaurants, delicatessens, schools, and etc.

(b) With respect to flavor:

(1) *Slight*—Detected only upon critical examination.

(2) *Definite*—Not intense but detectable.

(3) *Undesirable*—Identifiable flavors in excess of the intensity permitted, or those flavors not listed.

(4) *Acid*—Sharp and puckery to the taste, characteristic of lactic acid.

(5) *Barny*—A flavor characteristic of the odor of a cow stable.

(6) *Bitter*—A distasteful flavor similar to the taste of quinine.

(7) *Feed*—Feed flavors (such as alfalfa, sweet clover, silage, or similar feed) in milk carried through into the cheese.

(8) *Flat*—Insipid, practically devoid of any characteristic Swiss cheese flavor.

(9) *Fruity*—A sweet fruit-like flavor resembling apples; generally increasing in intensity as the cheese ages.

(10) *Rancid*—A flavor suggestive of rancidity or butyric acid, sometimes associated with a bitterness.

(11) *Malty*—A distinctive, harsh flavor suggestive of malt.

(12) *Metallic*—A flavor having qualities suggestive of metal, imparting a puckery sensation.

(13) *Old Milk*—Lacks freshness.

(14) *Onion*—This flavor is recognized by the peculiar taste and odor suggestive of its name. Present in milk or cheese when the cows have eaten onions, garlic or leeks.

(15) *Sour*—An acid, pungent flavor resembling vinegar.

(16) *Sulfide*—An objectionable flavor of hydrogen sulfide similar to the flavor of water with a high sulfur content.

(17) *Utensil*—A flavor that is suggestive of improper or inadequate washing and sanitizing of milking machines, utensils or factory equipment.

(18) *Weedy*—A flavor due to the use of milk which possesses a common weedy flavor. Present in cheese when cows have eaten weedy feed or grazed on common weed-infested pastures.

(19) *Whey-Taint*—A slightly acid taste and odor characteristic of fermented whey, caused by too slow expulsion of whey from the curd.

(20) *Yeasty*—A flavor indicating yeast fermentation.

(c) With respect to body:

(1) *Slight.*—Detected only upon critical examination.

(2) *Definite.*—Not intense but detectable.

(3) *Smooth.*—Feels silky; not dry and coarse or rough.

(4) *Firm.*—Feels solid, not soft or weak.

(5) *Coarse.*—Feels rough, dry and sandy.

(6) *Pasty.*—Usually weak body and when the cheese is rubbed between the thumb and fingers it becomes sticky and smeary.

(7) *Short.*—No elasticity to the plug when rubbed between the thumb and fingers.

(8) *Weak.*—Requires little pressure to crush, is soft but is not necessarily sticky like pasty cheese.

(d) With respect to eyes and texture in general:

(1) *Set.*—The number of eyes in any given area of cheese.

(2) *Well developed eyes.*—Eyes perfectly developed, glossy or velvety, with smooth even walls, round or slightly oval in shape, and fairly uniform in distribution throughout the cheese.

(e) With respect to eyes and texture as it relates to cabbage, collapsed, dead, dull, frog mouth, irregular, rough and shell:

(1) *Very Slight.*—Characteristic exhibited in less than 5% of the eyes.

(2) *Slight.*—Characteristic exhibited in 5% or more but less than 10% of the eyes.

(3) *Definite.*—Characteristic exhibited in 10% or more but less than 20% of the eyes.

(4) *Cabbage.*—Cheese having eyes so numerous within the major part of the cheese that they crowd each other, leaving only a paper-thin layer of cheese between the eyes, causing the cheese to have a cabbage appearance and very irregular eyes.

(5) *Collapsed.*—Eyes which have not formed properly and do not appear round or slightly oval but rather flattened and appear to have collapsed.

(6) *Dead.*—Developed eyes that have completely lost their glossy or velvety appearance.

(7) *Dull.*—Eyes that have lost some of their bright shiny luster.

(8) *Frog mouth.*—Eyes which have developed into a lenticular or spindle-shaped opening.

(9) *Irregular.*—Eyes which have not formed properly and do not appear round or slightly oval and which are not accurately described by other more descriptive terms.

(10) *Rough.*—Eyes which do not have smooth, even walls.

(11) *Shell.*—A rough nut shell appearance on the wall surface of the eyes.

(f) With respect to eyes and texture as it relates to streuble:

(1) *Slight.*—Extends no more than 1/4 inch into the body of the cheese.

(2) *Definite.*—Extends 1/4 inch or more but less than 1/2 inch into the body of the cheese.

(3) *Streuble.*—An overabundance of small eyes just under the surface of the cheese.

(g) With respect to eyes and texture as it relates to checks, picks, and splits:

(1) *Very Slight.*—Infrequent occurrence, not more than 1 inch from the surface.

(2) *Slight.*—Limited occurrence, not more than 1 inch from the surface.

(3) *Definite.*—Limited occurrence throughout cheese.

(4) *Checks.*—Small, short cracks within the body of the cheese.

(5) *Picks.*—Small irregular or ragged openings within the body of the cheese.

(6) *Splits.*—Sizable cracks, usually in parallel layers and usually clean cut, found within the body of the cheese.

(h) With respect to eyes and texture as it relates to large eyed and small eyed:

(1) *Very Slight.*—Majority of the eyes less than 1 1/16 and more than ½ inch.

(2) *Slight.*—Majority of the eyes less than ½ inch but more than 5/16 inch or more than 13/16 inch but less than 1 inch.

(3) *Large eyed.*—Eyes in excess of 13/16 inch.

(4) *Small eyed.*—Eyes less than 11/16 inch.

(i) With respect to eyes and texture as it relates to gassy and sweet holes:

(1) *Slight.*—No more than 3 occurrences per any given 2 square inches.

(2) *Gassy.*—Gas holes of various sizes which may be scattered.

(3) *Sweet holes.*—Spherical gas holes, glossy in appearance; usually about the size of BB shot.

(j) With respect to eyes and texture as it relates to nesty:

(1) *Very slight.*—Occurrence limited to no more than 5% of the total area of the cheese.

(2) *Slight.*—Occurrence more than 5% but less than 10% of the total area of the cheese.

(3) *Nesty.*—An overabundance of small eyes in a localized area.

(k) With respect to eyes and texture as it relates to one-sided and uneven:

(1) *Slight.*—Eyes evenly distributed throughout at least 90% of the total cheese area.

(2) *Definite.*—Eyes evenly distributed throughout at least 75% but less than 90% of the total cheese area.

(3) *One sided.*—Cheese which is reasonably developed on one side and underdeveloped on the other as to eye development.

(4) *Uneven.*—Cheese which is reasonably developed in some areas and underdeveloped in others as to eye development.

(l) With respect to eyes and texture as it relates to overset and underset:

(1) *Very slight.*—Number of eyes present exceed or fall short of the ideal by limited amount.

(2) *Slight.*—Number of eyes present exceed or fall short of the ideal by a moderate amount.

(3) *Afterset.*—Small eyes caused by secondary fermentation.

(4) *Overset.*—Excessive number of eyes present.

(5) *Underset.*—Too few eyes present.

(m) With respect to finish and appearance:

(1) *Very slight.*—Detected only upon very critical examination.

(2) *Slight.*—Detected only upon critical examination.

(3) *Definite.*—Not intense but detectable.

(4) *Checked rind.*—Numerous small cracks or breaks in the rind.

(5) *Huffed.*—The cheese becomes rounded or oval in shape instead of flat.

(6) *Mold on rind surface.*—Mold spots or areas which have formed on the rind surface.

(7) *Mold under wrapper or covering.*—Mold spots or area that have formed under the wrapper or on the cheese.

(8) *Soft Spots.*—Spots which are soft to the touch and usually faded and moist.

(9) *Soiled Surface.*—Milkstone, rust spots, grease, or other discoloration on the surface of the cheese.

(10) *Uneven.*—One side of the cheese is higher than the other.

(11) *Wet rind.*—A wet rind is one in which the moisture adheres to the surface of the rind and which may or may not soften the rind or cause discoloration.

(n) With respect to color:

(1) *Slight.*—Detectable only upon critical examination.

(2) *Acid cut.*—Bleached or faded appearance which sometimes varies throughout the cheese.

(3) *Bleached surface.*—A faded coloring beginning at the surface and extending inward a short distance.

(4) *Colored spots.*—Brightly colored areas (pink to brick red or gray to black) of bacteria growing in readily discernible colonies randomly distributed throughout the cheese.

(5) *Dull or faded.*—A color condition lacking in luster.

(6) *Mottled.*—Irregular-shaped spots or blotches in which portions are light colored and others are higher colored. Also, unevenness of color due to combining two different vats, sometimes referred to as "mixed curd."

(7) *Pink ring.*—A color condition which usually appears pink to brownish red and occurs as a uniform band near the cheese surface and may follow eye formation.

Signed at Washington, DC on October 8, 1986.

**James C. Handley,**

*Administrator.*

[FR Doc. 86-23204 Filed 10-27-86; 8:45 am]

BILLING CODE 3410-02-M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### 8 CFR Part 109

### Employment Authorization

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Petition for rulemaking.

**SUMMARY:** Part 109 of 8 CFR, entitled Employment Authorization, describes at § 109.1(a) the classes of aliens who are authorized to be employed in the United States as a condition of their nonimmigrant classification, and at § 109.1(b), the classes of aliens who may apply for work authorization. The Service has received a petition for rulemaking which seeks to rescind 8 CFR 109.1(b) on the ground that the Service has exceeded its statutory authority in promulgating this rule.

**DATES:** Written comments must be submitted on or before December 29, 1986.

**ADDRESS:** Please submit comments in duplicate to the Director, Office of Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Room 2011, Washington, DC 20536.

**FOR FURTHER INFORMATION CONTACT:**

For General Information: Loretta Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-4048

For Specific Information: Michael Shaul, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington DC 20536, Telephone: (202) 633-3946

**SUPPLEMENTARY INFORMATION:**

#### Comments invited

The Service, in publishing the petition for rulemaking, is inviting the public to comment and assist it in determining whether to proceed with the rulemaking sought by the petition. Interested persons are requested to participate by reviewing the information provided by the petitioner and submitting their views in writing. Comments should agree with or challenge arguments made in the petition and offer additional information in support of their position. It should be noted that the Service is not proposing a regulatory rule for adoption and has not taken a position on the petition. The Service will reach a conclusion on the merits of the petition after it has had an opportunity to evaluate it carefully in the light of the comments received. If the Service concludes that it should initiate rulemaking on the petition, a proposed rule will be published for public comment. For the convenience of commenters, the current regulation at 8 CFR 109.1(b) which the petitioner seeks to rescind is reprinted below, followed by the petition.

Regulation petitioner seeks to rescind:

*§ 109.1 classes of aliens eligible.*

* * * * *

(b) *Aliens who must apply for work authorization.* Any alien within a class of aliens described in this section must apply for work authorization to the district director in whose district the alien resides:

(1) Any alien maintaining a lawful nonimmigrant status in one of the following classes may be granted permission to be employed:

(i) Alien spouse or unmarried dependent son or daughter of a foreign government official (A–1) or (A–2) as provided in § 214.2(a)(2) of this title, or the dependent of an employee as provided by § 214.2(a)(3) of this title.

(ii) Alien nonimmigrant student (F–1) as provided in § 214.2(f) of this chapter.

(iii) Alien spouse or an unmarried dependent son or daughter of an officer or employee of an international organization (G–4) as provided in § 214.2(g) of this chapter.

(iv) Alien spouse or minor child of and exchange visitor (J–2) as provided in § 214.2(j) of this title.

(2) Any alien who filed a non-frivolous application for asylum pursuant to Part 208 of this chapter may be granted permission to be employed for the period of time necessary to decide the case.

(3) Any alien who has properly filed an application for adjustment of status to permanent resident alien may be granted permission to be employed for the period of time necessary to decide the case.

(4) Any alien paroled into the United States temporarily for emergent reasons or for reasons deemed strictly in the public interest: *Provided,* The alien established an economic need to work.

(5) Any alien who has applied to an immigration judge under § 242.17 of this chapter for suspension of deportation pursuant to section 244(a) of the Act may be granted permission to be employed for the period of the time necessary to decide the case: *Provided,* The alien establishes an economic need to work.

(6) Any deportable alien granted voluntary departure, either prior to hearing or after hearing, for reasons set forth in § 242.5(a)(2)(v), (vi), or (viii) of this chapter may be granted permission to be employed for that period of time prior to the date set for voluntary departure including any extension granted beyond such date. Factors which may be considered in granting employment authorization to an alien who has been granted voluntary departure:

(i) Length of voluntary departure granted;

(ii) Dependent spouse and/or children in the United States who rely on the alien for support;

(III) Reasonable chance that legal status may ensure in the near future; and

(iv) Reasonable basis for consideration of discretionary relief.

(7) Any alien in whose case the district director recommends consideration of deferred action, an act of administrative convenience to the government which gives some cases lower priority; *Provided,* The alien establishes to the satisfaction of the district director.

(8) Any excludable or deportable alien who has posted an appearance and delivery bond may be granted temporary employment authorization if the District Director determines that employment is appropriate under § 103.6(a)(2)(iii) of this chapter.

* * * * *

The petition in full is published below.

Dated: October 22, 1986.

**Richard E. Norton,**

*Associate Commissioner, Examinations, Immigration and Naturalization Service.*

Petition:

**I. Introduction**

The Federation for American Immigration Reform ("FAIR"), on behalf of its members throughout the country, hereby requests the Immigration and Naturalization Service ("INS") to rescind 8 CFR 109.1(b). The INS has acted beyond its statutory authority and contrary to the purpose of the Immigration and Nationality Act when it promulgated 8 CFR 109.1(b), which allows illegal or temporarily present aliens to apply for and receive work authorization.

**II. The Issue**

Whether the Attorney General has the authority to grant work authorization to certain classes of aliens who have not been authorized by Congress to work in this country.

**III. Background**

8 CFR 109.1 describes two sets of aliens who may be eligible to seek employment in the United States: Aliens who are authorized to work as a "condition of their admission or subsequent change to one of the indicated classes" [listed in 109.1(a)], and aliens who must apply for work authorization to the district director of the district in which the alien resides [listed in 109.1(b)]. Aliens in the latter category must also prove that they are financially unable to maintain themselves. 8 CFR 109.1(c).

The Immigration and Naturalization Service claims that section 103(a) of the Immigration and Nationality Act, 8 U.S.C.1103(a), which authorizes the Attorney General to establish regulations, issue instructions, and perform any actions necessary for the implementation and administration of the INA, empowers the Attorney General to grant work authorization and issue the regulations in 8 CFR 109.[1] The INS also claims the authority of the Attorney General to authorize employment of aliens was "specifically recognized by the Congress in the enactment of section 6 of Pub. L. 95–571."[2] This provision amended section 245(c) of the INA, 8 U.S.C. 1155(c),[3] to bar from adjustment of status any alien engaged in unauthorized employment.

The INS has been receiving and granting applications for work authorization from the classes of aliens listed in 8 CFR 109.1(b) even though Congress has not expressly authorized these classes to work.

**IV. Discussion**

The INS is currently granting work authorization to classes of aliens who have not been authorized by the Immigration and Nationality Act to receive work authorization. The Attorney General claims he has the authority to do this under his power to prescribe regulations to carry out the INA as set out in section 103(a), 8 U.S.C. 1103(a).[4] When the INS promulgates regulations, however, such regulations must conform with and further the purposes of the INA. *Wang* v. *Immigration and Naturalization Service,* 602 F.2d. 211, 213 (9th Cir. 1979).

8 CFR 109.1(b), which authorizes employment to be granted to certain groups of aliens at the discretion of the Attorney General, is *contrary* to one of the key purposes of the INA, which is to protect American workers and working conditions. As the Supreme Court has stated:

> [a] primary purpose in restricting immigration is to preserve jobs for American workers; immigrant aliens are therefore admitted to work in this country only if they "will not adversely affect the wages and working conditions of the workers in the United States similarly employed."

*Sure-Tan, Inc.* v. *NLRB,*—— U.S. ——, 104 S.Ct. 2803, 2810 (1984), quoting 8 U.S.C. 1182(a)(14) *and citing* S. Rep. No. 748, 89th Cong., 1st Sess. 15 (1965), *reprinted in* 1965 U.S. Code Cong. & Admin. News, p. 3328.

---

[1] 44 FR 43480 (1979); *See also* Letter from Alan C. Nelson, Commissioner, INS to Roger Conner, Executive Director, FAIR (March 28, 1986), attached as Appendix A.

[2] 44 FR 43480 (1979).

[3] *Infra,* n. 10.

[4] When the INS first proposed a rule to codify the procedures and criteria for the grant of employment authorization to aliens in the United States, it published a notice of its proposed rule in the Federal Register. 44 FR 43480 (1979). The INS explained its authority to issue the rule as follows:

> The Attorney General's authority to grant employment authorization stems from section 103(a) of the Immigration and Naturalization Act which authorizes him to establish regulations, issue instructions, and perform any actions necessary for the implementation and administration of the Act.

*A. The Regulation is Inconsistent With the Purpose of the INA*

One of the principal purposes of American immigration laws has always been to protect American workers and working conditions. As early as 1885, Congress enacted legislation prohibiting the entry of contract laborers. Act of February 26, 1885, 23 Stat. 332.

The intent of the INA was to protect Americans from the importation of cheap foreign labor, which would reduce wages by increasing the supply of labor. H.R. Rep. No. 1365, 82nd Cong., 2d Sess., *reprinted* in 1952 U.S. Code, Cong. & Admin. News 1653, 1662. In every revision of the INA, Congress re-emphasized the protection of American jobs and working conditions from foreign competition on American soil.[5]

In enacting the INA of 1952, Congress expressed its concern for protecting American labor:

> While the bill [INA of 1952] will remove the "contract labor clauses" from the law, it provides strong safeguards for American labor. . . . It is the opinion of this committee that [212(a)(14), the labor certification provisions] will adequately *provide for the protection* of American labor against an influx of aliens entering the United States *for the purpose of performing skilled or unskilled labor* where the economy of individual localities is not capable of absorbing them at the time they desire to enter this country.

H.Rep. No. 1365, 82d Cong., 2d Sess. (1952), reprinted in 1952 U.S. Code Cong. & Admin. News 1653, 1705 [Emphasis added].

In the legislative history of the Immigration and Nationality Amendments of 1965, Congress repeated its desire to protect U.S. workers from the impact of cheap foreign labor. S. Rep. No. 748, 89th Cong., 1st Sess. (1965), reprinted in 1965 U.S.Code Cong. & Admin. News 3328, 3333. Senator Saltonstall stated that the 1965 Amendments:

> . . . have included provisions to facilitate the entry of skilled workers while taking precautionary measures to insure that American jobs and working conditions will be protected.

Cong. Rec.—Senate, September 20, 1965 at 24441. Senator Clark, a cosponsor of the 1965 Amendments, stated:

> In this regard let me say that the bill before us offers even more protection to American workers. . . .

[5] See, H.R. Rep. No. 1015, 65th Cong., 3d Sess. at 8 (1919); H.R. Rep. No. 4, 67th Cong., 1st Sess. at 3 (1921), accompanying the Quota Act of 1921 (42 Stat. 5); H.R. Rep. N. 1621 67th Cong., 4th Sess. at 23–27 (1923); H.R. Rep. No. 176, 68th Cong., 1st Sess. at 15–17 (1924); H.R. Rep. No. 350, 68th Cong., 1st Sess. at 21–23 (1924), accompanying H.R. 7995, which was enacted as the Immigration Act of 1924 (43 Stat. 153).

*Id.* at 24500.

Hence, the legislative history of the immigration laws makes clear that one of the INA's key purposes is the protection of American workers and working conditions. This purpose was recently re-affirmed by Congress in the Immigration and Nationality Act Amendments of 1976, Pub. L. 94–571, 90 Stat. 2703. In the House report accompanying the bill, Congress stated:

> The labor certification provision set forth in Section 212(a)(14) of the Immigration and Nationality Act is intended to protect the domestic labor force.

H.R. Rep. No. No. 1553, 94th Cong., 2d Sess. (1976) reprinted in 1976 U.S. Code Cong. & Admin. News 6073, 6082.

The courts have also recognized this purpose in numerous opinions. As early as 1929, in *Karnuth* v. *United States*, 279 U.S. 231 (1929), the Supreme Court reviewed the legislative history of the INA, and acknowledged Congress' intent to protect U.S. workers from cheap foreign competition:

> The various acts of Congress since 1916 evince a progressive policy of restricting immigration. *The history of this legislation points clearly to the conclusion that one of its great purposes was to protect American labor against the influx of foreign labor.*

*Karnuth*, 279 U.S. at 242–44 [Emphasis added].

More recent decisions also recognize this purpose. In *Virginia Agricultural Growers Association* v. *U.S. Department of Labor*, 756 F. 2d 1025 (4th Cir. 1985), the 4th Circuit Court of Appeals stated that:

> VAGA's [Virginia Agricultural Growers Association] argument that the . . . rule contradicts the INA's underlying policy is grounded on the statute's goal of admitting needed seasonal foreign labor. VAGA downplays, however, the *statute's concurrent purpose of protecting American Labor.*

Id. at 1028 [Emphasis added]. *See also, Production Tool Corp.* v. *Employment and Training Administration, Dept. of Labor*, 688 F. 2d 1161, 1168 (7th Cir. 1982) ("Congress enacted § 212(a)(14) to protect the domestic labor force from competition and adverse working conditions as a result of foreign workers entering; the labor market"); *Wang* v. *INS*, 602 F.2d 211 (9th Cir. 1979); *Mehta* v. *INS*, 574 F. 2d. 701 (2d Cir. 1978); *Silva* v. *Secretary of Labor*, 518 F. 2d 301 (1st Cir. 1975).

Finally, the Immigration and Naturalization Service explicitly recognizes as the purpose of the INA the protection of American workers:

> The Constitution clearly permits the government to put conditions in the nature of employment restrictions on the entry of aliens into the United States, as part of the nation's sovereign power to limit the entry of aliens. *Congress exercised this power by enacting the Immigration and Nationality Act which creates an elaborate scheme for classifying aliens. The scheme was intended to protect American labor;* it does so by imposing work-related preconditions, or conditions, on all but a few carefully limited categories of aliens.

Brief for Appellant at 12, *National Center for Immigrants Rights, Inc* v. *Immigration and Naturalization Service*, No. 84–5504 (9th Cir.) (appeal of District Court granting of preliminary injunction in favor of appellees) [Emphasis added]. *See, National Center for Immigrants Rights, Inc. v. Immigration and Naturalization Service*, 743 F.2d 1365 (9th Cir. 1984).

By allowing the classes of aliens listed in 8 CFR 109.1(b) to receive work authorization, the INS is undermining one of the purposes for which Congress enacted the INA: The protection of American jobs. The granting of work authorization to deportable aliens and nonimmigrants not authorized by statute to work allows such aliens to compete directly with American workers for jobs.[6] This is in direct conflict with the purpose for which the INA was enacted.

Furthermore, both the INS and the Department of Labor have admitted that the "primary purpose of the work authorization requirement is to monitor the nature and volume of jobs available within the United States which aliens fill." Memorandum of Amici Curiae United States Department of Labor and United States Immigration and Naturalization Service at 17, *Ibarra* v. *Texas Employment Commission*, No. L–83–44–CA (E.D. Tex. 1986).

Yet, 8 CFR 109.1 does not contain any requirements that the INS determine whether the granting of work authorization will adversely affect

[6] There have been no guidelines promulgated by the INS to determine whether a grant of work authorization to these aliens would adversely affect the wages or working conditions of local citizens or legal aliens. The closest the INS comes to an attempt to protect American labor and labor conditions is in 8 CFR 103.6(a)(iii). This regulation provides a list of factors to be considered in the imposition of the bond condition barring unauthorized employment. The first factor calls for "Safeguarding employment opportunities for United States citizens and legal resident aliens;" and the second factor is the "impact on and dislocation of American workers by alien's employment." However, the factors listed in 8 CFR 103.6(a)(iii) are only to be considered in connection with the imposition of the bond condition barring unauthorized employment on an appearance and delivery bond. There is no language in either 8 CFR 103.6(a)(iii) or 109.1 that states that these factors are to apply in determining whether an alien is granted work authorization, with the exception of 8 CFR 109.1(b)(8).

American labor or working conditions.[7] The INS admits that it does not keep statistics on the number of aliens that are granted work authorization under 8 CFR 109.1(b). Letter from Alan C. Nelson, Commissioner, INS to Roger Conner, Executive Director, FAIR (March 28, 1986) (discussing work authorization), *supra*, n. 1. The INS is granting work authorization without knowing whether the aliens will be competing with American workers for jobs, or whether such authorization is having the effect of lowering wages and working conditions.[8] Thus, under the holding in *Wang* v. *Immigration and Naturalization Service*, 602 F.2d 211 (9th Cir. 1979), 8 CFR 109.1(b) is an unlawful regulation since it neither conforms with or furthers the purpose of the INA.

*B. The Regulations as Promugated by the INS is an Ultra Vires Act*

The INS claims the authority to grant work authorization to non-immigrants under Section 103 of the INA,[9] and that Congress had acquiesced in the Attorney General's power to grant work authorization when it amended section 245(c) [10] of the INA.[11] 45 FR 19563 (1980).

Not only is 8 CFR 109.1(b) inconsistent with the INA, it was promulgated without proper statutory authorization by Congress. 8 CFR 109.1(b) gives the Attorney General wide discretion to authorize aliens to engage in employment, regardless of whether Congress has authorized employment for that class of alien.

However, in the House report accompanying Pub. L. 94–571 (which amended section 245(c)), Congress indicated that the reason for enacting this provision was to "deter many nonimmigrants from violating the conditions of their admission by obtaining unauthorized employment." H.R. Rep. No. 1553, 94th Cong., 2d Sess., *reprinted in* 1976 U.S. Code, Cong. & Admin. News 6073, 6084. There is no indication in the Report that Congress had recognized the power of the INS to authorize any or all aliens to seek any and all types of employment in the U.S. Congress continued to allow only a few classes of aliens to work. Congress would not have made such a dramatic shift in emphasis without comment.

A careful review of the language contained in the provisions in the INA that created the classes of aliens listed in 8 CFR 109.1(b),[12] along with their accompanying legislative history,[13] reveals no Congressional intent to allow these classes of aliens to engage in employment while in the United States. There is no statutory authority for the classes of aliens listed in 8 CFR 109.1(b) to engage in employment. Therefore, the regulation is contrary to the purpose of the INA, and beyond INS's delegated authority.

The political branches of the federal government have plenary authority to establish and implement substantive and procedural rules governing the admission of aliens to this country. *Chae Chan Ping* v. *United States [Chinese Exclusion Case]*, 130 U.S. 581, 609 (1889). This power lies in the first instance with Congress. *United States ex rel. Knauff* v. *Shaughnessy*, 338 U.S. 537, 542 (1950). "Over no conceivable subject is the legislative power of Congress more complete." *Oceanic Steam and Navigation Co.* v. *Stranahan*, 214 U.S. 320 (1909).

Thus, it is up to Congress to decide which classes of aliens may be granted work authorization, not the INS. *Lapina* v. *Williams*, 232 U.S. 78 (1914) ("Congress . . . prescribe[s] the terms and conditions upon which [aliens] may enter and remain in this country.") If Congress wanted the aliens listed in 8 CFR 109.1(b) to engage in employment, it would have passed legislation allowing it. *I.N.S* v. *Phinpathya*, 464 U.S. 183, 196 (1984) ("Congress designs the immigration laws, and it is up to Congress to temper the laws' rigidity").

The INS must comply with the grant of statutory authority given it. *Lloyd Sabaudo Societa Anonima Per Azioni* v. *Elting*, 287 U.S. 329, 335 (1932). There is no support in the INA for the granting of work authorization to those aliens listed in 8 CFR 109.1(b). The INS has promulgated a regulation that is beyond its delegated authority. Therefore, the regulation promulgated in 8 CFR 109.1(b) is unlawful and should be rescinded, or amended to include only those aliens who have been authorized by Congress

---

[7] The only provision that provides for such a determination is in section 212(a)(14) of the INA, the labor certification provision. This section calls on the Secretary of Labor to determine and certify that there are not sufficient workers available in the occupation the alien wishes to perform. The labor certification provision does not apply to nonimmigrants seeking work authorization under 8 CFR 109.1, but to aliens who are seeking to enter the U.S. to perform skilled or unskilled labor. See section 212(a)(14) of the INA, 8 U.S.C. 1182(a)(14).

[8] Many scholars and the Supreme Court have recognized that the employment of illegal immigrants results in depressed wages and working conditions for American workers, especially lowskilled workers.

The Supreme Court has recognized the effect that employment of illegal aliens has on the domestic work force:

Employment of illegal aliens in times of high unemployment deprives citizens and legally admitted aliens of jobs; acceptance by illegal aliens of jobs on substandard terms as to wages and working conditions can seriously depress wage scales and working conditions of citizens and legally admitted aliens; and employment of illegal aliens under such conditions can diminish the effectiveness of labor unions.

*De Canas* v. *Bica*, 424 U.S. 351, 356 (1976). *See also, Sure-Tan, Inc.* v. *National Labor Relations Board*, —— *U.S.* ——, *104 S.Ct. 2803, 2810 (1984).*

*See also* North, Testimony before the Select Commission on Immigration and Refugee Policy (The presence of undocumented workers depresses the labor market, resulting in depressed wages and working conditions for people they compete with); Teitelbaum, *Immigration, Refugees and American Business*. National Chamber Foundation (1984) (Principal losers due to illegal immigration are those domestic workers with labor market characteristics similar to the illegal immigrants, i.e. youths, women, disadvantage American minorities); Immigration Reform and *Control Act: Hearings before the Subcomm. on Immigration, Refugees, and International Law of the House Comm. on the Judiciary*, 98th Cong., 1st Sess. (1983) (Statement of Robert W. Searby, Deputy Under Secretary of Labor for International Labor Affairs) (The Department of Labor support of employer sanctions as best way to protect low-skilled American and legal immigrant workers from competition with undocumented aliens).

[9] *Supra*, n. 4 and accompanying text.

[10] Section 245(c) of the INA states:

The provisions of this section [adjustment of status of nonimmigrants to permanent residents] shall not be applicable to . . . (2) an alien (other than an immediate relative as defined in section 201(b)) who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status.

[11] In the commentary to the proposed rule, the INS explained Congress' acquiescence in the granting of work authorization to aliens as follows:

The authority of the Attorney General to authorize employment of aliens in the United States as a necessary incident of his authority to administer the Act was *specifically recognized* by the Congress in the enactment of section 6 of Pub. L. 95–571. That provision amended section 245(c) of the Act to bar from adjustment of status any alien (other than an immediate relative of a United States citizen) who after January 1, 1977 engages in unauthorized employment prior to filing an application for adjustment of status.

45 FR 19563 (1980) [Emphasis added].

[12] See, Section 214(a), 208(a), 245, 244(a) and (e), 236, 237, 241, 242 of the INA.

[13] *See*, Section 208 of the INA, 8 U.S.C. 1158, along with S. Rep. No. 256, 96th Cong., 2nd Sess., *reprinted in* 1980 U.S. Code Cong. & Ad. News 141, 156 and H. Conf. Rep. No. 781, 96th Cong., 2nd Sess., *reprinted in* 1980 U.S. Code Cong. & Ad. News 160, 161; Section 214 of the INA, 8 U.S.C. 1184, along with H. Rep. No. 851, 91st Cong., 2nd Sess., *reprinted in* 1970 U.S. Code Cong. & Ad. News 2750, 2757; Section 245 of the INA, 8 U.S.C. 1255, along with S. Rep. No. 2133, 85th Cong., 2nd Sess., *reprinted in* 1958 U.S. Code Cong. & Ad. News 3698, S. Rep. No. 748, 89th Cong., 1st Sess., *reprinted in* 1965 U.S. Code Cong. & Ad. News 3328, 3343, H. Conf. Rep. No. 1101, 89th Cong., 1st Sess., *reprinted in* 1965 U.S. Code Cong. & Ad. News 3353, 3354, H. Rep. No. 1553, 94th Cong., 2nd Sess., *reprinted in* 1976 U.S. Code Cong. & Ad. News 6073, 6084, and H. Rep. No. 264, 97th Cong., 1st Sess., *reprinted in* 1981 U.S. Code Cong. & Ad. News 2577.

The legislative history accompanying the 1952 Immigration and Nationality Act applies to each of the above Sections as well as to Section 244 of the INA, 8 U.S.C. 1152. *See*, H. Rep. No. 1365, 65th Cong., 2nd Sess., *reprinted in* 1952 U.S. Code Cong. & Ad. News 1653, and H. Conf. Rep. No. 2096, 65th Cong., 2nd Sess., *reprinted in* 1952 U.S. Code Cong. & Ad. News 1753.

to be engaged in employment in the United States.

*C. The Regulation Undermines the Labor Certification Provision*

Congress enacted section 212(a)(14) to protect American jobs and working conditions. 8 CFR 109.1(b) allows an alien effectively to circumvent the labor certification provisions of section 212(a)(14) of the INA, 8 U.S.C. 1182(a)(14). The relevant language of section 212(a)(14) states:

> Aliens seeking to enter the United States, for the purpose of performing skilled or unskilled labor, [are ineligible to receive visas and are excluded from admission to the United States], unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that (A) there are not sufficient workers who are able, willing, qualified . . . and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed.

The language of the statute is clear. Aliens may not enter the United States to work if they would compete directly with Americans for jobs or would adversely affect Americans' wages and working conditions. Nor may an alien already here adjust status on the basis of needed skills if they would take jobs away from Americans.

The Secretary of Labor is responsible for certifying to the Attorney General that there is a shortage of workers to perform certain jobs and that the employment of an alien will not adversely affect wages and working conditions. 20 CFR 656.1(a). The burden of proof is on the alien to obtain his labor certification. 20 CFR 656.2(b). The Secretary of Labor has set up two schedules:

Schedule A, which lists occupations for which an alien may apply for labor certification due to insufficient numbers of American workers or lack of adverse effects on wages and working conditions, 20 CFR 656.10; and

Schedule B, which lists occupations that have an ample supply of American workers and for which employment of aliens could adversely affect wages and working condition, 20 CFR 656.11.

There is an elaborate mechanism to implement section 212(a)(14) of the INA involving the INS, the Department of Labor and the Department of State. Allowing statutorily unauthorized aliens to apply for and receive work authorization allows aliens who might otherwise have been turned down for admission to the United States to perform skilled or unskilled labor to circumvent the labor certification process.

For example, an alien who was previously not allowed to enter the U.S. to perform labor listed on Schedule B could simply enter the United States as a visitor for pleasure, overstay his visa, and apply for suspension of deportation or voluntary departure. The alien would receive work authorization until deportation or voluntary departure. Hence, the alien has effectively thwarted the labor certification provisions. The alien has come here for the purpose of employment without being certified by the Department of Labor.

Since the INS does not determine, in granting work authorization, whether the alien's employment will compete with citizens and resident aliens, the alien may be directly competing with Americans for a job which has an ample supply of American workers. Congress wanted to protect American labor through the labor certification process. 8 CFR 109.1(b) negates congressional intent.

*International Union of Bricklayers and Allied Craftsmen* v. *Meese*, 616 F.Supp. 1387 (N.D. Cal. 1985) (*Bricklayers II; See also, International Union of Bricklayers and Allied Craftsmen* v. *Meese*, 761 F.2d 798 (D.C. Cir. 1985) (*Bricklayers I*)), presented a similar problem. In *Bricklayers II*, a union challenged an INS "Operating Instruction" (OI) issuing visas to foreign laborers.[14] The union claimed that the OI in question violated the INA because it was inconsistent with specific provisions and the legislative intent of the Act.[15]

The court, in finding for the union, said the OI contravened the language of the two provisions by "[authorizing] the issuance of a B–1 visa to an alien coming to this country to perform skilled or unskilled labor." The court further explained:

> More importantly, the Operations Instruction authorizes the issuance of a nonimmigrant visa to a person performing skilled or unskilled labor, though qualified Americans may be available to perform the work involved. The Operations Instruction therefore lacks the safeguards contained in section 101(a)(15)(H)(ii) of the Act . . .

*Id.*, at 1399.

8 CFR 109.1(b) suffers the same problems as the OI in *Bricklayers II*. The regulation allows aliens granted work authorization to compete with American workers for jobs. Furthermore, the safeguards that section 212(a)(14) of the INA provides to protect American workers and working conditions from the adverse affects of incoming foreign labor are not present in 8 CFR 109.1(b), which covers only aliens applying for work authorization in this country.

The court in *Bricklayers* stated, after a careful review of the legislative history of the INA:

> The foregoing legislative history demonstrates that one of Congress' central purposes in the Act was the protection of American labor. . . . Thus, to the extent that the INS Operations Instruction 214.2(b)(5) permits aliens to circumvent the restrictions enacted by Congress [in sections 101(a)(15)(B) and 101(a)(15)(H)(ii)], the Operations Instruction is inconsistent with both the language and the legislative intent of the Act.

*Id.*, at 1401.

8 CFR 109.1(b) allows aliens who have been denied entry to the U.S. to perform skilled or unskilled labor the possibility of circumventing section 212(a)(14) of the INA. These aliens could enter the country on a nonimmigrant visa or without inspection and later apply for work authorization. Following the holding in Bricklayers, a regulation that is both contrary to the language of the Act, in this case section 212(a)(14), and the legislative intent of the Act, must be withdrawn.

**V. Petition**

Now, therefore, because the INS has promulgated a regulation, 8 CFR

---

[14] INS Operating Instruction 214.2(b)(5) provided that an alien may be classified as a "temporary visitor for business" nonimmigrant if the alien: Is to receive no salary or other remuneration from a United States source (other than an expense allowance or other reimbursement for expenses incidental to the temporary stay) . . . (and is) coming to install, service, or repair commercial or industrial equipment or machinery purchased from a company outside the U.S. or to train U.S. workers to perform such service . . .

OI 214.2(b)(5) allows foreign laborers to circumvent the labor certification provisions of the INA. The usual procedure for aliens coming to perform skilled or unskilled labor is to apply for a H–2 visa, or "temporary worker" visa. However, in order to receive an H–2 visa, the petitioning employer must apply for labor certification from the Secretary of Labor. Aliens applying for a "temporary visitor for business" visa (B–1), on the other hand, do not have to seek labor certification.

[15] Sections 101(a)(15)(B), which defines a temporary visitor for business as: An alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business . . .

and Section 101(a)(15)(H)(ii), which defines a temporary worker nonimmigrant as: An alien having a residence in a foreign country which he has no intention of abandoning . . . (and ) who is coming temporarily to the United States to perform temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country . . .

109.1(b), that is inconsistent with the purpose of the INA, undermines the labor certification provisions of section 212(a)(14) of the INA, and grants work authorization to aliens who have not been authorized by Congress to be allowed to seek employment in this country, FAIR respectfully requests that the Immigration and Naturalization Service: Rescind 8 CFR 109.1(b).

Daniel A. Stein,
Barnaby W. Zall,
1424 Sixteenth St. NW.
Washington, DC 20036
(202) 328-7004
*Attorneys for the Federation for American Immigration Reform.*

[FR Doc. 86-24329 Filed 10-27-86; 8:45 am]
BILLING CODE 4410-10-M

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

**[Docket No. PRM-50-44]**

### Committee to Bridge the Gap; Petition for Rulemaking; Extension of Comment Period

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking; Extension of comment period.

**SUMMARY:** On September 3, 1986 (51 FR 31341), the NRC published a notice of receipt of a petition for rulemaking filed by the Committee to Bridge the Gap. The petition requested that the Commission amend its regulations to require operators of reactors that use graphite as a moderator or reflector to (1) prepare and submit for NRC approval fire response plans and evacuation plans for a graphite fire and, (2) measure the energy stored in their graphite, and revise their safety analyses to consider the risks and consequences of a graphite fire in their facilities. The notice of receipt requested public comment on the petition and established a comment closing date of November 3, 1986.

In response to requests from the U.S. Department of Commerce, University of Missouri, Oregon State University, Worcester Polytechnic Institute, and North Carolina State University, the NRC has agreed to extend the comment period on PRM-50-44 for 90 days from the original comment closing date.

**DATE:** The comment period for PRM-50-44 has been extended from November 3, 1986 to February 3, 1987.

**ADDRESSES:** A copy of the petition for rulemaking is available for public inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. A copy of the petition may be obtained by writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

All persons who desire to submit written comments concerning the petition for rulemaking should send their comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

**FOR FURTHER INFORMATION CONTACT:** Michael T. Lesar, Acting Branch Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7758 or Toll Free: 800-368-5642.

Dated at Washington, DC this 23d day of October 1986.

For the Nuclear Regulatory Commission.

**Samuel J. Chilk,**
*Secretary of the Commission.*

[FR Doc. 86-24330 Filed 10-27-86; 8:45 am]
BILLING CODE 7590-01-M

### 10 CFR Part 50

### Emergency Planning and Preparedness; Withdrawal

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** The Commission is withdrawing its proposed amendment to 10 CFR Part 50 which would have explicitly incorporated into Commission regulations the decision reached in the *San Onofre* and *Diablo Canyon* licensing proceedings that no specific emergency preparedness measures need be established to account for earthquakes. The withdrawal of the proposed rule will not have a significant effect on emergency preparedness requirements established in August 1980 (45 FR 55402).

**FOR FURTHER INFORMATION CONTACT:** E. Neil Jensen, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (202) 634-1493; or Michael T. Jamgochian, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 443-7657.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 21, 1984, the Commission published proposed amendments to its emergency planning requirements at 10 CFR 50.47 and 10 CFR Part 50, Appendix E (49 FR 49640). The proposed rule stated that neither emergency response plans nor evacuation time analyses need consider the impact on emergency planning of earthquakes which cause, or occur proximate in time with, an accidental release of radioactive material from a nuclear power reactor. These amendments proposed to explicitly adopt by rule the Commission's interpretation of its existing rules in the Commission's *San Onofre* and *Diablo Canyon* decisions. *Southern California Edison Company, et al.* (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-81-33, 14 NRC 1091 (1981); *Pacific Gas and Electric Company* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-84-12, 20 NRC 249 (August 10, 1984), *San Luis Obispo Mothers for Peace v. NRC*, 751 F.2d 1287 (D.C. Cir. 1984), *rehearing en banc granted*, 760 F.2d 1320, *aff'd en banc*, 789 F.2d 26 (1986).

The Commission stated in the *Diablo Canyon* decision that it would undertake a generic rulemaking "to address whether the potential for seismic impacts on emergency planning is a significant enough concern for large portions of the nation to warrant the amendment of the regulations to specifically consider those impacts" and "to obtain additional information to determine whether, in spite of current indications to the contrary, cost effective reductions in overall risk may be obtained by the explicit consideration of severe earthquakes in emergency response planning." CLI-84-12, 20 NRC 249, 254-55.

The proposed rule permitted a 30-day comment period. This period was extended until February 27, 1985 (see 50 FR 3797, dated January 28, 1985).

**The Proposed Rule**

In the proposed rule, the Commission requested that commenters address the merits of three possible alternatives:

1. Adoption of the proposed rule explicitly incorporating the Commission interpretation in *San Onofre* and *Diablo Canyon* not to consider the impacts of earthquakes in emergency planning;

2. Leaving the issue open for adjudication on a case-by-case basis; or

3. Requiring by rule that emergency plans specifically address the impacts of earthquakes.

The Commission was also considering whether to include in this rulemaking tornadoes and other low-frequency natural events.

Sixty-one comment letters were received. Twenty-five letters favored the promulgation of the proposed rule. The majority of these letters were from utilities, and consulting firms representing utilities. Two favorable comments were received from private citizens and one from the Department of Energy.

Thirty-four letters opposed promulgation of the proposed rule. The majority of these letters were from private citizens, intervenors' groups and environmental groups. Nine of these letters were in signed petition form with approximately 94 signatures in total.

All of the commenters favoring promulgation of the proposed rule simply stated their agreement with the rationale offered by the Commission and provided little additional detailed information supporting the proposed rule change. Commenters opposing the proposed rule questioned the validity of the Commission's rationale and raised a number of points which have been considered by the Commission. No commenters took a position on the alternative to leave the issue open for adjudication on a case-by-case basis.

**Commission Conclusion**

The Commission's decision in *Diablo Canyon* was based on the view that for earthquakes up to and including the Safe Shutdown Earthquake (SSE), the seismic design of the plant rendered extremely small the probability that such an earthquake would result in a radiologic release. All nuclear power plants are required to be designed to safely shutdown for all earthquakes up to and including an SSE which is selected for each site based on a careful review of site geology and seismicity. While the regulations do not specifically address the effects of earthquakes on emergency planning, the regulations do go into great detail about how seismic considerations are to be accounted for in plant siting and design. 10 CFR Part 100, Appendix A; 10 CFR Part 50, Appendix A. Further, while a radiologic release might result from an earthquake greater than the SSE, the probability of such an earthquake was extremely low and emergency response would have marginal benefit because of its impairment by offsite damage. Finally, the likelihood of a contemporaneous occurrence of both a radiologic release from the plant caused by an event other than an earthquake, and an earthquake that would complicate emergency response was believed to be extremely low. 20 NRC at 251–52. The Commission bolstered its view by observing that existing emergency plans "have considerable flexibility to handle the disruptions caused by various natural phenomena which occur with far greater frequency than do damaging earthquakes and this implicitly includes some flexibility to handle disruptions from earthquakes as well." *Id.* at 252–53.

The Commission is satisfied that none of the information submitted by commenters indicates that its interpretation of emergency planning rules in the *San Onofre* and *Diablo Canyon* proceedings was mistaken or that the potential for seismic impacts on emergency planning is a significant enough concern for large portions of the nation to warrant amendment of the regulations. Nor did the comments suggest any additional cost-effective measures which might be taken to provide further assurance of protection in the event of an earthquake occurring simultaneously with a radiological release. Moreover, the *en banc* decision of the United States Court of Appeals for the District of Columbia Circuit, affirming the Commission's interpretation of its emergency planning rules, has removed regulatory uncertainty in this area. Thus the Commission has decided that a rulemaking which would simply make explicit the Commission's interpretation of its rules is unnecessary. If the need to consider earthquakes in emergency planning is raised in an adjudication, the Commission expects to adhere to the *Diablo Canyon* and *San Onofre* precedents unless a convincing case is made that application of these precedents to the facts of the case would cause a significant safety problem.

**Commission Response to Comments**

*Issue 1: Flexibility of Emergency Plans*

Some commenters questioned the Commission's view that sufficient flexibility exists in present emergency plans to make a generic finding that effects of earthquakes on emergency planning are always resolved by the general flexibility of emergency plans. Specifically, commenters objected that:

- There exists limited or no record concerning the flexibility of emergency plans to support the proposed rule;
- The proposed rule violates NRC's emergency planning principle of planning for accidents ranging from design-basis accidents to core-melt accidents, with the capacity to reduce the consequences of even the most severe accidents;
- FEMA's emergency plans do not adequately provide for earthquake response in a radiological emergency.

*Commission Response*

In June of 1979, the Commission began a formal reconsideration of the role of emergency planning in ensuring the continued protection of the public health and safety in areas around nuclear power facilities. The Commission determined that it must have reasonable assurance that proper means and procedures will be in place to assess the course of an accident and its potential severity, that NRC and other appropriate authorities and the public will be notified promptly, and that adequate protective actions in response to actual or anticipated conditions can and will be taken. On August 19, 1980, the Commission published its final rule on emergency planning. In developing the final rule the Commission established 16 planning standards (See 10 CFR 50.47(b)) which must generally be met by both onsite and offsite emergency response plans for nuclear power facilities. The planning standards are addressed by specific evaluation criteria in NUREG–0654; FEMA–REP–1, Rev. 1. To ensure that adequate plans exist and are maintained, the NRC reviews and evaluates the licensee's onsite emergency plans against the regulatory requirements of 10 CFR 50.47 and 10 CFR Part 50, Appendix E; and the guidance criteria in NUREG–0654/FEMA–REP–1, Rev. 1. In a parallel manner, the Federal Emergency Management Agency (FEMA) reviews and evaluates the state and local offsite plans against the criteria in NUREG–0654 and provides the NRC with its finding and determinations. Both agencies continue to review and evaluate changes to the respective plans and the results of drills and exercises, and ensure that necessary corrections are made based on those evaluations.

The emergency planning and prepardeness framework which is set forth in the emergency plans reflects the integration of a number of key elements including: Division of responsibilities and authorities; management controls; provisions for timely and informed decisionmaking; coordination of response organizations; adequate primary and backup communications systems; adequate assessment capabilities; adequate notification capabilities; written procedures to guide emergency response personnel; and training for emergency response personnel. These key elements would apply to any type of an emergency (*i.e.*, radiological, non-radiological, onsite,

offsite). Emergency planning and preparedness also results in a heightened awareness by emergency workers of the complex nature of emergency reponse. It fosters expertise within emergency organizations due to their increased understanding not only of individual response tasks, but also of how the separate tasks combine to form diverse response capabilities. Further, the emergency planning and prepardeness process is a dynamic process incorporating improvements based on experience gained through plan implementation and as a result of exercises, drills and actual events.

NRC emergency planning requirements and guidance have been developed through the coordinated efforts of NRC and FEMA. In the joint FEMA/NRC document entitled "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants (NUREG–0654, FEMA–REP–1, Rev. 1), the Commission's philosophy of assuring both a broad and flexible preparedness in response to a wide spectrum of events is articulated. In this Commission document it is stated at pp. 6, 7: "No single specific accident sequence should be isolated as the one for which to plan because each accident could different consequences, both in nature and degree."

FEMA shares the NRC's view that NRC-required emergency response plans have considerable flexibility to respond to a wide variety of adverse conditions, including those resulting from earthquakes. FEMA conducts two planning programs, the Radiological Emergency Preparedness (REP) program and the Earthquake Hazard Reduction program that, when completed, tested and exercised for the areas around nuclear power plants, should provide the basis for an improved Federal, State and local governmental response to protect the public in the very unlikely event of a coincident major earthquake and radiological emergency.

The objective of FEMA's Radiological Emergency Prepardness (REP) program is to assure that an integrated capability exists for State and local governments, together with utilities, to implement protective measures to protect public health and safety in the event of an emergency. FEMA coordinates the activities of 10 Federal agencies in reviewing and evaluating State and local government planning and preparedness around nuclear power plants through its 10 Regional Assistance Committees (RAC's). These evaluations are effected through assessment of emergency plans, and observation and evaluations of exercises designed to test the capabilities of government entities. Also, FEMA has developed and published on November 8, 1985 the Federal Radiological Emergency Response Plan (50 FR 46542) for radiological emergencies including commercial nuclear power plant accidents.

FEMA has an active program of earthquake hazard reduction that coordinates Federal preparadness and mitigation activities and provides technical and financial assistance to States and local communities in all segments of emergency management. This includes hazard awareness, assessment, preparedness, mitigation, reponse, and recovery. The Federal response planning provides for the supplemental help and recovery to State and local governments required to save lives and provide for basic human needs after a major earthquake. FEMA published the National Plan for Federal Response to a Catastrophic Earthquake on June 30, 1986 (51 FR 23624). The plan serves as the basis for Federal agencies to use in the event of an earthquake or, if appropriate, another catastrophic natural event.

FEMA technical and financial assistance to State and local earthquake hazard reduction programs focus upon preparedness and response planning, and provide for implementation and training exercises. The planning includes such activities as: hazards identification, vulnerability analysis, casualty and property loss estimates, and potential impacts resulting from damage to critical and special facilities (such as nuclear power plants) and lifelines.

Both the earthquake and radiological preparedness programs are carried out in a manner that addresses the integration of common functions such as communication, alert and notification, protective actions and decisionmaking, while recognizing unique management requirements such as radiological measurements. The ultimate goal in both program efforts is to facilitate the development of management and operational capabilities to analyze the need for protective action, make protective action decisions and implement appropriate operations. They are complementary in that the capabilities developed under the radiological program provide the means for coping with the various hazards that might present themselves during a major earthquake.

As indicated in the foregoing discussion, the Commission finds that emergency response plans, as required by current NRC regulations, do generally have considered flexibility to respond to a variety of adverse conditions, including those resulting from earthquakes. That this view is shared by the Federal Emergency Management Agency (FEMA) was confirmed in statements to the Commission in a public meeting on September 9, 1985. At that meeting Richard Krimm, Director of FEMA's Office of Natural and Technological Hazards, commented that "a community that has a radiological emergency plan in effect for offsite preparedness is able to handle almost any other type of emergency that comes along. I believe they are well-prepared and I think are better prepared than almost any other type of community."

The Commission recognizes, however, that the actual amount of flexiblity is difficult to establish with certainty and certainly cannot be quantified. While the regulations are intended to provide emergency plans which respond to a range of serious accidents, it was never the intent of the regulations and it is not reasonable to expect that the response to every accident will be the same. In an extremely severe seismic emergency situation, reconnaissance would ascertain the actual offsite damage, and an actual emergency response that takes advantage of the flexibility inherent in approved emergency plans would still retain some effectiveness in reducing radiological effects.

*Issue 2: Seismic Design*

Some commenters objected that defects in seismic design and quality assurance in construction have consistently undermined the seismic strength of plant systems and structures and thus it is irrational for the NRC to write off earthquakes as an emergency planning issue at the same time it is exhibiting growing concern regarding the effects of earthquakes on nuclear power plant sites.

*Commission Response*

NRC's regulations go into great detail about the extent to which seismic considerations are accounted for in plant siting and design, 10 CFR Part 100, Appendix A; 10 CFR Part 50, Appendix A, Criterion 2. The magnitude of the SSE, the adequacy of a plant's design to meet the SSE, and the adequacy of quality assurance used in construction are reviewed by NRC and may be challenged in adjudicatory proceedings. Consistent with the Commission's regulations, if postulation of a larger earthquake were considered appropriate to provide reasonable assurance that a

nuclear power plant can be constructed and operated at a given site without undue risk to the health and safety of the public, a larger SSE would be established. The Commission has considered all of the information now available on the likelihood of exceeding the SSE and finds no compelling reason either for changing the seismic design basis for nuclear power plants or rejecting its original proposal that such earthquakes need not be considered in emergency response planning.

The SSE for a nuclear plant is based upon an evaluation of the maximum earthquake potential for the specific site. The SSE is that earthquake which produces the maximum vibratory ground motion for which certain structures, systems, and components must be designed and constructed to remain functional. All structures, systems and components necessary to achieve and maintain a safe shutdown condition are seismically qualified for the SSE and are expected to remain functional and to bring the plant to safe shutdown condition.

While uncertainties do exist in estimating the behavior of structure, systems and components subjected to seismic effects, these uncertainties are accounted for in the design process through the use of conservatism. As a result of indications that earthquakes used for the design basis of eastern U.S. nuclear power plants may be understated, the NRC has underway an effort to define the seismic margins in operating plants. (For western sites probabilistic estimates have not been relied on by NRC as a basis for either seismic design or margin analysis.) Preliminary results, based on evaluation of about 12 published and unpublished PRAs (including the NRC sponsored Seismic Safety Margins Research Program), indicate that eastern U.S. plants, in general, can sustain earthquake levels up to at least 0.3 g peak ground acceleration (or roughly twice the SSE.) These levels indicate margins which are inherent in the plant design. In addition, the NRC is sponsoring research (Seismic Category I Structure Program) to determine the ability of concrete shear wall structures to maintain structural earthquake loads beyond their design basis. Results to date indicate that shear walls generally can sustain at least three to four times the SSE levels. The NRC has also recently completed the Mechanical Load Combinations research program showing that the probability of an earthquake causing a complete rupture of the primary coolant piping of pressurized water reactors (PWR) is extremely small (about 10–6 per reactor-year due to heavy component support failure under earthquake conditions and 10–12 per reactor-year due to fatigue crack growth). The results of this research have led the Commission to issue a final rule change to 10 CFR Part 50 Appendix A, General Design Criterion 4 that will permit the removal of pipe whip restraints for the primary coolant piping in PWRs (51 FR 12502, April 11, 1986). A proposed rule covering all high energy piping in all nuclear power plants was published on July 23, 1986 (51 FR 26393). Recent work by the Seismic Qualification Utility Group (SQUG), based on actual behavior of industrial facilities and their equipment in large earthquakes, lead to the conclusion that more margin against earthquakes larger than the SSE exists than was previously thought.

*Issue 3. The Contribution of Seismic Events to Core Melt Frequencies*

The Commission should evaluate the contribution of seismic events to overall core melt frequencies inasmuch as seismic PRA analysis has indicated that earthquakes are among dominant causes of core melt accidents.

*Commission Response*

An examination of recent probabilistic risk analysis indicates that seismic events have often been estimated to be one of the principal contributors to overall plant risk. Further, these estimates indicate that the significant seismic contributors to core damage or risk have been from earthquakes considerably larger than the safe shutdown earthquake (SSE).

Earthquakes which have accelerations less than the safe shutdown earthquake have not been found to be significant contributors to overall plant risk. The susceptibility of a component or subsystem to seismic damage is measured in terms of its fragility. An example of this are the ceramic insulators in the switchyard. It has been estimated (NUREG/CR–2405) that there is a 50-percent likelihood that they would fail at an acceleration of 0.2 g, leading to a loss of offsite power. However, loss of offsite power alone will not lead to a severe accident. Cooling water can be provided to the core using steam-tubine-driven pumps or by electrical pumps powered by onsite emergency diesel generators. An examination of the fragilities of the components of these emergency systems indicates that their failure likelihood at earthquakes less than the SSE will be governed by random component failures, rather than seismically induced scenarios. Thus, the accident would progress in a matter similar to a transient associated with a loss of offsite power. Since the likelihood of a loss of offsite power at a U.S. plant from all causes is considerably higher than that associated with seismic events less than or equal to the SSE, the contribution of below-SSE earthquakes to overall plant risk is minimal.

In contrast, as seismic intensity increases beyond the SSE, the estimated seismic contribution to risk increases. Large earthquakes would almost always be accompanied by a resultant loss of offsite power. Seismically induced faults in electrical control systems become important as accelerations approach 0.7 g. In addition, the estimated risk associated with severe earthquakes is usually associated with equipment failures resulting from structural collapse or interactions between structures which impose high stresses on piping systems. Absent structural interactions, most components (piping, cable trays, large pumps and compact valves) behave well even in earthquakes significantly above their design conditions. However, this is not universally true and improper location of motor drives or control devices can cause component failures in large earthquakes.

However, the analyses of seismic risk that have been performed have generally made several potentially conservative assumptions. In most cases structural degradation has been assumed to disable all components within the damaged structure in order to simplify the analysis. This assumption is clearly extremely conservative, but current analytical techniques permit only a judgmental estimate of the degree of conservatism. Thus, a comprehensive estimate of the degree of conservatism introduced must await improvements in analytical techniques.

Another area not usually considered is the ability of the operator to mitigate seismically induced risk. Depending on the types of failures which have occurred, alternate systems may be employed by the operator to ensure core cooling is maintained, or damaged components may be repaired. It is generally assumed that most seismic damage cannot be repaired in a short period of time. However, some credit has been allowed for restoration of relays which have moved to an unintended state, when they are easily accessible and the misposition can be detected easily from the control room.

Seismically induced accident sequences which take a long time (several hours) to develop provide time for the operator to provide alternate

water sources. One hour after plant shutdown, the decay heat level reduces to about 1.5 percent of full power and a 100 MW(e) reactor can be adequately cooled if as little as 300 gpm of water is provided to the core and allowed to boil. There are many potential sources of water which might be employed for core cooling but the availability depends on the availability of support systems such as AC and DC power. Studies performed to date have not included a comprehensive evaluation of recovery actions following an accident and thus tend to be conservative.

Even in the fastest developing scenarios which have been found risk-significant in previous PRAs, core melt does not occur simultaneously with the very large earthquake. Because of the normal heat capacity of material within the reactor vessel and the need to boil whatever water is initially present in the reactor vessel, and considering the additional heat sink available in the steam generators (PWR) or the suppression pool (BWR), at least 30 minutes will elapse between the initial shock and the release of fission products. In most cases, several hours will be available before large releases occur.

Because of the low demand for cooling water flow which the plant requires after shutdown, seismic aftershocks may be less significant than the original shock even if further damage results. Because of the low heat generation rates involved, a temporary interruption of coolant addition can occur without core damage. However, a detailed examination of the effects of after shocks has not been performed, and a conclusive evaluation of their significance cannot be provided at present.

With respect to the objection that some operators may react to the trauma of an earthquake and the distraction of fluctuating instruments by making mistakes that lead to serious accidents the NRC has conducted research to determine if psychological stress induced by an emergency in a nuclear power plant has a significant adverse effect on operator decisionmaking performance. "Operational Decisionmaking and Action Selection Under Psychological Stress in Nuclear Power Plants," NUREG/CR-4040. A number of measures for decreasing the effects of stress on operators were identified in order to assist operators in making correct decisions during and after a severe natural phenomena. Although it is considered highly unlikely that operator error caused by an earthquake could lead to a reactor accident which would threaten public health and safety, emergency plans are designed to deal with such an accident if it should occur.

*Issue 4. Other Natural Events*

What is the probability that other natural events (*e.g.*, hurricanes, tornadoes, heavy snow) which are now considered in emergency planning would initiate or occur proximate to an accident resulting in a radionuclide release from a nuclear power plant? How does this compare with earthquakes?

*Commission Response*

The range of probabilities for the occurrence of various natural phenomena was considered by the Advisory Committee on Reactor Safeguards, and the Committee's evaluation was forwarded to the Commission by letters dated October 16, 17, and December 16, 1985. The Committee noted that, "the probability for occurrence, the severity, and the potential contribution of individual natural phenomena to nuclear power plant accidents are site-specific. The potential impact of various natural phenomena on offsite emergency response is also site-specific." Within the context of the foregoing statements, the Committee concluded that ". . . of all natural phenomena, an earthquake is the only event that normally provides no warning of its impending occurrence and that has a significant potential for causing severe core damage and contemporaneous major disruption of offsite emergency response." In addition, the ACRS advised that "of secondary importance, compared to earthquakes, are tornadoes, hurricanes, and external floods." Consequently, the issue of whether or not to take specific account of earthquakes in emergency planning is the central focus of this rulemaking.

**Separate Opinions**

Commissioner Asselstine would prefer that the Commission publish for public comment a proposed rule which would require that emergency plans specifically address the impacts of earthquakes. However, while he disagrees with the majority's rationale, he concurs in the withdrawal of the proposed rule as being preferable to codifying the Commission's present interpretation of its emergency planning rule.

In view of the Commission's previously stated intent to codify a generic rule in this matter, and for the reasons outlined in this order, Commissioner Bernthal would have published the proposed rule, modified to state clearly that no additional emergency preparedness measures beyond those generic measures already specified in the Commission's regulations need be established to address that special class of severe, but low probability natural phenomena of which earthquakes are representative.

Dated at Washington, DC this 22d day of October 1986.

For the Nuclear Regulatory Commission.

**Samuel J. Chilk,**

*Secretary of the Commission.*

[FR Doc. 86-24333 Filed 10-27-86; 8:45 am]

BILLING CODE 7590-01-M

---

**10 CFR Part 50**

## Review of Existing LWR Regulatory Requirements; Availability of Reports and Request for Comments

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability of reports and request for comment.

**SUMMARY:** The NRC initiated a program to identify current regulatory requirements that, if deleted or appropriately modified, would improve the efficiency and effectiveness of NRC's regulatory program for nuclear power plants without adversely affecting public health and safety. Two reports resulting from the initial program efforts have been completed and are available to the public. This notice announces the availability of the two reports completed to date, describes four additional regulatory areas for which detailed evaluation is under way, and lists potential candidate areas being considered for reexamination in the future.

**DATE:** Submit comments by January 26, 1987.

**ADDRESSES:** Mail comments to The Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Copies of both reports are available for public inspection and copying in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Copies may also be purchased by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082, or by calling the Government Printing Office on (202) 275-2060. Copies may also be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

**FOR FURTHER INFORMATION CONTACT:** Dr. Anthony N. Tse, Regulatory Development Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 443–7752.

**SUPPLEMENTARY INFORMATION:** On October 3, 1984, the NRC published a **Federal Register** notice (49 FR 39066) announcing the initiation of a program to identify current regulatory requirements that, if deleted or modified, would improve the efficiency and effectiveness of the NRC regulatory program for nuclear power plants without adversely affecting public health and safety.

In this notice, the staff stated that the initial work would include a survey of regulatory requirements to identify those requirements appearing to have marginal safety significance. The notice also stated that, in a parallel effort, several regulatory areas would be evaluated in detail to assess the impact on safety and costs if the requirements in these areas were modified.

Several public comments were received in response to the October 3, 1984 notice. Copies of the comments and staff responses are available for inspection and copying in the Public Document Room. Six letters of comment were received: five from the industry and one from an individual. The comments from the industry supported this program. They suggested several regulatory requirements that, in their view, may have marginal safety importance. These suggestions, along with suggestions from other sources, were incorporated into a contractor's report (NUREG/CR–4330, Volume 1) on potential regulatory areas that can be selected for further evaluation.

One commenter expressed apprehension about the plan to review effectiveness of light-water reactor regulations. One of the commenter's major concerns was that the program had the potential of completely deregulating nuclear power. In responding to this comment, the staff pointed out that the purpose of the program is to identify and recommend to the Executive Director for Operations (EDO) elimination or modification of requirements that the staff considers to have marginal importance to safety. Before recommending elimination or modification, the staff must consider many factors, including risk to the public, dose to individuals, costs, defense-in-depth, and public confidence. If the EDO approves the recommendation, the normal process for changing requirements will be initiated. Therefore, any regulatory changes will be made through the normal NRC process for changing requirements, which provides substantial opportunity for input from all interested parties.

A contractor, Pacific Northwest Laboratories, is providing technical assistance in conducting this program. The contractor's initial efforts included two tasks: (1) To identify regulatory requirements that appear to have marginal safety importance, and (2) to evaluate risk and cost impacts if these requirements were modified or eliminated. The two tasks were completed and two reports summarizing the contractor's work have been published.

The Task 1 report, entitled "Review of Light Water Reactor Regulatory Requirements—Identification of Regulatory Requirements That May Have Marginal Importance to Risk" (NUREG/CR–4330, Volume 1), was published in April 1986. Over 40 regulatory areas, including those suggested by the commenters, were identified as potential candidates for detailed evaluation. The staff has selected four regulatory areas for evaluation from the candidate areas identified in the report, and it plans to select more areas in the future, as discussed later in this notice.

The Task 2 report, entitled "Assessment of Selected Regulatory Requirements That May Have Marginal Importance to Risk—Reactor Containment Leakage Rates, Main Steam Isolation Valve Leakage Control System, Fuel Design Safety Review" (NUREG/CR–4330, Volume 2), was published in June 1986. This report addresses potential effects on public safety and cost to the industry and the NRC in relation to possible changes in the three selected regulatory areas. Based on the results presented in the report and other available information, the staff is considering whether to recommend modification of any requirement in these regulatory areas.

As part of the next phase of the program, the staff selected four additional regulatory areas for detailed evaluation of risk significance and cost impact in relation to possible changes in these areas. The four regulatory areas are (1) post-accident sampling systems, (2) combustible gas control system, (3) turbine missiles, and (4) impregnated charcoal filters. These selections were based on information contained in the Task 1 report. The contractor's evaluations of the four areas are expected to be completed by early 1987. The staff's review of whether to modify the requirements in these areas is expected to begin at that time.

The staff is considering other potential candidate regulatory areas for reexamination as the program continues. Examples of areas the staff is considering are (1) equipment qualification, (2) surveillance and testing requirements, and (3) fire protection requirements. Public comments on the selection of these candidate areas are welcome and will be considered by the NRC.

The NRC is soliciting public comments on all aspects of the program. The staff will consider all public comments or suggestions in planning future activities of this program, in formulating staff recommendations concerning whether the regulatory requirements reviewed under this program should be deleted or modified, and in determining what action should be taken based on these recommendations. However, none of the suggestions received in response to this notice will be considered as a petition for rulemaking. Any petition for rulemaking must be submitted as directed in § 2.802 of 10 CFR Part 2 of the Commission's regulations.

Dated at Bethesda, MD this 20th day of October 1986.

For the Nuclear Regulatory Commission.

**Victor Stello, Jr.,**

*Executive Director for Operations.*

[FR Doc. 86–24336 Filed 10–27–86; 8:45 am]

BILLING CODE 7590–01–M

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 175

### Domestic Interested Party Petition Concerning Eligibility of Oil Country Tubular Goods From Panama for CBI Duty-Free Treatment

**AGENCY:** Customs Service, Treasury.

**ACTION:** Proposed interpretive rule; solicitation of comments.

**SUMMARY:** Customs has received a petition submitted on behalf of a domestic interested party with respect to a Customs ruling that certain oil country tubular goods (OCTG) imported from Panama would be eligible for duty-free treatment under the Caribbean Basin Initiative (CBI). The petitioner contends that an incorrect Customs determination resulted in the finding of duty-free eligibility. Customs had determined that the imported material from which the OCTG are produced undergoes a substantial transformation

into a separate and distinct article of commerce which, in turn, is used as a constituent material in producing the final article which is imported into the U.S. The petitioner believes that duty should be assessed on the OCTG. This document invites comments with respect to the correctness of the determination of CBI duty-free eligibility.

**DATE:** Comments must be received on or before December 29, 1986.

**ADDRESS:** Comments (preferably in triplicate) should be addressed to and may be inspected at the Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2426, Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Myles B. Harmon, Classification and Value Division (202-566-2938).

**SUPPLEMENTARY INFORMATION:**

## Background

Pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), a domestic interested party petition has been filed with respect to a decision in which Customs ruled that certain oil country tubular goods (OCTG; *i.e.*, oil well casing, tubing, and drill pipe) imported from Panama would be eligible for duty-free treatment under the Caribbean Basin Initiative (CBI).

Under the CBI program established pursuant to the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 *et seq.*), certain articles imported directly from a beneficiary country may be eligible for duty-free treatment if considered the growth, product, or manufacture of the beneficiary country, and if the sum of the cost or value of materials of the beneficiary country, plus the direct costs of processing performed in the beneficiary country, is not less than 35 percent of the appraised value of the article at the time of its entry into the U.S. The CBI program is implemented by §§ 10.191-10.198, Customs Regulations (19 CFR 10.191 through 10.198). Pursuant to § 10.196(a)(2), Customs Regulations (19 CFR 10.196(a)(2)), material of which a CBI eligible article is comprised, if not wholly the growth, product, or manufacture of a beneficiary country, must be substantially transformed in the beneficiary country into a new and different article of commerce in order for those materials to be considered to be produced in the beneficiary country so that their cost or value may be counted toward the 35 percent value content requirement. Therefore, for the cost of materials from a non-beneficiary country to be counted toward the 35 percent value-content requirement, the material first must be substantially transformed into a new and different intermediate article of commerce and then must be used in the production of a new and different final article of commerce which is imported into the U.S.

On November 21, 1985, Customs issued a ruling (CLA-2 CO:R:CV:V 553739 KP) which stated that when finished OCTG were produced in Panama, a beneficiary country, from steel coils which were imported from a non-beneficiary country, there was a substantial transformation of steel coil into a new and different intermediate article of commerce, tubular plain end tubes. Therefore, the cost or value of the steel coils could be counted toward the CBI 35 percent value added requirement when the final product, OCTG, were imported into the U.S. The conclusion that the tubular plain end tubes were a separate and distinct article of commerce from the steel coils and from the finished product OCTG was based on a determination that the steel coil was a raw material which emerged from processing as tubular plain end tubes with a size and shape making them particularly suited for the transportation of liquids or gases and the tubes emerged from further processing as pipe especially suited for use as oil well casing and tubing (*i.e.*, OCTG), because of considerably higher yield strength and tensile strength. In addition, the ruling continued, the final product OCTG met American Petroleum Institute (API) specifications for different grades of oil well casing and tubing, whereas the steel tubes emerging from the first processing stage did not. Also, with threaded and, in the case of tubing, upset ends, the oil well casing and tubing have a different physical appearance than the unprocessed steel tubes. Accordingly, it was held that the processing of tubes into OCTG constituted a second substantial transformation.

Therefore, since Customs determined that the tubular plain end tubes were separate and distinct articles of commerce, the value of the steel coil was permitted to be counted toward the 35 percent value-added requirement. Accordingly, the OCTG imported from Panama would be eligible for duty-free treatment under the CBI.

On March 6, 1986, a petition was submitted on behalf of a domestic interested party that is a manufacturer and producer in the U.S. of a class or kind of merchandise similar to the merchandise which is imported from Panama. The petitioner claims that the processing in Panama of steel coil imported from a non-beneficiary country into finished OCTG does not involve the production of a new and different intermediate article of commerce before the final article is produced. Tubular plain end tubes are not an intermediate constituent material, as Customs ruled, because they are already OCTG, and the second stage of processing merely produces a higher quality OCTG, not a new or different article of commerce having a different name, character, or use from the product existing after the first stage of processing.

The petitioner contends the Customs ruling is incorrect because, (1) tubular plain end tubes can be used in oil and gas wells after threading and coupling, (2) tubular plain end tubes are not "multifunctional" but are dedicated to oil and gas well use because of their high quality and expense, (3) tubular plain end tubes may meet API specifications but not have undergone actual API certification, (4) the heat treating done to tubular plain end tubes to make OCTG is not a substantial transformation, and (5) heat treating is not a substantial cost factor of stage two processing.

For these reasons, the petitioner believes that the requirement in § 10.196(a)(2), Customs Regulations, is not satisfied and the cost or value of the steel coil, imported to Panama from a non-beneficiary country, may not be counted toward the CBI value-content requirement.

## Comments

Pursuant to § 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on this matter, Customs invites written comments from the public on this issue. The domestic interested party petition, as well as all comments received in response to this notice, will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Customs Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

## Authority

This notice is published in accordance with § 175.21(a), Customs Regulations (19 CFR 175.21(a)).

## Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, U.S. Customs Service. However,

personnel from other offices participated in its development.

William von Raab,

*Commissioner of Customs.*

Approved: October 15, 1986.

Michael H. Lane,

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 86-24311 Filed 10-27-86; 8:45 am]

BILLING CODE 4820-02-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Social Security Administration

### 20 CFR Part 404

[Regulations No. 4]

### Federal Old-Age, Survivors, and Disability Insurance; Wage Coverage

**AGENCY:** Social Security Administration, HHS

**ACTION:** Proposed rule.

**SUMMARY:** The Social Security Administration (SSA) is proposing to revise five of its regulations on wage coverage under the Social Security Act (the Act). These amended regulations are as follows:

(1) We shall exclude from an employee's wages the cash value of the meals and lodging furnished the employee by the employer when these items are furnished for the employer's convenience.

(2) We shall no longer (with certain exceptions) exclude from an employee's wages the employer's payment of the employee's social security tax liability (i.e., Federal Insurance Contributions Act (FICA) tax).

(3) We shall—(a) exclude from an employee's wages the employer payments paid after the year the employee became entitled to disability insurance benefits if the employee performed no services for such employer *in* the pay period in which payment is made, and (b) no longer exclude from an employee's wages the employer payments paid to an employee after the employee became age 62 if these payments are paid *for* a period in which the employee did not work.

(4) We shall enlarge the scope of entitlement to the deemed wages provided to persons who were interned during the World War II period at a place operated by the United States Government for interning United States citizens of Japanese ancestry.

(5) We shall bar (with certain exceptions) deemed wage credits to members of the uniformed services who fail to complete a minimum service period of either 24 months of active duty or the full period the individual was called to active duty.

**DATES:** Comments must be received on or before December 29, 1986.

**ADDRESSES:** Comments should be submitted to the Commissioner of Social Security, Department of Health and Human Sevices, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3-A-3 Operations Bldg., 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

**FOR FURTHER INFORMATION CONTACT:** C.H. Campbell, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 597-3408.

**SUPPLEMENTARY INFORMATION:** The five rules to be amended and our amendments are as follows:

*Amendment that Excludes from an Employee's Wages the Value of the Meals and Lodging Furnished the Employee for the Employer's Convenience.*

According to current regulations, the value of meals and lodging furnished to an employee by an employer is wages if—

(1) Both employer and employee understand that the meals and lodging are to be furnished on a regular basis; or

(2) The value of these items comprises a large part of total employee pay.

This regulation was based on SSA's interpretation of section 209 of the Act and was consistent with the Internal Revenue Service's (IRS') interpretation of its parallel provision, section 3121(a) of the Internal Revenue Code (the IRC). Under this interpretation, an employee's wages included the value of the meals and lodging furnished the employee on a regular basis. The U.S. Supreme Court, however, in its opinion in *Rowan Companies, Inc.* v. *United States*, 452 U.S. 247 (1981), invalidated this interpretation as not being in accord with congressional intent. According to the Supreme Court decision, Congress intended the same statutory definition of wages with respect to the value of meals and lodging furnished an employee to apply under the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and the income tax provisions of the IRC. Consequently, the rule in section 119 of the IRC excluding the value of the meals or lodging furnished for the employer's convenience from the employee's gross income applies also under the Social Security Act. This Supreme Court holding was incorporated into the Social Security Act by section 327 of Pub. L. 98-21—"The Social Security Amendments of 1983" as amended by section 2662(g) of PUb. L. 98-369, "The Deficit Reduction Act of 1984."

We had originally intended that our proposed regulation amendment implementing *Rowan* apply only to meals and lodging furnished on or after June 8, 1981, the date of the Supreme Court's decision. However, we decided to apply the holding retroactively. Thus, our amended regulation, without stating an inception date, will provide that the value of meals and lodging furnished the employee for the convenience of the employer is excluded from an employee's wages when—

(1) In the case of meals, they are provided at the employer's place of business; and

(2) In the case of lodging, the employee is required to accept the lodging on the employer's premises as a condition of employment.

The section of the regulations that we are revising to implement *Rowan* also contains a rule on excluding the value of fringe benefits from an employee's wages. Fringe benefits means the facilities and privileges that an employer may provide to his or her employee. The enactment of section 531 of Pub. L. 98-369—"Deficit Reduction Act of 1984"—made this rule invalid with respect to fringe benefits provided on or after January 1, 1985. Consequently, we are amending this rule to show that it applies only to fringe benefits provided to employees prior to January 1, 1985. After IRS publishes final regulations to implement section 531, we will further amend this rule to reflect the statutory provisions on fringe benefits provided to employees after January 1, 1985.

*Amendment that Excludes From an Employee's Wages an Employer's Payment of the Employee's Social Security Tax Liability*

Our current regulations permit an employer to exclude from an employee's wages the employer's payment (without deduction from the employee's pay) of—

(1) The tax imposed on employees by the Federal Insurance Contributions Act (FICA); or

(2) Any payment required from an employee under a State unemployment compensation law.

The revised regulation will conform to the provisions of sections 1141(a)(2) and

1141(c) of PUb. L. 96–499 (the Omnibus Reconciliation Act of 1980) which amended section 209(f) of the Act. The amended section 209(f) prohibits this wage exclusion on or after January 1, 1981 with the following exceptions—

(1) Payments made on behalf of an employee working in—

(i) Domestic service in the private home of the employer; or

(ii) Agricultural labor.

(2) Payments made beginning January 1, 1981 through December 31, 1983 on behalf of an employee who works for a State or local government, if—

(i) The employer payments are for amounts equivalent to the employee's FICA share or State unemployment compensation contribution; and

(ii) The State or local government had in effect on October 1, 1980 a practice of paying a substantial portion of this amount.

*Amendments Concerning Excluding or not Excluding Employer Payments From an Employee's Wages; Payments for or in Nonwork Periods Paid to Employees who Attain Age 62 or are Entitled to Disability Insurance Benefits*

The current regulations exclude from wages an employer's payment to an employee for a period in which the employee did not work where the employee—

(1) Has attained age 62, or

(2) Is entitled to disability insurance benefits.

We are amending this regualtion, in accordance with Pub. L. 98–21, section 324(c)(3)(B), which repealed section 209(i) of the Act, to provide that the exclusion of payments to employees who have attained age 62 applies only to remuneration paid before January 1, 1984.

We are also amending this regulation as it applies to employer payments that are paid in a period of non-work to an employee who is a disability insurance beneficiary. This amendment is necessary of SSA's acquiescence in an Internal Revenue Service (IRS) interpretation of section 3121(a)(15) of the Internal Revenue Code (IRC) which corresponds to section 209(o) of the Act). Under this IRS interpretation, an employer's payments to an employee after the calendar year of disability benefit entitlement are not wages if the employee did not work for such employer in the period the payments were received.

Thus, these payments are not wages, even if they were paid for a period that preceded disability benefit entitlement in which the employee did work, provided they were received after the year of disability benefit entitlement in a period in which the employee did not work.

*Amendment to Enlarge the Scope of Entitlement to the Deemed Wage Credits Provided to Japanese and Americans Interned During the World War II Period*

The current regulations provide for granting wage credits to United States citizens of Japanese ancestry who were intended during any period of time from December 7, 1941 through December 31, 1946 in places operated by the United States Government within the United States. Additionally, the regulations provide that certification of internment is to be obtained from the Department of Defense.

We are enlarging the scope of the entitlement to these wage credits in accordance with anther interpretation of section 231 of the Act (which is the statutory basis for granting these wage credits). Under our amended regulations, the citizenship or ancestry of any internee confined in an internment camp will not be relevant to qualification for these wage credits.

Additionally, our amended regulations will provide that the required certification of internment is now to be obtained form the National Archives and Records Service.

*Amendment to bar the Deeming of Wage Credits to Members of the Uniformed Services who Fail to Complete the Minimum Service Requirement*

The current regulation that implements section 229(a) of the Social Security Act provides deemed wage credits, up to a maximum of $1,200 per year, as additional Social Security wage credits to members of the uniformed services. We are amending this regulation because of a minimum active duty service requirement that service members in most cases must satisfy to receive these credits. Our amended regulations is based on the following provisions from two statutory enactment affecting section 229(a) of the Act:

(1) *Section 408 of Pub. L. 97–306 (Codified in 38 U.S.C. section 3101A).* The proposed rule based on this statutory enactment applies to:

(1) Persons who enlist in the Armed Forces for the first time on or after September 8, 1980; and

(2) Other members of the uniformed services whose active duty begins on or after October 14, 1982; and who—

(a) Had not previously served 24 months of active duty; or

(b) Were not discharged from prior service for the convenience of the government (i.e., under section 1171 of title 10 of the U.S. Code).

Under the enactment, the minimum active duty period for granting wage credits to these persons is 24 months of service or the full period called to active duty if the person served fewer than 24 months of active duty. However, there are the following exceptions to these minimum service requirements:

(a) Discharge or release from active duty for the convenience of the government (i.e., section 1171 of title 10 of the U.S. Code);

(b) Discharged or release from active duty for hardship (i.e., section 1173 of title 10 of the U.S. Code);

(c) Discharge or release from active duty or release from active duty for disability incurred or aggravated in the line of duty; or

(d) The establishment of entitlement to compensation under chapter 11 of title 38 of the U.S. Code for service connected disability or death.

(2) *Section 1002 of Pub. L. 96–342 (Formerly Codified at 10 U.S.C. section 977).* This statutory enactment, although repealed, can apply concurrently with the provisions of section 408 of Pub. L. 97–306 to an individual who enlisted in a regular component of the Armed Forces for the first time on or after September 8, 1980 *and whose military service ended prior to October 14, 1982.* Based on section 1002 of Pub. L. 96–342, such an individual can receive wage credits for each month of service and is exempted from the minimum service requirement if he or she:

(a) Was discharged because of disability (i.e., under chapter 61 of title 10 of the U.S. Code); or

(b) Was later found to have a disability which resulted from injury or disease incurred or aggravated during enlistment which was not caused by misconduct or during unauthorized absence.

(3) The proposed regulation also provides for granting wage credits regardless of the duration of the period of active duty if the person dies while on active duty.

**Regulatory Procedures**

*Executive Order 12291*—The Secretary has determined that this is not a major rule under Executive Order 12291. Therefore, a regulatory impact analysis is not required.

*Paperwork Reduction Act*—These regulations impose no reporting/recordkeeping requirements requiring OMB clearance.

*Regulatory Flexibility Act*—We certify that these regulations will not, if promulgated, have a significant

economic impact on a substantial number of small entities. The proposed regulation based on legislation that limits an employer from using his or her payment of an employee's Social Security tax liability as a wage exclusion does relate to small entities since a few businesses had applied this wage exclusion to their employees' wages. However, the use by small businesses of this wage exclusion provision had never been widespread and the economic impact on such entities should therefore be minimal. The proposed regulation based on the U.S. Supreme Court decision in *Rowan Companies, Inc. v. United States*, 452 U.S. 247 (1981), and the subsequent codification, requiring employers to exclude from employees' wages the value of meals and lodging furnished for the employers' convenience, cause minor administrative costs but result in overall cost savings to such employers. It is anticipated this regulation causes minimal overall economic impact. The remaining proposed regulations would largely affect individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

Catalog of Federal Domestic Assistance Programs: No. 13.802 Social Security Disability Insurance; No. 13.803 Social Security—Retirement Insurance; No. 13.805 Social Security—Survivors Insurance.

**List of Subjects in 20 CFR Part 404**

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors, and Disability Insurance.

Dated: August 26, 1986.

**Dorcas R. Hardy,**

*Commissioner of Social Security.*

Approved: September 16, 1986.

**Otis R. Bowen,**

*Secretary of Health and Human Services.*

Title 20, Chapter III, Part 404, Subparts K and N of the Code of Federal Regulations are amended as follows:

**PART 404—[AMENDED]**

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

Authority: Secs. 205, 209, 210, 211, 229, 230, 231 and 1102 of the Social Security Act, 53 Stat 1368, 49 Stat 625, 64 Stat 492, 81 Stat 833, 86 Stat 416, 86 Stat 1367, 49 Stat 647; Sec. 5 of Reorganization Plan No. 1 of 1953, 67 Stat 631, 42 U.S.C. 405, 409, 410, 411, 429, 430, 431 and 1302 and 5 U.S. C. Appendix.

2. Section 404.1043 is revised as set forth below.

**§ 404.1043 Facilities or privileges—meals and lodging.**

(a) *Excluding the value of employer provided facilities or privileges from employee gross income prior to January 1, 1985.* (1) Generally, the facilities or privileges that an employer furnished an employee prior to January 1, 1985 are not wages if the facilities or privileges—

(i) Were of relatively small value; and

(ii) Were offered or furnished by the employer merely as a means of promoting the health, good will, contentment, or efficiency of the employees.

(2) The term "facilities or privileges" for the period prior to January 1, 1985 is intended to include such items as entertainment, medical services, and so-called "courtesy" discounts on purchases.

(b) *Meals and lodging.* (1) The value of the meals and lodging furnished to an employee by an employer for reasons of the employer's convenience is not wages if—

(i) The meals are provided at the employer's place of business; and

(ii) The employee, in the case of lodging, is required to accept lodging on the employer's business premises as a condition of employment.

3. Section 404.1055 is revised as set forth below:

**§ 404.1055 Payments by an employer of employee's tax or employee's contributions under State law.**

(a) *Before January 1, 1981.* Before January 1, 1981, we did not include as wages any payment by an employer that was not deducted from the employee's salary (or for which reimbursement was not made by the employee) of either—

(1) The tax imposed by section 3101 of the Code (employee's share of "social security tax"); or

(2) Any payment required from an employee under a State unemployment compensation law.

(b) *Beginning January 1, 1981.* Beginning January 1, 1981, the employer payments described in paragraph (a) of this section are wages with the following exceptions:

(1) Payments made on behalf of an employee employed in:

(i) Domestic service in the private home of the employer, or

(ii) Agricultural labor.

(2) Payments made beginning January 1, 1981 through December 31, 1983 on behalf of an employee who works for a State or local government, and—

(i) The employer payments are for amounts equivalent to the employee's FICA share or state unemployment compensation contribution; and

(ii) The State or local government had in effect on October 1, 1980 a practice of paying at least a substantial portion of this amount.

4. Section 404.1059 is amended by revising paragraph (g) to read as follows:

**§ 404.1059 Special situations.**

* * * * *

(g) *Payments to employees for non-work periods*—(1) *Payments to an employee after the employee attained age 62*—(i) *Payment prior to January 1, 1984.* (A) We do not include as wages any payment made by an employer to an employee (including a corporate officer) prior to January 1, 1984 in a calendar month after the employee attains age 62, when the payments are for a period—

(*1*) Throughout which an employment relationship exists; and

(*2*) In which the employee did not work for the employer (even if subject to call for the performance of work).

(B) If the employee does any work for the employer in the period the payments are earned, the payments are not excluded from wages under this provision. Also, vacation or sick pay is not excluded from wages under this paragraph. The term "sick pay" as used in this paragraph includes "sick leave" payments made by a State, a political subdivision, or an interstate instrumentality to an employee for a period during which he or she was absent from work due to illness.

(ii) *Payments on or after January 1, 1984*—We include as wages any payment made by an employer to an employee (including a corporate officer) on or after January 1, 1984 in a calendar month after the employee attains age 62 for a period in which the employee did not work unless excluded under some other provision (e.g. sick payments made after 6 calendar months following the last calendar month the employee worked for the employer).

(2) *Payments to an employee who is entitled to disability insurance benefits.* We do not include as wages any payments made by an employer to an employee if at the time such payment is made—

(i) The employee is entitled to disability insurance benefits under the Act;

(ii) The employee's entitlement began before the calendar year in which the employer's payment is made; and

(iii) The employee performed no work for the employer in the period in which the payments were paid by such employer (regardless of whether the

employee worked in the period the payments were earned).

* * * * *

5. Section 404.1060 is amended by revising paragraphs (a) and (e) to read as set forth below:

**§ 404.1060 Deemed wages for certain individuals interned during World War II.**

(a) *In general.* Persons who were interned during any period of time from December 7, 1941, through December 31, 1946, by the United States Government at a place operated by the Government within the United States for the internment of United States citizens of Japanese ancestry are deemed to have been paid wages (in addition to wages actually paid) as provided in paragraph (c) of this section during any period after attaining age 18 while interned. This provision is effective for determining entitlement to, and the amount of, any monthly benefit for months after December 1972, for determining entitlement to, and the amount of, any lump-sum death payment in the case of a death after December 1972, and for establishing a period of disability.

* * * * *

(e) *Certification of internment.* The certification concerning the internment is made by the National Archives and Records Service. After the internment has been verified, wages are deemed to have been paid to the internee.

6. The authority citation for Subpart N is revised to read as follows:

**Authority:** Secs. 205, 210, 217, 229 and 1102 of the Social Security Act as amended; 53 Stat. 1368 as amended, 64 Stat. 494, 64 Stat 512 as amended, 81 Stat 833 as amended, 49 Stat 647 as amended, 42 U.S.C. 405, 410, 417, 429 and 1302.

7. Section 404.1341 is amended by revising paragraphs (a) and (c) and by adding paragraph (d) to read as set forth:

**§ 404.1341 Wage credits for a member of a uniformed service.**

(a) *General.* In determining your entitlement to, and the amount of your monthly benefit (or lump sum death payment) based on your wages while on active duty as a member of the uniformed service after 1956, and for establishing a period of disability as discussed in § 404.132, we add wage credits to the wages paid you as a member of that service. The amount of the wage credits, the applicable time periods, the wage credit amount limits, and the requirement of a minimum period of active duty service for granting these wage credits, are discussed in paragraphs (b), (c), and (d) of this section.

(b) * * *

(c) *Limits on wage credits.* The amount of these wage credits cannot exceed—

(1) $1,200 for any calendar year, or

(2) An amount which when added to other earnings causes the total earnings for the year to exceed the annual earnings limitation explained in §§ 404.1047 and 404.1096(b).

(d) *Minimum active-duty service requirement.*

(1) If you enlisted for the first time in a regular component of the Armed Forces on or after September 8, 1980, you must complete the shorter of 24 months of continuous active duty or the full period that you were called to active duty to receive these wage credits, unless.

(i) You are discharged or released from active duty for the convenience of the government in accordance with section 1171 of title 10 of the U.S. Code or because of hardship as specified in section 1173 of title 10 of the U.S. Code;

(ii) You are discharged or released from active duty for a disability incurred or aggravated in line of duty;

(iii) You are entitled to compensation for service connected disability or death under chapter 11 of title 38 of the U.S. Code;

(iv) You die during your period of enlistment; or

(v) You *were discharged prior to October 14, 1982,* and your discharge was—

(A) Under chapter 61 of title 10 of the U.S. Code; or

(B) Because of a disability which resulted from an injury or disease incurred in or aggravated during your enlistment which was not the result of your intentional misconduct and did not occur during a period of unauthorized absence.

(2) If you entered on active as a member of the uniformed services as defined in § 404.1330 *on or after* October 14, 1982, having neither previously completed a period of 24 months active duty nor been dischared or released from this period of active duty under section 1171, title 10 of the U.S. Code (i.e., convenience of the government), you must complete the shorter of 24 months of continuous active duty or the full period you were called or ordered to active duty to receive these wage credits unless:

(i) You are discharged or released from active duty for the convenience of the government in accordance with section 1171 of title 10 of the U.S. Code or because of hardship as specified in section 1173 of title 10 of the U.S. Code;

(ii) You are discharged or released from active duty for a disability incurred or aggravated in line of duty;

(iii) You are entitled to compensation for service connected disability or death under chapter 11 of title 38 of the U.S. Code; or

(iv) You die during your period of active service.

[FR Doc. 86-24221 Filed 10-77-86; 8:45 am]
BILLING CODE 4190-11-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

**[A-4-FRL-3099-3 FL-3]**

### Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Florida

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** EPA is today proposing approval of the Florida section 111(d) plan for Total Reduced Sulfur (TRS) emissions. This proposal identifies concerns, however, over two sections (17-2.600(4)(c)7. and 8.) that allow the State to approve alternative emission limits without EPA approval. This plan was submitted by Florida in response to the requirements of section 111(d) of the Clean Air Act (Act). Approval of this plan should significantly decrease odorous TRS emissions.

**DATE:** To be considered, comments must reach us on or before November 28, 1986.

**ADDRESSES:** Written comment should be addressed to Stuart Perry of EPA Region IV Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by Florida may be examined during normal business hours at the following locations:

Florida Department of Environmental Regulation, Bureau of Air Quality Management, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301

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

A more detailed description of EPA's comments is presented in the Technical Support Document for the revisions, available for public inspection at the EPA Region IV office (above address).

**FOR FURTHER INFORMATION CONTACT:** Stuart Perry, Air Programs Branch, at the above EPA address and phone 404/347-3286 or FTS 257-3286.

**SUPPLEMENTARY INFORMATION:** In accordance with section 111 of the Act, "Standards of Performance for New Stationary Sources," EPA has promulgated standards of performance for criteria pollutants (those for which National Ambient Air Quality Standards (NAAQS) have been published) and non-criteria pollutants. The standards apply to "new" sources (i.e., new, modified, or reconstructed sources) which commenced construction after the date on which EPA proposed standards for that particular source category.

A source in existence prior to the date on which EPA proposed new source performance standards for that particular source category is defined as an "existing source." Paragraph (d) of section 111 of the Act requires States to develop plans for the control of emissions of the same noncriteria, or designated, pollutants from such "existing" sources. The requirements for such plans are set forth in Subpart B of 40 CFR Part 60. (November 17, 1975; 40 FR 53346).

Since TRS is a designated pollutant, regulated under section 111(d) of the Act, States are required to develop section 111(d) plans.

The Florida Department of Environmental Regulation (FDER) submitted its section 111(d) plan for TRS to EPA on May 24, 1985. The plan as submitted contains all the elements needed for an approvable section 111(d) plan.

The TRS compounds regulated under section 111(d) are considered welfare-related pollutants. This means that although their effects are bothersome, they are not health-threatening, and some leeway may be allowed in their control. In other words, although EPA's guideline document (*Kraft Pulping-Control of TRS Emissions from Existing Mills* (EPA–450/2–78–003b)) suggests emission limits, control technologies, etc., limits other than those recommended by EPA may be adopted by the State provided adequate justification is given.

Several features of the Florida TRS plan differ from EPA guidance in the document cited above; however, only a few of these are significant. These are discussed below.

**Changes From Guidance**

The Florida section 111(d) plan submittal included some new definitions which were added to section 17–2.100. Some of the definitions adopted by the State are slightly different from the ones contained in the guideline document. The guideline document defines three types of kraft recovery furnaces: old-design; new-design; and cross-recovery. A "new-design" furnace is a furnace with both membrane wall or welded wall construction and emission control designed air systems. A "new-design" furnace will have stated in its contract a TRS performance guarantee or that it was designed with air pollution control as an objective. The guideline TRS standard for "new-design" furnaces is 5 ppm. An "old-design" furnace is a furnace without membrance wall or welded wall construction, or emission-control designed air systems. The "old-design" furnace has a recommended standard of twenty ppm TRS.

Florida defines a "new-design" furnace as any straight kraft recovery furnace which is of "membrane wall' construction to minimize air in-leakage and has an adjustable air introduction system to deliver an adequate quantity of air while providing both effective air distribution and penetration into the furnace. Florida's definition of a "new-design" furnace differs from EPA's definition since it refers to the furnace based on physical features only, and does not consider if the unit was constructed with air pollution controls as an objective.

The State has also included definitions for two furnace types whose individual physical characteristics warranted separate definitions. The State developed separate definitions for a "new-design direct-fired kraft recovery furnace" and a "new-design direct-fired suspension-burning kraft recovery furnace." See the technical support document or complete definitions.

Florida presently has eight operating kraft recovery furnaces which fall under the State's definition of "new-design" furnaces. Of the eight sources, three are considered by the State to be "new-design direct-fired kraft recovery furnaces," one is a "new-design direct-fired suspension-burning kraft recovery furnace," and the other four are defined as "new-design, non-direct-fired furnaces."

The three "new-design direct-fired" furnaces are required by Section 17–2.600(f)(c)3.a.(ii) to meet a 5 ppm TRS standard. This is consistent with EPA's suggested limit of 5 ppm TRS (for an EPA-defined "new design" furnace).

Florida's four "new-design" furnaces that are not direct-fired are required by Section 17–2.600(4)(c)3.a.(i) to meet a 17.5 ppm TRS standard. This limit is more stringent than what EPA's guideline document suggests, because the furnaces defined by the State as being "new-design, non-direct-fired" actually fall under EPA's definition of "old-design" furnaces. EPA recommends that "old-design" recovery furnaces be required to meet a limit of 20 ppm TRS.

The final furnace, a "new-design direct-fired suspension-burning" furnace (State-defined) is required by section 17–2.600(4)(c)3.a.(i) to meet a 17.5 ppm TRS standard. The emission limiting standard applicable to this furnace is less restrictive than recommended in EPA's guideline document for "new-design" furnaces. Florida decided to adopt this limit based upon data that the source submitted to them which suggested that a higher limit would be appropriate for this type of source.

This furnace is slightly different from the other furnaces in Florida. It is a suspension-burning furnace, and its design characteristics are different from straight new-design recovery furnaces. Data provided to the State by the company shows that this type of furnace cannot consistently meet an emission limiting standard of less than 17.5 ppm. Florida has agreed that this should be the limit. However, Florida has required the source to install continuous emission monitors at a cost of over $240,000 to determine if the source can meet a lower standard. If a lower standard is warranted, then FDER will change the rule. EPA concurs with this approach.

**Florida's Other TRS Emission Limitations**

Florida's "old-design" furnaces are required to meet a 17.5 ppm TRS standard. This is also more stringent than EPA's recommended limit of 20 ppm for old design furnaces.

Florida has also established TRS emission standards for cross-recovery furnaces (25 ppm), lime kilns (20 ppm), digester systems (5 ppm), multiple effect evaporator systems (5 ppm), and condensate stripper systems (5 ppm). All of these emission limits are consistent with EPA's guideline TRS standards.

The TRS emission limiting standard adopted by the State for existing smelt dissolving tank vents is equvalent to the present NSPS Limit which was promulgated in the May 20, 1986, **Federal Register** (51 FR 18538). The present limit is 0.0480 lbs. TRS emissions per 3,000 lbs. black liquor solids processed.

In addition to requiring control of TRS from typical sources at kraft pulp mills, Florida has also established a TRS emission limitation for tall oil plants (.05 lb. TRS/ton of crude tall oil produced). EPA's guideline document does not contain a recommended level of control of TRS from this type of facility. However, such control was included in the plan because the State felt that tall

oil plants also contributed to the TRS problem in the State.

Sections 17-2.600(4)(c) 7. and 8., of the adopted rule allow the State to approve alternative emission limits (emissions trading or bubbling) without EPA case-by-case approval. Paragraph 8., covers alternate limits in general, while paragraph 7., covers alternate limits for application of new technology. Emissions trading is the over-controlling of some sources, while undercontrolling others to the same or greater extent, so that overall plantwide emissions do not increase. EPA has not yet stated in any **Federal Register** notice a general policy regarding trading of emissions regulated by section 111(d) of the Act. EPA is proposing to approve sections 17-2.600(4)(c) 7. and 8., as being consistent with the requirements of section 111(d). However, EPA has certain concerns about section 17-2.600(4)(c) 7. and 8. and the State may be required to clarify or change its regulation to address these concerns, as discussed below. The State originally provided that section 17-2.600(4)(c)8., would become inoperative if not approved by EPA along with the remainder of the regulation for TRS emissions from kraft pulp mills. That provision (which would render the alternate emission limit provision inoperative) has been removed by the State since the original submission of section 17-2.600(4)(c)8.

**EPA Review of Emissions Trading Provisions (Sections 17-2.600(4)(c) 7 and 8**

EPA's concerns about these sections can be stated in two categories: (1) the consistency of generic emission trading provisions for section 111(d) plans with existing EPA regulations and (2) specific technical concerns about the Florida rule submitted to EPA.

*1. General Concerns about Emission Trades for Section 111(d) Plans*

EPA's previous statement about emission trading appear in the **Federal Register** of December 11, 1979 (44 FR 71779), April 7, 1982 (47 FR 15076), and August 31, 1983 (48 FR 39580). A new emission trading policy, which is in the final stages of development, does not address emission trades under section 111 of the Act. However, EPA believes that certain forms of emission trading may be consistent with section 111 and proposed to approve an NSPS bubble on January 25, 1985 (50 FR 3688).

Section 111(a) requires EPA to set performance standards applicable to new or modified sources. Section 111(d) requires States to adopt and submit plans—similar to State implementation plans (SIP's) under section 110—for control of existing sources of pollutants that are not "criteria pollutants," but for which EPA has established performance standards for new sources under section 111(a). Plans under section 111(d) do not need to demonstate attainment and maintenance of any ambient standard (the way section 110 plans must do), although reduction of ambient pollutant levels is an obvious implicit goal of section 111— as well as other portions— of the Act. Instead, section 111(d) plans establish standards of performance that reflect the best demonstrated technology as determined by EPA and reflected in the State plan (See section 111(a)(1)(C)).

EPA publishes guidelines that specify control of the designated sources and pollutants based on what is technologically feasible for existing sources. The EPA has set forth criteria for approval of section 111(d) plans in 40 CFR Part 60, Subpart B. Section 60.24(f) of those regulations allows a State flexibility to apply less stringent emission standards than those specified in EPA guidelines; the State must, however, provide a justification that meets specified criteria relating to the reasonableness of the EPA-specified controls. The EPA categorizes noncriteria pollutants as either health-related (causing or contributing to adverse effects on public health or welfare-related (causing or contributing to endangerment of public welfare but not public health). Section 60.24(d) of EPA's regulation allows still more flexibility in applying control on sources where the designated pollutant is welfare-related. (Total reduced sulfur is a welfare-related pollutant.)

The regulations that implement section 111(d) provide States broad flexibility, even without an explicit provision for emissions trading. The advantages of an alternate emissions limit policy may be achieved, in some cases, simply by observing EPA's requirements for implementing section 111(d) as found in 40 CFR Part 60, Subpart B. However, the additional advantages in conserving resources produced by a generic trading provision, once approved, are obvious. The EPA solicits public comment on this issue of whether either individual emissions trades for section 111(d) plans or "generic" emissions trading procedures—such as the one contained in the Florida plan—that allow States to substitute alternative emissions limits without having to submit them for EPA approval, are consistent with EPA's rules governing plans under section 111(d) (40 CFR Part 60, Subpart B).

*2. Specific Technical Concerns about the Florida Rule*

(a) Modeling

Paragraphs a. and b. of Section 17-2.600 (4)(c)7., and paragraphs d. and e. of Section 17-2.600(4)(c)8., of the Florida rule require modeling over a grid of receptor points extending from ½ mile to 10 miles from the facility. Under these provisions, a source that requests an alternative emissions limit must demonstrate that—

—the sum of maximum 1-hour concentrations of TRS attributable to the sources included in the set of alternate emissions limits equals the sum of maximum 1-hour concentrations from emissions limits already specified in the regulation; and

—the maximum 1-hour concentration predicted by modeling of the alternate emission limits is less than or equal to the maximum 1-hour concentration predicted by modeling emissions limits already specified in the regulation.

Importantly, section 111(d) does not establish any ambient standards and the modeling provision is thus an additional feature not normally found in 111(d) plans. In this respect, TRS emissions control is somewhat unique from the control of other 111(d) pollutants. It should be noted that approval of this specific modeling provision in the context of section 111(d) would not be relevant to demonstrating compliance with requirements under other portions of the Act, such as for demonstrating attainment of the NAAQS in SIPs under section 110 of the Act.[1] However, since the aim in controlling TRS emissions is to reduce public exposure to odor, EPA is concerned about any mechanism that might allow a segment of the general public to be exposed to TRS odors to a greater degree than would have occurred had the emission limits already specified in the section 111(d) regulations been complied with, without the opportunity for public comment.

EPA specifically solicits comments on whether the modeling approach in Sections 17-2.600(4)(c)7., and 8., of Florida's regulation in necessary, desirable or consistent with

[1] This is because this modeling approach, while possibly ensuring that the maximum concentration under the pre-trade situation is not exceeded after the trade is implemented, does not ensure that the second highest or other concentrations under the post-trade situation are less than pre-established ambient concentration (e.g., a NAAQS). Furthermore, the practice of excluding receptors within one-half mile of the facility may ignore higher concentrations closer to the source that may exceed an established ambient concentration, and EPA policy and regulations for approval of SIP's under section 110 require that all receptors in the ambient air have predicted concentration below the NAAQS.

requirements under section 111(d) of the Act, and if so, whether the modeling approach proposed is adequate to ensure that alternate emission limits will not cause any member of the general public to be exposed to TRS odors that would not have been similarly exposed to such odors had emission limits already specified in Florida's 111(d) plan for TRS been complied with.

Section 17–2.600(4)(c)7. of the Florida regulation (pertaining to variances for the use of "alternate new technology") relies entirely on the modeling approach to determine acceptability of a variance. If the proposed modeling approach is not approved in the final rulemaking, EPA would be unable to approve section 17–2.600(4)(c)7. Also, since section 17–2.600 (4)(c)(7) of the Florida regulation allows emission controls which could be less stringent than EPA guidelines without the demonstration required by 40 CFR 60.24(f), Florida would need to specify such documentation in its Rules or to submit such variances for approval with the necessary documentation, as revisions to the section 111(d) plan.

(b) Credit for Shutdown Sources

The Florida provision for emissions trading allows credit for shutdown sources. Apparently a source of TRS emissions thus could avoid required control with no further justification if another source of TRS were permanently shut down. An argument could be made that old sources, if shut down, would be expected to be replaced by newer sources which would have to meet new source performance standards. If so, the environment would experience reduced emissions from the shutdown source and reduced emissions from application of the section 111(d) controls. These total reductions would be only partially offset by the emissions from the new source. In such a case, the Florida provision would provide fewer emissions reductions than those required from the section 111(d) controls because when emissions from any new replacement sources were added the result would be greater total emissions than if shutdowns were not creditable.

EPA specifically requests comments on whether this argument has merit and more generally whether and how the provision that allows credit for shutdown sources is consistant or could be made consistent with section 111(d).

(c) Credit from Currently Unregulated Sources

The Florida emissions trading rule allows currently unregulated sources to provide credit for emission trades. This could be construed to be environmentally the same or better than requirements otherwise applicable (i.e., unregulated sources would be requlated if they provide emissions reduction credit). Currently unregulated sources, however, may have no definite or enforceable baseline of emissions (the emissions from the unregulated source before it is regulated) that would enable a replicable calculation of exactly how much credit (and how much real reduction in emissions) will be gained from the source. The Florida rule (17–2.600(4)(c) 8.b.(ii)) allows credit for control of such sources ". . . if the owner or operator can demonstrate that the current rate of emissions from the source, if operated to minimize emissions of total reduced sulfur, as compared with the proposed rate of TRS emissions from that source, will result in a measurable and enforceable reduction of total reduced sulfur emissions." The provision, "if operated to minimize emissions of total reduced sulfur," may be subject to differing interpretations. Generic emissions trading provisions to avoid case-by-case review by EPA, must have a clearly defined baseline and be objectively replicable, i.e., two independent observers must be able to come to the same conclusion about the amount of credit available, given a set of information about a particular source.

The EPA is specifically soliciting comment from the public on whether EPA should allow credit from unregulated sources in trades under section 111(d) plans. Furthermore, if EPA determines that some credit should be allowed for such sources, EPA solicits comments on whether it should approve the Florida provision in final rulemaking absent amendment of the regulation to specify with greater particularity an acceptable, replicable manner in which credit will be calculated from currently unregulated sources. EPA specifically requests comments on whether this bubble provision is replicable and, if not, what changes are necessary to make it replicable.

(d) Credit Based on Capacity

The baseline in the Florida rule is established at theoretical (i.e., maximum allowable) capacity; therefore, plants with normal operating rates lower than the theoretical maximum may be able to secure emissions reduction credit for the difference between actual and allowable emissions. This is true regardless of whether or not the source providing the credit is a currently regulated source. Also the provision does not specify on which time basis the post-trade emissions must be less than or equal to the pre-trade (compliance level) emissions. In other words, if the basis in time is tons per year, a source that is not operated continuously (e.g., only one or two shifts a day, or only on weekdays) could provide emissions credit for the times when it is not operating, and another source within the plant, being operated continuously, could increase its actual emissions up to the credited amount or possibly even avoid installation of control measures.

Finally, by not specifying a fixed historical period or criteria for choosing such a period that the State will use to calculate emissions under normal operating conditions, the rule leaves the State a great deal of discretion in constructing alternative emissions plans raising concerns about whether the provision is objectively replicable. For these reasons, EPA specifically solicits comments on the Florida rules' credit based on capacity, and whether EPA should require Florida to specify in the regulation that credit must be based on an actual emissions baseline averaged over a fixed reasonably representative historical period which is specifically defined.

(e) Units of Emissions Limits

Several of Florida's rules for control of TRS from combustion sources in kraft pulp mills (e.g., recovery furnaces) are specified in parts per million (ppm) of TRS by volume on a 12-hour average. However, units of concentration (e.g., ppm) are not necessarily indicative of mass emission; that is, two stacks with similar concentrations may vary in their mass emission.

The EPA, therefore, specifically solicits comment on whether emissions trades for limits expressed in ppm are sufficiently replicable, or whether EPA should require that these emissions limits must be expressed—and monitored for verification—as a mass limit per unit time. (This would require specification of the source's operating conditions (percent capacity operation, hours per day, days per year, etc.) to provide a replicable basis for calculating emissions reductions and increases). EPA will take final action to approve the Florida provision only if Florida specifies, in the regulation or guideline how such provision can be interpreted and enforced as part of the SIP in a clear, replicable, and acceptable manner.

(f) Emissions trading baseline

Based on the technical information submitted by the State, EPA is concerned about provisions regarding the availability of credits for emissions trading and the baseline on which emissions trades will be based.

First, Florida provides total TRS emission rates by process. It is not clear whether these emission rates are actual emission rates expected after control or allowable emission rates. Also, accurate determination of the amount of trading credit available for most emission points may be difficult because allowable emission rates are not specified for each source. Second, based on the State's emission inventory, some sources may already be able to provide emissions trading credit without actually controlling emissions, where the source's actual emissions are substantially less than the allowable emissions. (See discussion above regarding "Credit Based on Capacity.") EPA specifically solicits comments on how this provision will affect the effectiveness of the control regulations.

Third, certain processes are provided mutliple methods of treatment for their flue gases in 17-2.600(4)(c)l. The allowable baseline emission for these processes, and the method for determining emission reduction credits are not clearly stated. EPA requests comment on this provision, and will not take final action to approve this provision without an acceptance procedure for making the baseline determination, which assures that emission reduction credits are legitimate.

EPA specifically requests comments and further information regarding the determination of emission trading baseline for each TRS emission point and specifically, how the following information can be determined and made available:

—actual emissions before application of the new TRS rule.
—allowable emissions before application of the new TRS rule.
—new allowable emissions after application of the new TRS rule.
—expected actual emissions after application of the new TRS rule.

In its final rulemakings on the State rule, EPA will review this information in deciding whether to approve the emissions trading baseline.

As required by EPA regulations, Florida's plan sets out compliance schedules to be met by all sources. The EPA finds the final compliance dates in these schedules to be acceptable. However, the schedules do not contain the increments of progress which are also required by EPA's regulations. This portion of Florida's plan must, therefore, be supplemented with schedules containing acceptable increments of progress before EPA can take final action to approve the plans. Any alternate compliance schedules which are approved by the State must also be submitted as plan revisions (40 CFR 60.24(e)), unless the State specifies replicable criteria under which such alternate schedules with increments of progress may be improved by it as part of its generic rule.

**Proposed Action**

The EPA's review of Florida's TRS plan shows that portions of the plan satisfy present EPA requirements, while EPA has concerns about section 17-2.600(4)(c)7. and 8. Therefore, EPA is today proposing to approve the State's submittal, but specifically requests comments on the following issues, which must be resolved satisfactorily prior to final approval:

1. Whether the modeling approach in sections 17-2.600(4)(c)7. and 8., of Florida's regulation is necessary, desirable, or consistent with requirements under section 111(d) of the Act and if so, whether the modeling approach proposed is adequate to ensure that alternate emission limits will not cause any member of the general public to be exposed to TRS odors that would not have been similarly exposed to such odors had emission limits already specified in Florida's section 111(d) plan for TRS been complied with.

2. Whether and how the provision that allows credit for shutdown sources is consistent or could be made consistent with section 111(d).

3. Whether EPA should allow credit from unregulated sources in trades under section 111(d) plans and whether Florida has specified in a sufficiently replicable manner how emissions reduction credit will be calculated from currently unregulated sources.

4. Whether Florida has specified an emissions baseline that is sufficient to ensure equivalent or better environmental results.

5. Whether Florida has specified in a clear, replicable, and acceptable procedure how emissions limits expressed in ppm are to be considered in an alternative emissions limit and how source surveillance will be implemented to determine compliance with the alternative limit.

6. Whether Florida has specified in a sufficiently, replicable manner how emission reduction credits are determined for sources subject to section 17-2.600 (4) (c)1.

7. Whether Florida has provided for the submittal to EPA as SIP revisions, all variances issued under section 17-2.600(4)(c)7.

In addition, before EPA can approve the Florida TRS plan, Florida must submit for EPA approval compliance schedules containing acceptable increments of progress; such schedules must be subjected to public hearing.

EPA may proceed with approval of non-controversial portions of this rule and defer action on the remainder until we are able to resolve concerns that are raised during the public comment period.

Interested persons are invited to submit comments on this proposed action.

The EPA will consider all comments received by November 28, 1986. For further information on the specifics of the analysis, see EPA's Technical Support Document for the Florida 111 (d) TRS plan.

Under 5 U.S.C. 605(b), the Administrator has certified that section 111(d) plan approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

**List of Subjects in 40 CFR Part 62**

Air pollution control, Sulfur, Reporting and recordkeeping requirements.

**Authority:** 42 U.S. 7401–7642.

Dated: August 11, 1986.

**Jack E. Ravan,**

*Regional Administrator.*

[FR Doc. 86–24320 Filed 10–27–86; 8:45 am]

BILLING CODE 6560–50–M

## GENERAL SERVICES ADMINISTRATION

**48 CFR Part 503**

**[GSAR Notice No. 5–161]**

## General Services Acquisition Regulation; Voiding and Rescinding Contracts

**AGENCY:** Office of Acquisition Policy, GSA.

**ACTION:** Notice of Proposed rulemaking.

**SUMMARY:** This notice invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) which would implement subpart 3.7 of the FAR by providing agency procedures for voiding and rescinding contracts. The intended effect is to improve the regulatory coverage and provide uniform procedures for contracting under the regulatory system.

**DATE:** Comments are due in writing on or before November 28, 1986.

**ADDRESS:** Requests for a copy of the proposal and comments should be addressed to Ms. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations, 18th and F Streets, NW, Room 4026, Washington, DC 20405, (202) 523-3822.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward Loeb, Office of GSA Acquisition Policy and Regulations, 18th and F Streets, NW, Room 4024, Washington, DC 20405, (202) 535-7791.

**SUPPLEMENTARY INFORMATION:** The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain procurement regulations from Executive Order 12291. The exemption applies to this proposed rule. The GSA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). The proposed rule will implement higher level regulations which provide for voiding and rescinding of contracts based upon a conviction where there is fraud in the inducement. The rule does not contain information collection requirements which require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.).

List of Subjects in 48 CFR Part 503

Government procurement.

Dated: October 16, 1986.

Ida M. Ustad,

*Director, Office of GSA Acquisition Policy and Regulations.*

[FR Doc. 86-24279 Filed 10-27-86; 8:45 am]

BILLING CODE 6820-61-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 216

[Docket No. MMPAH-1986-1]

### Regulations Governing the Taking and Importing of Marine Mammals

**AGENCY:** Office of the Administrative Law Judge, U.S. Department of Commerce, for the National Marine Fisheries Service (NMFS), NOAA.

**ACTION:** Supplement relating to issues in formal rulemaking proceeding.

**SUMMARY:** On August 15, 1986, a Notice announced the convening of a formal rulemaking proceeding, 51 FR 29674, (Aug. 20, 1986 concerning regulations governing the taking and importing of marine mammals. This Notice confirms the issues for consideration.

**DATES:** The dates remain as published in the Order of September 17, 1986, 51 FR 33907 (Sept. 24, 1986).

**ADDRESS:** Office of the Administrative Law Judge, Suite 6716, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Rosalie Smith, Office of the Administrative Law Judge, Suite 6716, U.S. Department of Commerce, 14th & Constitution Ave., NW., Washington, DC 20230, Telephone: 202-377-3135.

Order

In the Matter of Proposed Regulations to Govern the Taking of Marine Mammals (Dall's Porpoise) Incidental to Commercial Salmon Fishing Operations.

As stated in the Agency public notice published in the **Federal Register** of August 20, 1986, 51 FR 29674:

The hearing will be limited to the following issues:

(a) Estimates of existing population levels of Dall's porpoise and other affected marine mammal stocks; and

(b) the expected impact of the proposed regulations and permit conditions on the optimum sustainable population (OSP) of Dall's porpoise and other marine mammals. These issues necessarily involve consideration of whether the scientific evidence is sufficient to make any of the required MMPA findings, future scientific research needs, and the means available to the applicant to further reduce the mortality of Dall's porpoise. Evidence relating to other issues may be submitted at the hearing subject to the rulings of the presiding officer on the relevance and materiality of such issues.

I have given careful consideration to the various submissions made on behalf of a number of the parties and conclude that the original notice adequately states what the primary issues are.

It is also appropriate to identify some of the "issues" that are not for primarily consideration with this proceeding. These include: The so called "Driftnet Crisis"; the status of seabird populations and driftnet mortality; the effect of the driftnet squid fishery; and the status of salmon stocks, including escapements from and return to particular areas of Alaska. Nor do I perceive the nature of this proceeding as one to usurp the functions of the International North Pacific Fisheries Commission (INPAC) or the management of fishery resources generally. This is a rulemaking proceeding conducted under the mandate of the Marine Mammal Protection Act of 1972 respecting the incidental take of Dall's Porpoise in the Japanese salmon fishery, that is the ball on which we will focus.

Because there was apparently some misunderstanding, respecting my allusion to the record of the 1980-1981 rulemaking, it is appropriate to restate the basis for reference to that prior proceeding. Early in this proceeding there was some mention of that earlier hearing and action, which induced me to call for that file. It is available for inspection in this Office. I have not yet reviewed it nor examined the recommended decision. However, that proceeding is part of the regulatory history which the parties should be aware of. We do not have a long historic body of regulatory experience nor scientific data in this area. Neither do we proceed from a blank slate. Prior experience is appropriate to be aware of and build upon.

Dated: October 23, 1986.

**Hugh J. Dolan,**

*Administrative Law Judge.*

Dated: October 23, 1986.

Hugh J. Dolan,

*Administrative Law Judge.*

[FR Doc. 86-24309 Filed 10-27-86; 8:45 am]

BILLING CODE 3510-08-M

# Notices

Federal Register
Vol. 51, No. 208
Tuesday, October 28, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Proposed Draft Forest Plan and Draft Environmental Impact Statement; Sierra National Forest—Fresno, Madera, and Mariposa Counties, CA; Extension of Comment Period

On August 22, 1986, the Forest Service, U.S. Department of Agriculture, distributed to the public and filed the Sierra National Forest Draft Land and Resource Management Plan and Environmental Statement with the Environmental Protection Agency. On September 5, 1986, the EPA published a Notice of Availability in the **Federal Register** (Vol. 51, No. 172, page 31838) with a public review period beginning September 12, 1986 and ending December 12, 1986 (90 days).

Because of public requests, we are extending the comment period an additional 30 days. Comments on the draft documents now must be received by midnight, January 12, 1987. Please send your comments to the Forest Supervisor, 1130 O Street, Fresno, California 93721.

All comments received between October 12, 1986 and January 12, 1987, will be analyzed for use in the Final Environmental Statement.

Dated: October 21, 1986.

**James L. Boynton,**

*Forest Supervisor.*

[FR Doc. 86-24328 Filed 10-27-86; 8:45 am]

BILLING CODE 3410-01-M

## DEPARTMENT OF COMMERCE

### Agency Form Under Review by the Office of Management and Budget (OMB)

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

Agency: National Telecommunications and Information Administration (NTIA).

Title: AM Stereo Broadcast Transmission System.

Form No.: Agency—N/A; OMB—N/A.

Type of request: New collection-Expedited Clearance Requested.

Burden: 500 respondents; 250 reporting hours.

Needs and uses: No comprehensive study has been done to determine the degree of market acceptance for AM stereo since the FCC's decision in 1981 not to select one standard for AM stereo. The survey will elicit information from AM radio broadcasters to determine their acceptance of "AM Stereo" broadcast technology.

Affected public: Business or other for-profit institutions.

Frequency: One-time only.

Respondent's obligation: Voluntary.

OMB desk officer: Sheri Fox, 395-3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: October 22, 1986.

**Linda Engelmeier,**

*Acting Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.*

[FR Doc. 86-24277 Filed 10-27-86; 8:45 am]

BILLING CODE 3510-CW-M

### International Trade Administration

### Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

**SUMMARY:** The Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee was initially established on January 3, 1973, and rechartered on January 10, 1986 in accordance with the Export Administration Act.

Time and place: November 18, 1986, 9:30 a.m., the Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue, NW., Washington, DC.

*Agenda:*

General Session.

1. Opening remarks by the Chairman.
2. Introduction of public attendees.
3. Introduction of invited guests.
4. Report from the Subcommittees: Technical Regulations; Foreign Availability.
5. ½" Computer Tape—What products are controlled today?—What is the status of Foreign Availability?
6. ECCN 1565: Plotters—Recommendations for change in the language of the Regulations.
7. Section 379: Technical Data—Intent of the Regulations.
8. Strategic uses of magnetic (including video and computer) tape—discussion.
9. Substrates for Magnetic Media—Control Considerations Tutorial Presentation: Stolle Corporation/Subsidiary of Alcoa.
10. Tutorial Presentation: Optical Media—Philips/DuPont Joint Venture.
11. New Business

Executive Session:

12. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

**Public Participation**

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

**SUPPLEMENTARY INFORMATION:** A Notice of Determination to close meetings or portions of meetings of the committee to the public on January 10, 1986, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202-377-4217. For further

information or copies of the minutes call 202–377–2583.

Dated: October 23, 1986.

**Margaret A. Cornejo,**

*Director, Technical Support Staff, Office of Technology and Policy.*

[FR Doc. 86–24310 Filed 10–27–86; 8:45 am]

BILLING CODE 3510–DT–M

## Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

### Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.53a or 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

### Opportunity to Request a Review

Not later than November 30, 1986, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in November, for the following periods:

| | period |
|---|---|
| Antidumping Duty Proceeding | |
| Drycleaning Machinery from the Federal Republic of Germany | 11/01/85–10/31/86 |
| Barbed Wire and Barbless Fencing Wire From Argentina | 05/03/85–10/31/86 |
| Wire Rods from Trinidad/Tobago | 11/01/85–10/31/86 |
| Choline Chloride from Canada | 11/01/85–10/31/86 |
| Bicycle Speedometers from Japan | 11/01/85–10/31/86 |
| Carbon Steel Wire Rods from Argentina | 11/01/85–10/31/86 |
| Titanium Sponge from Japan | 11/01/85–10/31/86 |
| Countervailing Duty Proceeding | |
| Certain Textiles and Textile Products from Argentina | 01/01/85–12/31/85 |
| Deformed Steel Concrete Reinforcing Bars from Peru | 09/16/85–12/31/85 |
| Sodium Gluconate from the European Community | 01/01/85–12/31/85 |
| Certain Refrigeration Compressors from the Republic of Singapore | 01/01/85–12/31/85 |

A request must conform to the Department's interim final rule published in the **Federal Register** (50 FR 32556) on August 13, 1985. Seven copies of the request should be submitted to the Deputy Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by November 30, 1986.

If the Department does not receive by November 30, 1986 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: October 21, 1986.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary, Import Administration.*

[FR Doc. 86–24349 Filed 10–27–86; 8:45 am]

BILLING CODE 3510–DS–M

## National Oceanic and Atmospheric Administration

## North Pacific Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council will convene public meetings of its advisory bodies as follows:

*Plan Team for the Gulf of Alaska Groundfish Fishery Management Plan*—will convene November 17–20, 1986, in Room 2079 of the Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 7600 Sand Point Way, Building 4, Seattle, WA, to finalize the 1986 Resource Assessment Document for the Gulf of Alaska groundfish fisheries and prepare recommendations for 1986 harvest guidelines. The public meeting will convene at 9 a.m. on November 17 and may extend through November 21, if necessary. For more information contact Steve Davis, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510; telephone: (907) 274–4563.

*Crab Management Committee*—newly-formed, will convene its first public meeting, November 20, 1986, at 9 a.m., at the same location as above for the Plan Team for the Gulf of Alaska Groundfish Fishery Management Plan, to develop a comprehensive management framework for the Gulf of Alaska and Bering Sea/Aleutians crab fisheries. Committee recommendations will be presented to the North Pacific Fishery Management Council in December 1986. For more information contact Clarence Pautzke, Deputy Director, North Pacific Council, address and telephone number above.

Dated: October 22, 1986.

**Richard B. Roe,**

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 86–24298 Filed 10–27–86; 8:45 am]

BILLING CODE 3510–22–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

## Establishing Import Limits for Certain Cotton and Man-Made Fiber, Textile Products Produced or Manufactured in India

October 23, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 29, 1986. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

### Background

On April 24, August 5 and August 26, 1986, notices were published in the **Federal Register** (51 FR 15526, 28617, and 30391), which established import restraint limits for cotton shop towels in Category 369–S (only TSUSA 366.2840), women's, girls' and infants' woven blouses of man-made fibers in Category 641, and man-made fiber skirts in Category 642, produced or manufactured in India and exported during the ninety-day periods which began on June 30, March 31, and July 31, 1986. Inasmuch as a mutually satisfactory solution concerning these categories was not reached in consultations held between the two governments in September 1986, the United States, pursuant to the terms

of the bilateral agreement of December 21, 1982, as amended, has decided to establish prorated specific limits for the categories during the periods which began on June 30, March 31, and July 31, 1986 and extend through December 31, 1986 at levels of 223,494 pounds (Category 369–S), 485,735 dozen (Category 641), and 71,336 dozen (Category 642).

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with India, further notice will be published in the **Federal Register.**

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

**William H. Houston III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

October 23, 1986.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs
*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: This directive cancels and supersedes the directive of August 21, 1986 which directed you to prohibit entry of certain man-made fiber textile products in Category 642, produced or manufactured in India and exported during the ninety-day period which began on July 31 and extends through October 28, 1986, in excess of 49,314 dozen.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 21, 1982, as amended, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 29, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 369–S,[1] 641 and 642, produced or manufactured in India and exported during the prorated twelve-month periods indicated below, in excess of the designated levels:

| Category | Prorated 12-mo. level [2] | Date of export period |
|---|---|---|
| 369–S | 223,494 pounds | June 30–Dec. 31, 1986. |
| 641 | 485,735 dozen | Mar. 31–Dec. 31, 1986. |
| 642 | 71,336 dozen | July 31–Dec. 31, 1986. |

[2] The limits have not been adjusted to account for any imports exported after Mar. 30, 1986 (Cat. 641), June 29, 1986 (Cat. 369–S), or July 30, 1986 (Cat. 642).

Textile products in the foregoing categories, exported before March 31, 1986 (Category 641), June 30, 1986 (Category 369–S), or July 31, 1986 (Category 642) shall not be subject to this directive.

Textile products in Categories 369–S and 641 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 86–24348 Filed 10–27–86; 8:45 am]

BILLING CODE 3510–DR–M

[1] In Category 369, only TSUSA number 366.2840.

## Establishing Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in the People's Republic of China

October 24, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 28, 1986. For further information contact Kathryn Cabral, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

**Background**

On August 21, 1986, a notice was published in the **Federal Register** (51 FR 30100), which established import restraint limits for wool skirts in Category 442 and cotton duck fabric in Category 319/320 pt. (in Cat. 320 only TSUS items 320.—321.—, 322.—, 326.—, 327.— and 328.— with statistical suffix 66, produced or manufactured in China and exported to the United States during the ninety-day period which began on July 29, 1986 and extends through October 26, 1986. The notice also stated that the Government of the People's Republic of China is obligated under the Bilateral Cotton, Wool and Man-made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, if no mutually satisfactory solution is reached on levels for these categories during consultations, to limit its imports during the twelve-month period immediately following the ninety-day consultation period to 20,188 dozen (Category 442) and 1,133,516 square yards (Category 319/320 pt.)

No solution has been reached in consultations on mutually satisfactory limits for these categories. The United States Government has decided, therefore, to control imports of cotton and wool textile products in Categories 442 and 319/320 pt., exported during the twelve-month period beginning on October 27, 1986 and extending through October 26, 1987, at the levels described above. The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register.**

In the event the limits established for the ninety-day period have been exceeded, such excess amounts, if allowed to enter, will be charged to the levels established for the designated twelve-month period. Charges for goods exported during the ninety-day period and imported during the period which began on July 29, 1986 and extended through August 24, 1986 have amounted to 18,413 dozen in Category 442. Further charges will be made, as necessary, when the data become available.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on

December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of The United States Annotated (1986).

**William H. Houston III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

October 24, 1986.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,
*Department of the Treasury,*
*Washington, DC 20229.*

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 28, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in Categories 319/320 pt.[1] and 442, produced or manufactured in the People's Republic of China and exported during the twelve-month period which begins on October 27, 1986 and extends through October 26, 1987, in excess of the following levels of restraint:

| Category | 12-mo restraint levels[1] |
|---|---|
| 319/320 pt. | 1,113,516 square yards. |
| 442 | 20,188 dozen. |

[1] The levels have not been adjusted to account for any imports exported after July 28, 1986. Charges for imports in Category 442 during the period, July 29 through August 24, 1986 amounted to 18,413 dozen.

Textile products in Categories 319/320 pt. and 442 which are in excess of the ninety-day levels previously established shall be subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 17, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Traiff Schedules of The United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 86-24494 Filed 10-27-86; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 320, only TSUS items 320.—, 321.—, 322.—, 326.—, 327.—, and 329.— with statistical suffix 66.

## DEPARTMENT OF DEFENSE

### U.S. Court of Military Appeals Code Committee; Meeting

**ACTION:** Notice of public hearings.

**SUMMARY:** This notice announces the forthcoming public meeting of the Code Committee established by Article 67(g), Uniform Code of Military Justice, 10 U.S.C. 867(g), to be held at 2:00 p.m. on October 29, 1986, in the Judge William Holmes Cook Conference Room at the Courthouse of the United States Court of Military Appeals, 450 E Street, Northwest, Washington, DC 20442-0001. The agenda for this meeting will include consideration of the following matters relating to the operation of the Uniform Code of Military Justice throughout the Armed Services: (a) Military Justice Amendments of 1986 to the Uniform Code of Military Justice; (b) Proposed amendments to the Manual for Courts-Martial, United States, 1984; (c) Scope and plans for 1987 Homer Ferguson Conference; and (d) 1974 American Bar Association recommendation to allow military accused an option after conviction by court members to elect sentencing by military judge.

**DATE:** October 29, 1986.

**FOR FURTHER INFORMATION CONTACT:** Thomas F. Granahan, Clerk of Court, United States Court of Military Appeals, 450 E Street, Northwest, Washington, DC 20442-0001; telephone (202) 272-1448.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

October 23, 1986.

[FR Doc. 86-24351 Filed 10-24-86; 11:31 am]

BILLING CODE 3810-01-M

## DEPARTMENT OF ENERGY

### Economic Regulatory Administration

**[ERA Docket No. 86-41-NG]**

### Tricentrol United States, Inc. and Tricentrol Petroleum Marketing, Inc., Order Approving a Blanket Authorization To Export and Import Natural Gas

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of order approving blanket authorization to import and export natural gas.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issue an order granting blanket authorization to Tricentrol United States, Inc. (TUSI), and Tricentrol Petroleum Marketing, Inc. (TPMI), to export domestically produced natural gas to Canada and to import Candian natural gas on a short-term basis. The order issued in ERA Docket No. 86-41-NG authorizes TUSI and TPMI to export up to 60 MMcf per day of natural gas produced in Montana and to import an equivilent 60 MMcf per day of natural gas from Canada for a two-year term beginning on the date of first delivery of the natural gas to the international border facility.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 20, 1986.

**Robert L. Davies,**

*Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 86-24364 Filed 10-27-86; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

**[Docket Nos. CP87-17-000 et al.]**

### Natural Gas Certificate Filings; United Gas Pipe Line Co., et al.

October 22, 1986.

Take notice that the following filings have been made with the Commission:

**1. United Gas Pipe Line Company**

[Docket No. CP87-17-000]

Take notice that on October 10, 1986, United Gas Pipe Line Company (Applicant), 600 Travis Street, Houston, Texas 77002, filed in Docket No. CP87-17-000 an application pursuant to section 7 of the Natural Gas Act for authorization to (1) extend until November 1, 1996, the term of its service agreement covering sales for resale of up to 524,000 Mcf of natural gas per day (Mcfd) to Mississippi River Transmission Corporation (MRT); (2) permit MRT to modify its purchase obligation from Applicant under certain circumstances; and (3) require MRT to purchase certain amounts of gas from Applicant and its affiliate over the term of the service agreement, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Applicant presently makes sales for resale to MRT of a maximum daily quantity (MDQ) of 524,000 Mcfd pursuant to a service agreement which expires on November 1, 1988. Pursuant to a precedent agreement dated February 24, 1986, Applicant and MRT's parent corporation, Arkla, Inc., have agreed to execute a new service agreement (new agreement), it is explained.

Pursuant to the terms of the new agreement, either MRT or Applicant could commence negotiations to redetermine MRT's MDQ, effective not earlier than two years following the date of the new agreement (second anniversary), it is indicated. Applicant states that in the event MRT and Applicant are unable to agree upon a redetermined MDQ by the second anniversary, MRT would have the right to reduce its MDQ from Applicant by 20 percent per year for five years following the second anniversary or, alternatively, MRT could reduce its MDQ annually after the second anniversary by an amount equal to the percentage by which its firm sales are reduced by its customers pursuant to § 284.10(c)(3) of the Commission's Regulations. Applicant avers that MRT would have the right to reduce its MDQ under certain other circumstances.

Applicant explains that MRT would have the right to purchase gas from other parties in lieu of its purchase obligation from Applicant, provided that any such alternate supplier's price is lower than Applicant's and that Applicant or one of its affiliates is given the opportunity to meet such lower price and chooses not to do so.

It is indicated that, pursuant to the terms of the new agreement, MRT would be obligated during stipulated six-month periods to purchase from Applicant or its affiliate, Natural Gas Pipeline Company of America, not less than the following percentages of its system supply for resale in the indicated periods:

| Period | Percentage |
|---|---|
| For each six-month period extending from Apr. 1 through Sept. 30, and Oct. 1 through Mar. 31 (or in the case of 1996, through Nov. 1, 1996) occurring during: | |
| Apr. 1, 1986 through Mar. 31, 1989 | 40.0 |
| Apr. 1, 1989 through Mar. 31, 1990 | 42.5 |
| Apr. 1, 1990 through Mar. 31, 1991 | 45.0 |
| Apr. 1, 1991 through Nov. 1, 1996 | 47.5 |

Finally, Applicant proposes to extend the term of the service agreement from November 1, 1988, to November 1, 1996.

Comment date: November 12, 1986, in accordance with Standard Paragraph F at the end of this notice.

**2. Consolidated Gas Transmission Corp.**

[Docket No. CP87-5-000]

Take notice that on October 2, 1986, Consolidated Gas Transmission Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP87-5-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale of natural gas in interstate commerce to PennEast Gas Services Company (PennEast), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to sell natural gas, on a firm basis, to PennEast, in quantities sufficient to support PennEast's anticipated resale requirements, at a price equivalent to the rate set forth in Rate Schedule E of Applicant's FERC Gas Tariff, Volume No. 1. It is indicated that PennEast's resale requirements during the 1987-88 winter season are up to 110,000 dt equivalent of natural gas per day and the resale requirements during each remaining winter season are up to 255,000 dt equivalent of natural gas per day. Applicant states that the sales are to commence on November 15, 1987, or as soon as the necessary regulatory approvals are acquired, and continue for a primary term of twenty years, and from year to year thereafter.

Applicant states that it has entered into a precedent agreement dated September 22, 1986, with PennEast to which is attached a *pro forma* copy of a seasonal sales service agreement. It is indicated that Applicant and PennEast would enter into a seasonal sales service agreement in substantially similar form, upon the receipt of the necessary regulatory authorizations and the fullfillment of other conditions.

It is indicated that winter deliveries would commence on November 15 of each year, and would end on March 31 of the following year (called the winter season). Further, it is indicated that the winter season would be rendered in two periods. The first period would begin on November 15 and end on February 15 of the following year, and is referred to as the early winter period. The second period would begin on February 16 and end on March 31; this period is referred to as the late winter period.

Applicant states that, during each early winter period, Applicant would make available, on a firm daily basis, quantities of natural gas sufficient to support PennEast's anticipated resale requirements. Applicant also states that quantities of natural gas available to PennEast during the late winter period are equal to 30 percent of the quantities of gas actually purchased by PennEast during the immediately preceding early winter period. Applicant submits that this quantity (known as the late winter contract quantity) is to be made available in equivalent daily quantities equal to 1/45th of the late winter contract quantity.

It is indicated that, in the event of a delayed commencement of services, the initial and second year early winter contract quantities would be prorated by the number of days remaining within the initial and second year early winter periods.

Applicant submits that, when additional supplies are available during the late winter period (February 16 through March 31, the end of the winter heating season), Applicant would make such additional supplies available to PennEast. Further, Applicant submits that PennEast may, if it so chooses, increase its late winter period daily deliveries to as much as 150 percent of the otherwise applicable daily quantity subject only to the limitation of the late winter contract quantity. It is indicated that this right to increase takes carries with it no restrictions, penalties, or additional costs.

Applicant states that PennEast may reduce its takes freely, and without cost, and if PennEast chooses to reduce its takes during any winter, it may elect to adjust its future purchase quantities as well, or to maintain its previous (and higher) level of seasonal purchases by paying a supply maintenance charge (SMC). Further, Applicant states that, if PennEast elects to reduce its purchases during one winter period, but chooses to maintain its service level by paying the SMC, PennEast has the right to purchase

additional supplies during the upcoming summer at the normal rate, and would receive a credit to its commodity charge equal to the SMC.

Applicant states that it would deliver the subject gas supplies to PennEast at existing points of interconnection between Applicant and Texas Eastern Transmission Corporation (Texas Eastern) in Westmoreland County, Pennsylvania (near Oakford Storage Pool), and in Clinton County, Pennsylvania (near Leidy Storage Pool). Applicant submits that it would not be necessary for it to construct any facilities to render the proposed sales to PennEast.

It is indicated that the gas to be sold to PennEast would come from Applicant's general system supply.

Comment date: November 12, 1986, in accordance with Standard Paragraph F at the end of this notice.

**3. Pacific Gas Transmission Co.**

[Docket No. CP87-10-000]

Take notice that on October 8, 1986, Pacific Gas Transmission Company (PGT), 160 Spear Street, San Francisco, California 94105-1570, filed an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) the interruptible transportation of natural gas in interstate commerce; and (2) pregranted abandonment authorization upon termination of the transportation agreement, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that the transportation would be accomplished by means of a delivery to PGT at Kingsgate, British Columbia of up to 61,300 Mcf of natural gas per day for the account of Windward Energy and Marketing Company (Windward) and the redelivery of such natural gas to Windward at a point of interconnection between the pipeline systems of PGT and Pacific Gas and Electric Company at Malin, Oregon. PGT states that the interruptible transportation service would be accomplished through the utilization of existing capacity available on PGT's system. PGT asserts that the term of the agreement would be for a primary term of ninety days, not to exceed one year.

PGT indicates that the transporation charges would be based upon the cost-of-service charges to PGT's firm service customers billed pursuant to its Rate Schedules T-1, T-2 and PL-2.

The unit transportation rate, it is claimed, would be redetermined each July 1 and shall be equal to the total cost-of-service billing for the firm service customers, less credits for interruptible transportation, during the preceding twelve month period divided by the contract volume demand miles for firm service customers.

PGT states that the transportation charge to the interruptible transport customers would be the product of (a) the unit transportation rate times (b) the volumes delivered hereunder times (c) the distance from the point of receipt to the point of delivery. The pipeline distance shall be deemed to be not less than 200 miles.

PGT indicates that the initial transportation charge for Windward would be $.1666 per Mcf of natural gas. There would be a deduction for fuel, line loss and unaccounted for charge of 4.2% of the gas received and a GRI charge of 1.35 cents per MMcf of gas delivered by PGT.

PGT additionally requests permission for the interruptible gas transportation agreement between PGT and Windward to be filed pursuant to 18. CFR 154.52.

PGT also seeks pregranted abandonment authorization to terminate service upon termination of the transportation agreement.

Comment date: November 12, 1986, in accordance with Standard Paragraph F at the end of this notice.

**4. PennEast Gas Services Co.**

[Docket No. CP87-4-000]

Take notice that on October 2, 1986, PennEast Gas Services Company (Applicant), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP87-4-000 an application for a certificate of public convenience and necessity authorizing Applicant to make sales of natural gas in interstate commerce for resale to the Brooklyn Union Gas Company (Brooklyn Union), Elizabethtown Gas Company (Elizabethtown), Long Island Lighting Company (LILCO), New Jersey Natural Gas Company (New Jersey Natural), and Public Service Electric and Gas Company (PSE&G) (collectively referred to as Buyers); to transport natural gas in interstate commerce for the Buyers; to construct and operate facilities necessary therefore; and for a blanket certificate pursuant to 18 CFR 284.221 authorizing open-access, non-discriminatory transportation of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it is a general partnership organized by Consolidated Gas Transmission Corporation (Consolidated) and Texas Eastern Gateway, Inc., an affiliate of Texas Eastern Transmission Corporation (Texas Eastern).

Applicant proposes to make jurisdictional sales of gas, on a firm basis, for a primary term of 20 years to five local distribution companies located in the New Jersey and the New York metropolitan area pursuant to proposed Rate Schedule SS-1 and related tariff provisions and service agreements attached as Exhibit P to the application. Applicant proposes to sell gas to the Buyers up to the quantities (dt equivalent) indicated below in two phases:

PHASE I.—COMMENCING NOV. 15, 1987 AND ENDING NOV. 14, 1988

| Buyer | Contract demand quantity/ early winter daily quantity | Early winter contract quantity | Maximum annual quantity |
|---|---|---|---|
| Brooklyn Union | 27,500 | 2,062,500 | 2,681,250 |
| Elizabethtown | 5,000 | 375,000 | 487,500 |
| LILCO | 22,500 | 1,687,500 | 2,193,750 |
| New Jersey Natural | 5,000 | 375,000 | 487,500 |
| PSE&G | 40,000 | 3,000,000 | 3,900,000 |
| TOTAL | 100,000 | 7,500,000 | 9,750,000 |

PHASE II.—COMMENCING NOV. 15, 1988 UNTIL TERMINATION

| | | | |
|---|---|---|---|
| Brooklyn Union | 75,000 | 5,625,000 | 7,312,500 |
| Elizabethtown | 10,000 | 750,000 | 975,000 |
| LILCO | 25,000 | 1,875,000 | 2,437,500 |
| New Jersey Natural | 35,000 | 2,625,000 | 3,412,500 |
| PSE&G | 100,000 | 7,500,000 | 9,750,000 |
| TOTAL | 245,000 | 16,375,000 | 23,887,500 |

Applicant indicates that the deliveries to each Buyer would commence on November 15 of each year, and would end on March 31 of the following year (called the Winter Season). Further, it is indicated that this sales service would be rendered in two periods. The first period would begin on November 15 and end on February 15 of the following year, and is referred to as the Early Winter Period. The second period would begin on February 16 and end on March 31, and is referred to as the Late Winter Period.

Applicant states that the proposed tariff and the related service agreements would permit any Buyer to reduce its takes freely, and without cost. Also, Applicant states that, if a Buyer chooses to reduce its takes during any winter, it may elect to adjust its future purchase quantities under Rate Schedule SS-1 or to maintain its previous (and higher) level of seasonal purchases by paying a supply maintenance charge (SMC). It is submitted that this charge defrays the costs associated with maintaining gas

supply for succeeding years. Furthermore, if a Buyer elects to reduce its purchases during one winter period, but chooses to maintain its Rate Schedule SS–1 service level by paying the SMC, the Buyer may purchase, to the extent Applicant's operating conditions permit, equivalent additional supplies during the upcoming summer at the normal rate, and would receive a credit to the Rate Schedule SS–1 commodity charge equal to the SMC.

Applicant proposes to charge an interim, two-part rate for sales made under Rate Schedule SS–1. Applicant indicates that the proposed Demand Charge would be $7.7233 per dt of Contract Demand Quantity for Phase I and $8.3933 per dt of Contract Demand Quantity for Phase II. Applicant proposes to charge an initial Commodity Charge of $3.5343 per dt, which reflects the cost of gas purchased by Applicant for resale.

Applicant submits that the gas proposed to be sold by Applicant would be purchased from Consolidated and delivered for the account of Applicant at points located near Oakford Storage Pool, in Westmoreland County, Pennsylvania, and Leidy Storage Pool, in Clinton County, Pennsylvania and other mutually agreeable points. Applicant also submits that Consolidated has advised Applicant that the source of the gas Consolidated would sell to Applicant would be from Consolidated's general system supply. Consolidated has filed in Docket No. CP87–5–000 for the necessary certificate authorizations to make such sale to Applicant.

Applicant also proposes to provide the five local distribution companies long-term firm transportation services pursuant to Applicant's proposed Rate Schedule T–1. Applicant proposes to transport on a daily basis natural gas up to the quantities (dt equivalent) indicated below:

CONTRACT DEMAND QUANTITIES

| Transporter | Phase I | Phase II |
|---|---|---|
| Brooklyn Union | 27,500 | 75,000 |
| Elizabethtown | 5,000 | 10,000 |
| LILCO | 22,500 | 25,000 |
| New Jersey Natural | 5,000 | 35,000 |
| PSE&G | 40,000 | 100,000 |
| | 100,000 | 245,000 |

Applicant states that the Aggregate Maximum Daily Delivery Obligation of Applicant to Buyer under Rate Schedules T–1 and SS–1 would not be in excess of the quantities shown in the immediate preceding table for Phase I and II. Applicant further states that its Pro Forma FERC Gas Tariff and firm transportation Rate Schedule T–1 is attached as Exhibit P to the application.

Applicant proposes to charge an interim, two part rate structure for firm transportation under Rate Schedule T–1. Applicant proposes to charge a Capacity Reservation Rate of $5.1442 per dt of Contract Demand for Phase I and $5.6007 per dt of Contract Demand for Phase II. Applicant states that this rate is a derivative of the SS–1 demand charge and results from the application of modified fixed-variable rate design principles and is designed to recover depreciation, interest expense, fixed operation and maintenance expenses, and taxes other than income taxes. It is indicated that for firm sales customers under Rate Schedule SS–1 who also contract for firm transportation services under Rate Schedule T–1, and T–1 tariff provides that to the extent Buyer is paying a Demand Charge under section 3 of Rate Schedule SS–1, this Capacity Reservation Charge would be waived. Further, the equity return and related taxes and variable operating expenses (excluding fuel) would be recovered through a Commodity Rate not in excess of a Maximum Commodity Rate of $0.3174 per dt for Phase I and $0.3437 per dt for Phase II, and not less than the Minimum Commodity Rate of $0.0100 per dt as established in the tariff. Transportation service for Buyers would be rendered under a service agreement which would provide, *inter alia*, for a primary term of twenty years.

Applicant seeks a blanket certificate pursuant to § 284.221 of the Commission's Regulations authorizing it to render additional firm and interruptible transportation service on an open access, non-discriminatory basis for other subscribing shippers. Applicant states that it would propose to render open access firm transportation pursuant to Rate Schedule T–1. It is indicated that Applicant would provide open-access interruptible transportation under a proposed interruptible transportation Rate Schedule T–2 which provides for a commodity rate to be charged by Applicant not in excess of a Maximum Commodity Rate of $0.2539 per dt in Phase I and $0.2759 per dt in Phase II and not less than the Minimum Commodity Rate of $0.0100 per dt established in the tariff.

Applicant states that it intends to comply with the conditions set forth in paragraph (c) of § 284.221 of the Commission's Regulations, including the rate design requirements of § 284.7(d)(2); however, in light of the lack of any historical information regarding the potential use by shippers of Rate Schedules T–1 and T–2 services, Applicant has not designed rates in this filing for Rate Schedules T–1 and T–2 based upon costs allocated to be recovered by means of projected units of service under these rate schedules. Applicant submits that the lack of such historical information regarding use of the T–1 and T–2 or other comparable services by Applicant is sufficient good cause to warrant the waiver of § 284.7(d)(2) for a limited term provided appropriate refunds are made to the SS–1 customers. Accordingly, Applicant requests the Commission to waive the requirements of § 284.7(d)(2) for a limited term but to condition such waiver to require Applicant to file not later than fifteen months from the commencement of Phase II service a rate filing reflecting a cost of service and through-put volumes for a base period which shall be the first 12 months following the in-service date of Phase II.

Applicant proposes to render the jurisdictional sales and transportation services by means of incremental pipeline capacity to be constructed and operated in conjunction with existing facilities of Texas Eastern, located in Pennsylvania, New Jersey, and New York. Specifically, Applicant proposes to construct and operate facilities in two phases. Applicant proposes under Phase I to construct and operate approximately 20.1 miles of 36-inch pipeline loop, in three locations, on Texas Eastern's existing system in Pennsylvania; to upgrade the compression at Texas Eastern's existing Shermans Dale and Bernville Compressor Stations; and to construct and operate a 3,500 HP compressor station near mile post 36.25 on Texas Eastern's existing Line No. 24. Applicant proposes under Phase II to construct and operate approximately 24.75 miles of 36-inch pipeline loop, in five locations, on Texas Eastern's existing system in Pennsylvania; to construct and operate 14.50 miles of 24-inch pipeline between Texas Eastern's existing Line No. 20 and Texas Eastern's existing Hanover Compressor Station in New Jersey; to upgrade compression at Texas Eastern's existing Delmont, Armagh and Entriken Compressor Stations; to modify and expand Texas Eastern's existing measuring and regulating station Nos. 058, 1078, and 1075, located in Richmond County, New York, and Morris and Middlesex Counties, New Jersey; and to construct and operate a new measuring and regulating station at Bridgewater, located in Somerset County, New Jersey, on Algonquin Gas Transmission Company's existing system.

Applicant states that the proposed facilities are estimated to cost

$39,586,000 for Phase I and $69,340,000 for Phase II for a total cost of $108,926,000.

Applicant further states that its facilities would be constructed and operated by Texas Eastern pursuant to a construction, administration, operation and maintenance agreement between Applicant and Texas Eastern. Applicant also states that Texas Eastern would be responsible for constructing, administrating, operating, and maintaining the proposed facilities on a day to day basis. It is indicated that this agreement would be filed with the Commission in the near future, as a supplement to this application.

Applicant submits that the proposed facilities, in conjunction with the upgrade of facilities by Texas Eastern, would be sufficient to effect deliveries of the contemplated quantities of natural gas and that no existing capacity in Texas Eastern's or Consolidated's existing systems would be committed to this project or utilized to effect deliveries by Applicant and only Applicant and its customers would bear the costs associated with the proposed facilities and services.

Comment date: November 12, 1986, in accordance with Standard Paragraph F at the end of this notice.

**5. United Gas Pipe Line Co.**

[Docket No. CP87-16-000]

Take notice that on October 9, 1986, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-16-000 an application pursuant to section 7(b) of the Natural Gas Act, as amended, for authorization to abandon of a portion of pipeline and appurtenant facilities located in Caddo Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Specifically, United proposes to abandon 6.5 miles of 16-inch pipeline located in Caddo Parish, Louisiana. United states that the subject line is over 60 years old and is no longer used and that its abandonment will not affect service to any other customer in the area.

Comment date: November 12, 1986, in accordance with Standard Paragraph F at the end of this notice.

**Standard Paragraph:**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 86-24352 Filed 10-27-86; 8:45 am]

BILLING CODE 6717-01-M

---

## Oil Pipeline; Tentative Valuation

October 24, 1986.

The Federal Energy Regulatory Commission by order issued February 10, 1978, established an Oil Pipeline Board and delegated to the Board its functions with respect to the issuance of valuation reports pursuant to section 19a of the Interstate Commerce Act.

Notice is hereby given that a tentative valuation is under consideration for the common carrier by pipeline listed below:

1982 Basic Report, Valuation Docket No. PV-1487-000, Navajo Pipeline Company, P.O. Drawer 159, Artesia, New Mexico 88210

On or before December 1, 1986, persons other than those specifically designated in section 19a(h) of the Interstate Commerce Act having an interest in this valuation may file, pursuant to rule 214 of the Federal Energy Regulatory Commission's "Rules of Practice and Procedure" (18 CFR 385.214), an original and three copies of a petition for leave to intervene in this proceeding.

If the petition for leave to intervene is granted the party may thus come within the category of "additional parties as the FERC may prescribe" under section 19a(h) of the Act, thereby enabling it to file a protest. The petition to intervene must be served on the individual company at its address shown above and an appropriate certificate of service must be attached to the petition. Persons specifically designated in section 19a(h) of the Act need not file a petition; they are entitled to file a protest as a matter of right under the statute.

**Francis J. Connor,**

*Administrative Officer, Oil Pipeline Board.*

[FR Doc. 86-24354 Filed 10-27-86; 8:45 am]

BILLING CODE 6717-01-M

---

**[Docket No. G-10839-000, et al.]**

## Mesa Operating Limited Partnership; Application

October 22, 1986.

Take notice that on October 14, 1986, Mesa Operating Limited Partnership (MOLP), of P.O. Box 2009, Amarillo, Texas 79189 filed an application in compliance with the provisions of the Federal Energy Regulatory Commission's (Commission) Rules under the Natural Gas Act and more particularly with Part 157 thereof, for a certificate of public convenience and necessity to continue sales being made under permanent certificates of public convenience and necessity heretofore issued to Pioneer Production Corporation (Pioneer), in each of the Dockets listed on the attached Exhibit "A" or in the alternative, that each of the said certificates heretofore issued to Pioneer be amended by substituting MOLP in lieu of Pioneer as the certificate holder in the Dockets on Exhibit "A", which is on file with the Commission and open to public inspection. MOPL also requests that the gas rate schedules of Pioneer listed on the attached Exhibit "A" be redesignated as rate schedules of MOPL.

Effective June 30, 1986, Pioneer Corporation conveyed all of its right, title and interest in certain acreage to Mesa Limited Partnership which conveyed that acreage to MOLP.

Any person desiring to be heard or to make any protest with reference to said application should, on or before November 4, 1986, file with the Federal Energy Regulatory Commission,

Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

EXHIBIT A

| Now | | Former | |
|---|---|---|---|
| MESA operating limited partnership FERC gas rate schedule Nos. | Certificate Docket No. | Pioneer Production Corporation FERC gas rate schedule Nos. | Purchaser |
| | G-10839 | 1 | Natural Gas Pipeline Co. of America. |
| | G-11576 | 2 | Northern Natural Gas Co. |
| | G-12628 | 4 | Do. |
| | G-18476 | 5 | ANR Pipeline Co. |
| | G-18553 | 7 | El Paso Natural Gas Co. |
| | G-17768 | 8 | Transwestern Pipline Co. |
| | CI62-113 | 12 | Natural Gas Pipeline Co. of America. |
| | CI62-955 | 13 | El Paso Natural Gas Co. |
| | CI63-100 | 14 | Northern Natural Gas Co. |
| | CI63-607 | 15 | Transwestern Pipeline Co. |
| | CI63-1127 | 17 | Northern Natural Gas Co. |
| | CI63-1528 | 18 | Panhandle Eastern Pipe Line Co. |
| | CI63-1547 | 19 | Do. |
| | CI64-373 | 20 | Northern Natural Gas Co. |
| | CI64-462 | 21 | Do. |
| | CI64-481 | 22 | Do. |
| | CI64-547 | 23 | Do. |
| | CI64-671 | 25 | Do. |
| | CI64-676 | 26 | Do. |
| | CI64-942 | 28 | Do. |
| | CI64-945 | 29 | Do. |
| | CI67-119 | 33 | Panhandle Eastern Pipe Line Co. |
| | CI67-978 | 34 | Do. |
| | CI68-1179 | 36 | Natural Gas Pipeline Co. of America. |
| | CI69-459 | 38 | El Paso Natural Gas Co. |
| | CI69-459 | 39 | Do. |
| | CI69-459 | 40 | Westar Transmission Co. |
| | CI69-459 | 41 | Do. |
| | | 42 | Panhandle Eastern Pipe Line Co. |
| | CI73-617 | 43 | Northern Natural Gas Co. |
| | CI74-505 | 44 | ANR Pipeline Co. |
| | CI74-545 | 45 | Do. |

EXHIBIT A—Continued

| Now | | Former | |
|---|---|---|---|
| MESA operating limited partnership FERC gas rate schedule Nos. | Certificate Docket No. | Pioneer Production Corporation FERC gas rate schedule Nos. | Purchaser |
| | CI74-546 | 46 | Cities Service Oil & Gas Corp. |
| | CI74-587 | 47 | Natural Gas Pipeline Co. of America. |
| | CI74-620 | 48 | Panhandle Eastern Pipe Co. |
| | CI75-722 | 49 | El Paso Natural Gas Co. |
| | CI75-773 | 50 | Arkansas Louisiana Gas Co. |
| | CI76-603 | 51 | United Gas Pipe Line Co. |
| | CI77-250 | 53 | El Paso Natural Gas Co. |
| | CI77-319 | 54 | Do. |
| | CI77-376 | 55 | Do. |
| | CI77-414 | 56 | Phillips Petroleum Co. |
| | CI77-810 | 57 | ANR Pipeline Co. |
| | CI78-505 | 58 | Northern Natural Gas Co. |
| | CI78-877 | 60 | El Paso Natural Gas. Co. |
| | CI78-928 | 61 | Do. |
| | CI78-540 | 63 | Northern Natural Gas Co. |
| | CI79-549 | 64 | Transcontinental Gas Pipe Line Corp. |
| | CI80-63 | 65 | Texas Gas Transmission Corp. |
| | CI80-246 | 66 | Northern Natural Gas Co. |
| | CI80-212 | 67 | Transcontinental Gas Pipe Line Corp. |
| | CI81-128 | 68 | Do. |
| | CI81-337 | 69 | Transwestern Pipeline Co. |
| | CI82-51 | 70 | Panhandle Eastern Pipe Line Co. |
| | CI82-412 | 71 | Texas Eastern Transmission Corp. |
| | CI83-46 | 72 | Natural Gas Pipeline Co. of America. |
| | CI85-259 | 73 | Texas Eastern Transmission Corp. |
| | CI85-283 | 74 | ANR Pipeline Co. |
| | CI85-284 | 75 | Transcontinental Gas Pipe Line Corp. |
| | CI86-511 | 76 | Natural Gas Pipeline Co. of America. |

[FR Doc. 86-24358 Filed 10-27-86; 8:45 am]
BILLING CODE 6717-01-M

**[Docket No. ST86-2362-000 et al.]**

## Panhandle Eastern Pipe Line Co. et al.; Self-Implementing Transactions

October 22, 1986.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Subpart F of Part 157 and Part 284 of the Commission's Regulations, and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA).[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to § 284.102 of the Commission's Regulations.

A "C" indicates transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate is sought to § 284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's Regulations and Section 312 of the NGPA.

An "F(157)" indicates transportation by an interstate pipeline for an end-user pursuant to § 157.209 of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(EU)" indicates transportation by an interstate pipeline company on behalf of an end-user pursuant to a blanket certificate issued under § 284.223 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company pursuant to a blanket certificate issued under § 284.222 the Commission's Regulations.

A "G(LT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 the Commission's Regulations.

[1] Notice of transactions does not constitute a determination that service will continue in accordance with Order No. 436, Final Rule and Notice Requesting Supplemental Comments, 50 FR 42372 (Oct. 18, 1985).

A "C/F(157)" indicates intrastate pipeline transportation which is incidential to a transportation by an interstate pipeline to an end-user pursuant to a blanket certificate under 18 CFR 157.209. Similarly, a "G/F(157)" indicates such transportation performed by a Hinshaw Pipeline or distributor.

Any person desiring to be heard or to make any protest with reference to a transaction reflected in this notice should on or before October 31, 1986, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

**Kenneth F. Plumb,**

*Secretary.*

| Docket No.[1] | Transporter/seller | Recipient | Date filed | Subpart | Expiration date [2] | Transportation rate (cents per/MMBtu) |
|---|---|---|---|---|---|---|
| ST86-2362 | Panhandle Eastern Pipe Line Co | Consumers Power Co | 08-01-86 | B | | |
| ST86-2363 | do | do | 08-01-86 | B | | |
| ST86-2364 | Trunkline Gas Co | Northern Indiana Public Service Co | 08-01-86 | B | | |
| ST86-2365 | Mountain Fuel Resources, Inc | Cascade Natural Gas Corp., *et al* | 08-01-86 | B | | |
| ST86-2366 | ONG Transmission Co | Panhandle Eastern Pipe Line Co | 08-01-86 | C | 12-29-86 | 10.00 |
| ST86-2367 | do | Bridgeline Gas Distribution Co | 08-01-86 | C | 12-29-86 | 24.32 |
| ST86-2368 | Somerset Gas Service | Texas Eastern Transmission Corp | 08-01-86 | C | 12-29-86 | 40.00 |
| ST86-2369 | Oasis Pipe Line Co | Transwestern Pipeline Co | 08-05-86 | C | | |
| ST86-2370 | ONG Transmission Co | Peoples Natural Gas Co | 08-05-86 | C | 01-02-87 | 24.32 |
| ST86-2371 | Houston Pipe Line Co | Transwestern Pipeline Co | 08-05-86 | C | | |
| ST86-2372 | Arkla Energy Resources | Indiana Gas Co | 08-06-86 | B | | |
| ST86-2373 | do | J-W Operating Co | 08-06-86 | B | | |
| ST86-2374 | Texas Eastern Transmission Corp | Michigan Consolidated Gas Co | 08-06-86 | B | | |
| ST86-2375 | do | Philadelphia Electric Co | 08-06-86 | B | | |
| ST86-2376 | do | do | 08-06-86 | B | | |
| ST86-2377 | Northwest Pipeline Corp | Southwest Gas Corp | 08-06-86 | B | | |
| ST86-2378 | Michigan Gas Storage Co | Battle Creek Gas Co | 08-07-86 | B | | |
| ST86-2379 | do | Michigan Gas Utilities | 08-07-86 | B | | |
| ST86-2380 | do | Consumers Power Co | 08-07-86 | B | | |
| ST86-2381 | do | do | 08-07-86 | B | | |
| ST86-2382 | do | do | 08-07-86 | B | | |
| ST86-2383 | United Gas Pipe Line Co | Chattanooga Gas Co | 08-07-86 | B | | |
| ST86-2384 | do | do | 08-08-86 | B | | |
| ST86-2385 | do | City of Austell Natural Gas System | 08-08-86 | B | | |
| ST86-2386 | do | do | 08-08-86 | B | | |
| ST86-2387 | do | Atlanta Gas Light Co | 08-08-86 | B | | |
| ST86-2388 | do | Southeast Alabama Gas District | 08-08-86 | B | | |
| ST86-2389 | do | City of Statesboro | 08-08-86 | B | | |
| ST86-2390 | do | City of Wrens | 08-08-86 | B | | |
| ST86-2391 | do | Southeast Alabama Gas District | 08-08-86 | B | | |
| ST86-2392 | do | South Carolina Pipeline Corp | 08-08-86 | B | | |
| ST86-2393 | do | Marshall County Gas District | 08-08-86 | B | | |
| ST86-2394 | do | Atlanta Gas Light Co | 08-08-86 | B | | |
| ST86-2395 | do | Alabama Gas Corp | 08-08-86 | B | | |
| ST86-2396 | do | do | 08-08-86 | B | | |
| ST86-2397 | do | City of Wrens | 08-08-86 | B | | |
| ST86-2398 | do | Utilities Board of Sylacauga | 08-08-86 | B | | |
| ST86-2399 | do | City of Thomson Gas System | 08-08-86 | B | | |
| ST86-2400 | do | City of Sylvania | 08-08-86 | B | | |
| ST86-2401 | do | United Cities Gas Co | 08-08-86 | B | | |
| ST86-2402 | do | City of Thomson Gas System | 08-08-86 | B | | |
| ST86-2403 | do | City of Statesboro | 08-08-86 | B | | |
| ST86-2404 | do | City of Sylvania | 08-08-86 | B | | |
| ST86-2405 | do | Utilities Board of Sylacauga | 08-08-86 | B | | |
| ST86-2406 | do | Marshall County Gas District | 08-08-86 | B | | |
| ST86-2407 | do | South Carolina Pipeline Corp | 08-08-86 | B | | |
| ST86-2408 | Texas Gas Transmission Corp | Western Kentucky Gas Co | 08-08-86 | B | | |
| ST86-2409 | do | City of Carrollton | 08-08-86 | B | | |
| ST86-2410 | do | Indiana Gas Co | 08-08-86 | B | | |
| ST86-2411 | do | Western Kentucky Gas Co | 08-08-86 | B | | |
| ST86-2412 | do | City of Murray | 08-08-86 | B | | |
| ST86-2413 | do | Niagara Mohawk Power Corp | 08-08-86 | B | | |
| ST86-2414 | United Gas Pipe Line Co | United Cities Gas Co | 08-08-86 | B | | |
| ST86-2415 | Arkla Energy Resources | Arkansas Western Gas Co | 08-11-86 | B | | |
| ST86-2416 | ANR Pipeline Co | Michigan Consolidated Gas Co | 08-11-86 | B | | |
| ST86-2417 | do | do | 08-11-86 | B | | |
| ST86-2418 | do | do | 08-11-86 | B | | |
| +ST86-2419 | do | do | 08-11-86 | B | | |
| ST86-2420 | do | Arkla Energy Resources (Intra. Seg.) | 08-11-86 | B | | |
| ST86-2421 | do | Michigan Consolidated Gas Co | 08-11-86 | B | | |
| +ST86-2422 | do | do | 08-11-86 | B | | |
| ST86-2423 | do | do | 08-11-86 | B | | |
| ST86-2424 | do | Dayton Power and Light Co | 08-11-86 | B | | |
| ST86-2425 | do | Michigan Consolidated Gas Co | 08-11-86 | B | | |
| ST86-2426 | Arkla Energy Resources | City of Winfield | 08-11-86 | B | | |
| ST86-2427 | Panhandle Eastern Pipe Line Co | Northern Indiana Public Service Co | 08-11-86 | B | | |
| ST86-2428 | Producer's Gas Co | Southern California Gas Co | 08-11-86 | D | | |
| ST86-2429 | ANR Pipeline Co | Northern Illinois Gas Co | 08-12-86 | B | | |
| ST86-2430 | do | Ohio Valley Gas Corp | 08-12-86 | B | | |
| +ST86-2431 | do | Michigan Consolidated Gas Co | 08-12-86 | B | | |

| Docket No.[1] | Transporter/seller | Recipient | Date filed | Subpart | Expiration date[2] | Transportation rate (cents per/MMBtu) |
|---|---|---|---|---|---|---|
| + ST86-2432 | do | Illinois Power Co | 08-12-86 | B | | |
| ST86-2433 | do | Nothern Illinois Gas Co., *et al* | 08-1-86 | B | | |
| ST86-2434 | do | Nothern Intrastate Pipeline Co | 08-12-86 | B | | |
| ST86-2435 | do | Michigan Consolidated Gas Co | 08-12-86 | B | | |
| ST86-2436 | Trunkline Gas Co | Consumers Power Co | 08-12-86 | B | | |
| ST86-2437 | do | Houston Pipe Line Co | 08-12-86 | B | | |
| ST86-2438 | United Gas Pipe Line Co | Rochester Gas & Electric Corp | 08-12-86 | B | | |
| ST86-2439 | Texas Gas Transmission Corp | Memphis Light, Gas and Water Div | 08-12-86 | B | | |
| ST86-2440 | do | do | 08-12-86 | B | | |
| ST86-2441 | Panhandle Eastern Pipe Line Co | Indiana Gas Co | 08-13-86 | B | | |
| ST86-2442 | United Texas Transmission Co | United Gas Pipe Line Co | 08-13-86 | B | | |
| ST86-2443 | Colorado Interstate Gas Co | Hadson/New Mexico | 08-13-86 | B | | |
| ST86-2444 | ONG Transmission Co | Consumers Power Co | 08-14-86 | C | 01-14-87 | 10.00 |
| ST86-2445 | Louisiana Resources Co | various local distribution cos | 08-11-86 | C | 01-14-86 | 35.80 |
| ST86-2446 | United Gas Pipe Line Co | Indiana Gas Co | 08-14-86 | B | | |
| ST86-2447 | do | Lousiville Gas & Electric Co | 08-14-86 | B | | |
| ST86-2448 | do | West Ohio Gas Co | 08-14-86 | B | | |
| ST86-2449 | do | Memphis Light, Gas and Water Div | 08-14-86 | B | | |
| ST86-2450 | do | do | 08-14-86 | B | | |
| ST86-2451 | do | FRM, Inc | 08-14-86 | B | | |
| ST86-2452 | do | City of Henderson | 08-14-86 | B | | |
| ST86-2453 | do | Rochester Gas & Electric Corp | 08-14-86 | B | | |
| ST86-2454 | El Paso Natural Gas Co | Apache Transmission Co | 08-15-86 | B | | |
| ST86-2455 | United Gas Pipe Line Co | City of Moss Point | 08-15-86 | B | | |
| ST86-2456 | do | United Gas Pipe Line Co, Western Kentucky Gas Co | 08-15-86 | B | | |
| ST86-2457 | Delhi Gas Pipeline Corp | Natural Gas Pipeline Co. of America | 08-18-86 | C | | |
| ST86-2458 | Texas Gas Transmission Corp | PHiladelphia Gas Works, *et al* | 08-18-86 | B | | |
| ST86-2459 | Panhandle Eastern Pipe Line Co | Illinois Power Co | 08-20-86 | B | | |
| ST86-2460 | do | Arkansas Louisiana Gas Co | 08-21-86 | B | | |
| ST86-2461 | Northwest Pipeline Corp | CP National Corp | 08-21-86 | B | | |
| ST86-2462 | Consolidated Gas Transmission Corp | Cranberry Pipeline Corp | 08-21-86 | B | | |
| ST86-2463 | do | East Ohio Gas Co | 08-21-86 | B | | |
| ST86-2464 | do | Niagara Mohawk Power Corp | 08-21-86 | B | | |
| ST86-2465 | do | Hope Gas, Inc | 08-21-86 | B | | |
| ST86-2466 | do | do | 08-21-86 | B | | |
| ST86-2467 | do | Peoples Natural Gas Co | 08-21-86 | B | | |
| ST86-2468 | do | do | 08-21-86 | B | | |
| ST86-2469 | do | do | 08-21-86 | B | | |
| ST86-2470 | ANR Pipeline Co | Consumers Power Co | 08-21-86 | B | | |
| ST86-2471 | Mississippi Fuel Co | Tennessee Gas Pipeline Co | 08-21-86 | C | 01-18-87 | 14.63 |
| ST86-2472 | Texas Gas Tranmission Corp | IMC Pipeline Co | 08-22-86 | B | | |
| ST86-2473 | Ozark Gas Transmission System | Delhi Gas Pipeline Corp | 08-25-86 | B | | |
| ST86-2474 | Texas Eastern Transmission Corp | National Fuel Gas Distribution Corp | 08-25-86 | B | | |
| ST86-2475 | do | Rochester Gas & Electric Corp | 08-25-86 | B | | |
| ST86-2476 | do | Public Service Electric and Gas Co | 08-25-86 | B | | |
| ST86-2477 | do | Indiana Gas Co | 08-25-86 | B | | |
| ST86-2478 | do | Consumers Power Co | 08-25-86 | B | | |
| ST86-2479 | do | Philadelphia Electric Co | 08-25-86 | B | | |
| ST86-2480 | do | Corpus Christi Indust. Pipeline Co | 08-25-86 | B | | |
| ST86-2481 | do | Rochester Gas & Electric Corp | 08-25-86 | B | | |
| ST86-2482 | Panhandle Eastern Pipe Line Co | Peoples Natural Gas Co | 08-25-86 | B | | |
| ST86-2483 | do | Central Illinois Light Co | 08-25-86 | B | | |
| ST86-2484 | do | Consumers Power Co | 08-25-86 | B | | |
| ST86-2485 | do | Central Illinois Light Co | 08-25-86 | B | | |
| ST86-2486 | do | do | 08-25-86 | B | | |
| ST86-2487 | do | Indiana Gas Co | 08-25-86 | B | | |
| ST86-2488 | PGC Pipeline | Texas Gas Transmission Corp | 08-25-86 | B | | |
| ST86-2489 | Colorado Interstate Gas Co | Southern California Gas Co | 08-25-86 | C | | |
| ST86-2490 | do | Citizens Utilities Corp | 08-25-86 | B | | |
| ST86-2491 | do | Pacific Gas and Electric Co | 08-25-86 | B | | |
| ST86-2492 | El Paso Natural Gas Co | Jal Gas C., Inc | 08-25-86 | B | | |
| ST86-2493 | Panhandle Eastern Pipe Line Co | Consumers Power Co | 08-26-86 | B | | |
| ST86-2494 | Trunkline Gas Co | do | 08-26-86 | B | | |
| ST86-2495 | Panhandle Eastern Pipe Line Co | Illinois Power Co | 08-26-86 | B | | |
| ST86-2496 | do | Michigan Gas Utilities | 08-26-86 | B | | |
| ST86-2497 | ONG Transmission Co | Panhandle Eastern Pipe Line Co | 08-26-86 | C | 01-23-87 | 10.00 |
| ST86-2498 | MIGC, Inc | Northern Illinois Gas Co | 08-27-86 | B | | |
| ST86-2499 | do | Southern California Edison | 08-27-86 | B | | |
| ST86-2500 | Panhandle Eastern Pipe Line Co | Archer Daniels Midland Co | 08-27-86 | F(157) | | |
| ST86-2501 | do | Kansas Power and Light Co | 08-27-86 | B | | |
| ST86-2502 | do | Archer Daniels Midland Co | 08-27-86 | F(157) | | |
| ST86-2503 | Trunkline Gas Co | Consumers Power Co | 08-27-86 | B | | |
| ST86-2504 | do | do | 08-27-86 | B | | |
| ST86-2505 | Acadian Gas Pipeline System | Louisiana Industrial Gas Supply Sys | 08-29-86 | C | | |
| ST86-2506 | El Paso Natural Gas Co | Town of Ignacio | 08-28-86 | B | | |
| ST86-2507 | do | TPC Pipeline, Inc | 08-28-86 | B | | |
| ST86-2508 | do | Navajo Tribal Utility Authority | 08-29-86 | B | | |
| ST86-2509 | do | El Paso Hydrocarbons Co | 08-29-86 | B | | |
| ST86-2510 | do | Westar Transmission Co | 08-29-86 | B | | |
| ST86-2511 | Houston Pipe Line Co | Columbia Gas of Ohio, Inc | 08-29-86 | C | | |
| ST86-2512 | do | Texas Eastern Transmission Corp | 08-29-86 | C | | |
| ST86-2513 | do | Columbia Gas of Pennsylvania, Inc | 08-29-86 | C | | |
| ST86-2514 | do | United Cities Gas Co | 08-29-86 | C | | |
| ST86-2515 | do | El Paso Natural Gas Co | 08-29-86 | C | | |
| ST86-2516 | Oasis Pipe Line Co | do | 08-29-86 | C | | |
| ST86-2517 | do | Northern Natural Gas Co | 08-29-86 | C | | |
| ST86-2518 | Michigan Gas Storage Co | Consumers Power Co | 08-29-86 | B | | |
| ST86-2519 | Mississippi Fuel Co | Transcontinental Gas Pipe Line Corp | 08-29-86 | C | 01-26-87 | 14.63 |
| ST86-2520 | Mountain Fuel Resources, Inc | Intermountain Gas Co | 08-29-86 | B | | |

| Docket No.[1] | Transporter/seller | Recipient | Date filed | Subpart | Expiration date [2] | Transportation rate (cents per/MMBtu) |
|---|---|---|---|---|---|---|
| ST86-2521 | do | Pacific Gas and Electric Co | 08-29-86 | B | | |
| ST86-2522 | ONG Transmission Co | Peoples Natural Gas Co | 08-29-86 | C | 01-26-87 | 10.00/12.00 |
| ST86-2523 | do | Illinois Power Co | 08-28-86 | C | 01-25-87 | 10.00 |
| ST86-2524 | do | Panhandle Eastern Pipe Line Co | 08-28-86 | C | 01-25-87 | 10.00 |
| ST86-2525 | Panhandle Gas Co | Southern California Gas Co | 08-28-86 | D | | |
| ST86-2526 | Transwestern Pipeline Co | do | 08-29-86 | B | | |
| ST86-2527 | do | City of Long Beach | 08-29-86 | B | | |
| ST86-2528 | do | Southern California Gas Co | 08-29-86 | B | | |
| ST86-2529 | Valero Transmission Co | Valero Interstate Transmission Co | 08-29-86 | C | | |
| ST86-2530 | Valero Interstate Transmission Co | Petrofina Gas Co | 08-29-86 | B | | |
| ST86-2531 | Columbia Gulf Transmission Co | Washington Gas Light Co | 08-29-86 | G(IE) | | |
| ST86-2532 | do | National Fuel Gas Supply Corp | 08-29-86 | G(IE) | | |
| ST86-2533 | Columbia Gas Transmission Corp | Washington Gas Light Co | 08-29-86 | G(IE) | | |
| ST86-2534 | do | National Fuel Gas Supply Corp | 08-29-86 | G(IE) | | |
| ST86-2535 | do | Elam Utility Co., Inc | 08-29-86 | B | | |
| ST86-2536 | Panhandle Eastern Pipe Line Co | Richmond Gas Corp | 08-29-86 | B | | |
| ST86-2537 | do | Central Illinois Public Service Co | 08-29-86 | B | | |
| ST86-2538 | do | Consumers Power Co | 08-29-86 | B | | |
| ST86-2539 | do | East Ohio Gas Co | 08-29-86 | B | | |
| Below are five Revised Petitions for Rate Approval. They are noticed at this time to give interested parties the appropriate 150-day comment period. | | | | | | |
| ST86-0922 | Sun Gas Transmission Co., Inc | Transcontinental Gas Pipe Line Corp | 08-18-86 | C | 01-15-87 | 08.10 |
| ST86-0923 | do | Tennessee Gas Pipeline Co | 08-18-86 | C | 01-15-87 | 21.20 |
| ST86-1020 | Arkansas Oklahoma Gas Corp | Columbia Gas Transmission Corp | 08-19-86 | C | 01-16-87 | 21.00 |
| ST86-1021 | do | Tennessee Gas Pipeline Co | 08-19-86 | C | 01-16-87 | 21.00 |
| ST86-1022 | do | Mississippi River Transmission Corp | 08-19-86 | C | 01-16-87 | 21.00 |

[1] The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.
[2] The intrastate pipeline has sought Commission approval of its transportation rate pursuant to Section 284.123(b)(2) of the Commission's Regulations (18 CFR 284.123(b)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.
+ These filings were rejected by Delegation Letter Order of the Director, Office of Pipeline and Producer Regulation on August 27, 1986.

[FR Doc. 86-24359 Filed 10-27-86; 8:45 am]
BILLING CODE 6717-01-M

**[Docket No. SA87-2-000]**

## Pogo Producing Co.; Petition for Adjustment

Issued: October 22, 1986.

On October 8, 1986, Pogo Producing Company (Pogo) filed with the Federal Energy Regulatory Commission a petition for waiver pursuant to Commission Order No. 399-A,[1] section 502(c) of the Natural Gas Policy Act of 1978,[2] and Subpart K of the Commission's Rules of Practice and Procedure.[3] Pogo seeks waiver of Btu refund obligations to United Gas Pipe Line Company, Sea Robin Pipeline Company, and Southern Natural Gas Company attributable to royalty interests of the Federal government under oil and gas leases located in the Outer Continental Shelf for which Pogo made payment to the Federal government prior to November 9, 1981. Under Order No. 399,[4] these refunds are due by November 5, 1986. Pogo also seeks waiver of this deadline.

Pogo alleges that it has diligently, but thus far unsuccessfully, pursued its legal remedies to recoup these funds from the Department of Interior Minerals Management Service (MMS), which asserts that the refunds are barred by the statute of limitations under section 10 of the Outer Continental Shelf Lands Act.[5] Pogo requests that the refund waiver it seeks be effective until the Department of Interior's Board of Land Appeals or other body of competent jurisdiction orders the MMS, in a final and nonappealable order, to refund the royalties to Pogo.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 86-24360 Filed 10-27-86; 8:45 am]
BILLING CODE 6717-01-M

[1] 49 FR 46,353 (November 26, 1984); FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶ 30,612.
[2] 15 U.S.C. 3412(c) (1982).
[3] 18 CFR 385.1101-.1117 (1986).
[4] 49 FR 37,735 at 37,740 (September 26, 1984), FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶ 30,597 at p. 31,150.

**[Project No. 8607-002]**

## Prospect Associates Co.; Surrender of Preliminary Permit

October 22, 1986.

Take notice that Prospect Associates Company, permittee for the Shady Cove Project No. 8607, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 8607 was issued on April 30, 1985, and would have expired on March 31, 1988. The project would have been located on the Rogue River near the town of Shady Cove, Jackson County, Oregon.

The permittee filed the request on September 30, 1986, and the preliminary permit for Project No. 8607 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 86-24353 Filed 10-27-86; 8:45 am]
BILLING CODE 6717-01-M

[5] 43 U.S.C. 1339 (1982).

**[Docket No. RP87-5-000]**

## Transcontinental Gas Pipe Line Corp.; Petition for Declaratory Order

October 22, 1986.

Take notice that on October 3, 1986, Transcontinental Gas Pipe Line Corporation (Transco) filed, in Docket No. RP87-5-000, a petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) for a declaratory order.

Transco requests the Commission to resolve uncertainty regarding the appropriate treatment of WSS and T-I

nominations within sales contract levels during the present period of "interim open access" on Transco's system. Specifically, it is Transco's understanding that: (1) Order No. 436 requirements were not intended to disturb existing certificated services; (2) Order No. 436 requirements did not contemplate service that had the characteristics of "firm/interruptible" or "quasi-firm/interruptible" depending on whether the service was within a customer's sales contract demand level or in excess of such level; and (3) Upper "open access", sales contract customers have no preferential call on available pipeline capacity unless and until some type of firm transportation service with standby sales service has been approved and made effective, as would be the case under Transco's pending settlement. Transco has advised its customers that it does not intend to make WSS withdrawals or T–I deliveries "firm within sales contract." It recognizes, however, that customers may disagree with this conclusion, and that the ground rules are less than clear. Transco, therefore, asks the Commission to provide guidance through a Declaratory Order.

Any person desiring to be heard or to make any protest with reference to said petition should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before November 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 86–24361 Filed 10–27–86; 8:45 am]

BILLING CODE 6717–01–M

---

**[Docket No. TC87–2–000, etc]**

## Arkla Energy Resources et al; Tariff Sheet Filings

October 23, 1986

In the matter of: Arkla Energy Resources, a Division of Arkla, Inc., Docket No. TC87–2–000

North Penn Gas Company, Docket No. TC87–3–000

Florida Gas Transmission Company, Docket No. TC87–4–000

Take notice that the following pipelines [1] have filed revised tariff sheets to become effective November 15, 1986, pursuant to § 281.204(b) of the Commission's Regulations, which requires interstate pipelines to update their respective index of entitlements annually to reflect changes in priority 2 entitlements (Essential Agricultural Users).[2]

*Pipeline and Docket No.*

(1) Arkla Energy Resources, a Division of Arkla, Inc. TC87–2–000. Filed: October 14, 1986.

Eighth Revised Sheet No. 3E
Eighth Revised Sheet No. 3F
Eighth Revised Sheet No. 3G
Eighth Revised Sheet No. 3H
Eighth Revised Sheet No. 3I
Eighth Revised Sheet No. 3J of FERC Gas Tariff, First Revised Volume No. 1

(2) North Penn Gas Company TC87–3–000. Filed: October 15, 1986.

Fourth Revised Sheet No. 12K
Fourth Revised Sheet No. 12L
Second Revised Sheet No. 12M of FERC Gas Tariff, First Revised Volume No. 1

(3) Florida Gas Transmission Company TC87–4–000. Filed: October 15, 1986.

Third Revised Sheet No. 30
Third Revised Sheet No. 31
Third Revised Sheet No. 32
Third Revised Sheet No. 33
Third Revised Sheet No. 34
Third Revised Sheet No. 35
Third Revised Sheet No. 36
Third Revised Sheet No. 37 of FERC Gas Tariff, First Revised Volume No. 1

Any person desiring to be heard or to make any protest with reference to said tariff sheet filing should on or before November 6, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 of 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

**Kenneth F. Plumb,**

*Secretary.*

*Appendix*

Arkla Energy Resources, a Division of Arkla, Inc., P.O. Box 21734, Shreveport, Louisiana 71151

North Penn Gas Company, 76–80 Mill Street, Port Allegany, Pennsylvania 16743

Florida Gas Transmission Company, P.O. Box 1188, Houston, Texas 77001

[FR Doc. 86–24355 Filed 10–27–86; 8:45 am]

BILLING CODE 6717–01–M

[1] Addresses of the pipelines are listed in the Appendix hereto.

[2] Section 281.204(b)(2) states that these filings are to be made by September 15 with an effective date of November 1; however, Arkla Energy Resources, North Penn Gas Company, and Florida Gas Transmission Company were granted extensions of time to file by October 15, 1986, with effective dates of November 15, 1986, in Docket Nos. TC86–20–000, TC86–10–000, and TC86–9–000, respectively.

---

**[Docket Nos. CP87–13–000 and CP87–30–000]**

## Brooklyn Union Gas Co. and Distrigas of Massachusetts Corp.; Complaints and Petition for Declaratory Order

October 21, 1986.

In the matter of: The Brooklyn Union Gas Company, Docket No. CP87–13–000; Complainant vs. Distrigas of Massachusetts Corporation, Respondent

Boston Gas Company, Docket No. CP87–30–000; Complainant vs. Distrigas of Massachusetts Corporation, Respondent

Take notice that on October 8, 1986, The Brooklyn Union Gas Company (Brooklyn Union), 195 Montague Street, Brooklyn, New York 11201, filed a complaint and petition in Docket No. CP87–13–000 pursuant to sections 4, 5, 7, and 16 of the Natural Gas Act and Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207), requesting that the Commission (1) initiate expedited proceedings to determine whether the Distrigas of Massachusetts Corporation's (DOMAC) LNG project as presently structured is consistent with the public interest; (2) modify the certificate issued to DOMAC in Docket No. CP77–216 to sell Algerian LNG in interstate commerce to reduce the total annual quantity of LNG DOMAC is authorized to terminal and sell to Brooklyn Union and its other jurisdictional customers to a level determined to be required by the present or future public convenience and necessity; (3) conduct an expedited hearing pursuant to section 5 of the Natural Gas Act to determine whether or not DOMAC's current tariff providing for the collection of demand charges, including a 9.5 percent return on equity, is unjust and unreasonable in view of the *de facto* abandonment of the project; (4) issue an order suspending the obligation of Brooklyn Union and DOMAC's other customers in view of

the *de facto* abandonment of the LNG project and ordering refunds with interest to be made from September 30, 1985, for all demand and/or minimum bill charges collected pursuant to tariff sheets which became effective subject to refund on October 1, 1985, in Docket No. RP85–125–000; and (5) grant such other and further expedited relief as may be required to protect Brooklyn Union and other DOMAC customers and consumers from exploitation and excessive rates and charges that are unjust and unreasonable, all as more fully set forth in the complaint and petition which is on file with the Commission and open to public inspection.

Take further notice that on October 20, 1986, Boston Gas Company (Boston Gas), One Beacon Street, Boston, Massachusetts 02108, filed a similar complaint against DOMAC in Docket No. CP87–30–000, in which it requests (1) a determination that it is excused as of September 30, 1985, from any and all obligations under the terms of its service agreement with DOMAC for LNG sales and terminalling services, including any obligation to pay demand or minimum bill charges to DOMAC in connection with the LNG import project of DOMAC and its sister corporation, Distrigas Corporation; (2) an order that DOMAC be required to refund with interest all such charges paid by Boston Gas since that date; and (3) pending such relief, interim authorization to deposit into escrow any and all future demand charges that would otherwise be payable to DOMAC, all as more fully set out in the complaint which is on file with the Commission and open to public inspection.

Brooklyn Union and/or Boston Gas assert that (a) DOMAC's LNG project has been in a state of *de facto* abandonment since September 1985; (b) DOMAC's affiliate and sole source of LNG, Distrigas Corporation, has repudiated the underlying LNG supply contract with the Algerian seller and has filed a voluntary petition in bankruptcy; (c) fundamental changes have occurred in the natural gas industry, including the availability of new more competitive gas supplies and the replacement of DOMAC LNG since the *de facto* abandonment of the project; (d) there is no present or reasonably foreseeable prospect that the LNG project would be revived as a base load year-round import project; and (e) pursuant to revised rates which became effective subject to refund on October 1, 1985, in Docket No. RP85–125–000, DOMAC is continuing to collect demand and/or minimum bill charges from all of its jurisdictional customers despite the *de facto* abandonment of the LNG project. These demand charges are alleged to include 50 percent of DOMAC's claimed 19 percent return on equity and associated taxes together with DOMAC's other fixed costs.

The complainants further allege that continued suspension of DOMAC's operations violates the express conditions of its FERC certificate and that DOMAC has violated the Natural Gas Act by failing to maintain service at the lowest reasonable rates. They contend that, as a result, they should not be required to continue paying for DOMAC's abandoned LNG project and to pay the substantial costs incurred for replacement supply.

Pursuant to Rule 213 of the Commission's rules of practice and procedure, DOMAC is to respond to the complaints by Brooklyn Union and Boston Gas and petition for a declaratory order within 20 days from the date of this notice.

Any person desiring to be heard or to make any protest with reference to the said complaints and petition should on or before November 10, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

**Kenneth F. Plumb**

*Secretary.*

[FR Doc. 86–24356 Filed 10–27–86; 8:45 am]

BILLING CODE 6717–01–M

---

**[Docket No. RP87–10–000]**

## Colorado Interstate Gas Co.; Tariff Filing

October 23, 1986.

Take notice that on October 16, 1986, Colorado Interstate Gas Company (CIG) tendered for filing the following revised tariff sheets to be a part of its FERC Gas Tariff, Original Volume No. 1, effective November 1, 1986:

Third Revised Sheet No. 10
First Revised Sheet No. 10A
First Revised Sheet No. 11B
Third Revised Sheet No. 16

CIG states that these revised tariff sheets reflect a change in the definition of "Full Requirement Customer" as set forth in CIG's Rate Schedules G–1, PR–1 and P–1. Under the proposed change, a Full Requirement Customer will be defined as a resale customer that purchases 75 percent or more of its total annual gas requirements from CIG. Under the existing tariff provisions, a Full Requirement Customer is defined as a resale customer that purchases 75 percent of its total monthly gas requirements from CIG.

CIG has served copies of this filing on all of its jurisdictional customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before October 30, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 86–24357 Filed 10–27–86; 8:45 am]

BILLING CODE 6717–01–M

---

## ENVIRONMENTAL PROTECTION AGENCY

**[AAA-FRL—3101–5]**

## EPA Master List of Debarred, Suspended or Voluntarily Excluded Persons

**AGENCY:** Environmental Protection Agency.

**ACTION:** EPA master list of debarred, suspended, or voluntarily excluded persons.

**SUMMARY:** 40 CFR 32.400 requires the Director, Grants Administration Division, to publish in the **Federal Register** each calendar quarter the names of, and other information concerning, those parties debarred, suspended, or voluntarily excluded from participation in EPA assisted programs by EPA action under Part 32. Assistance (grant and cooperative agreement) recipients and contractors under EPA

assistance awards may not initiate new business with these firms or individuals on any EPA funded activity during the period of suspension, debarment, or voluntary exclusion.

This short list contains the names of those persons who have been listed as a result of EPA actions only. It is provided for general informational purposes only and is not to be relied on in determining a person's current eligibility status. A comprehensive list, updated weekly, is available in each Regional Office. Inquiries concerning the status of any individual, organization, or firm should be directed to EPA's Regional or Headquarters office for grants administration that normally serves you.

**DATE:** This short list is current as of September 22, 1986.

**FOR FURTHER INFORMATION CONTACT:** Frank Dawkins, of the EPA Compliance Staff, Grants Administration Division, at (202) 475–8025.

Dated: September 25, 1986.

**Harvey G. Pippen, Jr.,**

*Director, Grants Administration Division (PM–216).*

EPA MASTER LIST OF DEBARRED, SUSPENDED AND VOLUNTARILY EXCLUDED PERSONS

| Name and Jurisdiction | File No. | Status [1] | From | To | Grounds |
|---|---|---|---|---|---|
| A.C. Lawrence Leather Co., Inc. (Danvers, MA) | 83-0007-00 | D | 04-12-84 | 04-11-87 | § 32.200(a)(c)(i) |
| A.F. Beil Electric Co., Inc. (Youngstown, OH) | 85-0014-00 | D | 06-27-85 | 06-26-88 | § 32.200(a) |
| Altman, Larry L. (Charleston, SC) | 85-0063-03 | S | 07-29-85 | Open | § 32.300(b) |
| American Recovery Co., Inc. (Glen Burnie, MD) | 86-0011-00 | D | 08-20-86 | 08-19-89 | § 32.200(f)(i) |
| Averill, Ernest Jr. (Fort Myers, FL) | 83-0066-06 | D | 12-02-83 | 10-29-88 | § 32.200(b) |
| Azzil Trucking Co., Inc. (Roslyn, NY) | 85-0008-02 | D | 09-11-86 | 09-10-89 | § 32.200(a)(b) |
| Barber, Lawrence (Hazelwood, NC) | 83-0007-05 | D | 04-12-84 | 04-11-87 | § 32.200(a)(c)(i) |
| Barnum, James Charles (Utica, MI) | 86-0010-01 | D | 12-10-85 | 12-09-88 | § 32.200(a) |
| Batzer Construction Co., Inc. (St. Cloud, MN) | 85-0052-00 | S | 03-07-86 | Open | § 32.300(b) |
| Batzer, Bruce (St. Cloud, MN) | 85-0052-01 | S | 03-07-86 | Open | § 32.300(b) |
| Batzer, Robert (St. Cloud, MN) | 85-0052-02 | S | 03-07-86 | Open | § 32.300(b) |
| Beckham, Charles (Detroit, MI) | 84-0030-02 | D | 02-24-86 | 07-30-89 | § 32.200(a)(b) |
| BECO, Inc. (High Point, NC) | 85-0017-01 | VE | 12-10-85 | 12-09-88 | § 32.200(a)(3) |
| Bell, Bobby (Sulphur, LA) | 85-0071-01 | D | 03-06-86 | 03-05-89 | § 32.200(a)(b) |
| Bell, Edwin (Sulphur, LA) | 85-0071-02 | D | 03-06-86 | 03-05-89 | § 32.200(a)(b) |
| Blackwelder, Ray Martin (Concord, NC) | 84-0011-01 | D | 06-27-85 | 06-26-88 | § 32.200(a) |
| Bowers, Darralyn (Detroit, MI) | 84-0030-01 | D | 02-24-86 | 05-11-89 | § 32.200(a)(b) |
| Boyette, Willie Eugene (Wilson, NC) | 83-0044-01 | D | 04-15-85 | 04-14-87 | § 32.200 (a) |
| Bridges, William D., Jr. (Wilmington, NC) | 85-0069-01 | D | 04-09-86 | 04-08-89 | § 32.200(a) |
| Cannady, Nathaniel Ellis (Asheville, NC) | 86-0047-01 | D | 03-18-86 | 07-15-89 | § 32.200(a)(i) |
| Carson, Charles (Grosse Point Woods, MI) | 85-0066-00 | D | 03-18-86 | 04-25-89 | § 32.200(b) |
| Carson, E. Eugene (Statesville, NC) | 85-0004-01 | D | 01-06-86 | 01-05-89 | § 32.200(a) |
| Commonwealth Electric Co., Inc. (Lincoln, NE) | 86-0100-00 | S | 09-09-86 | Open | § 32.300(b) |
| Cooney Construction Co., Inc. (Waucon, IA) | 86-0062-00 | S | 03-18-86 | Open | § 32.300(b) |
| Croft, William A. (Madison, WI) | 83-0047-00 | D | 08-20-84 | 08-19-87 | § 32.200(a) |
| Cryer, John P. (Baton Rouge, LA) | 85-0062-03 | S | 07-29-85 | Open | § 32.300(b) |
| Cummins Construction Co., Inc. (Enid, OK) | 86-0069-00 | S | 09-08-86 | Open | § 32.300(b) |
| Cusenza, Sam (Ypsilanti, MI) | 85-0024-02 | D | 02-24-86 | 04-02-89 | § 32.200(a)(b) |
| Cuti, Vincent J., Jr. (Huntington, NY) | 83-0040-03 | D | 04-30-85 | 04-29-88 | § 32.200(a) |
| Dellinger, Theodore C. (Monroe, NC) | 84-0012-01 | VE | 03-12-85 | 03-11-88 | § 32.200(a) |
| Dobson, Arthur A. (Lincoln, NE) | 83-0030-01 | D | 08-30-85 | 04-18-87 | § 32.200(i) |
| Domanski, Gary Henry (Utica, MI) | 86-0010-02 | D | 12-10-85 | 12-09-88 | § 32.200(a) |
| Dykes, Lamar D. (Nederland, TX) | 85-0071-03 | D | 03-06-86 | 03-05-89 | § 32.200(a)(b) |
| Enmanco (Utica, MI) | 86-0010-00 | D | 12-10-85 | 12-09-88 | § 32.200(a) |
| Environmental Management Corp. (Utica, MI) | 86-0010-00 | D | 12-10-85 | 12-09-88 | § 32.200(a) |
| Fischback & Moore, Inc. (Dallas, TX) | 84-0023-00 | D | 01-15-86 | 10-19-87 | § 32.200(a) |
| Floyd D. Stuckey & Associate (Winfield, KS) | 84-0028-00 | D | 08-26-85 | 08-25-88 | § 32.200(a) |
| Foley, Bancroft T. (Washington, DC) | 86-0004-03 | D | 03-07-86 | 03-06-89 | § 32.200(a) |
| Franklin Wiring Co. (Youngstown, OH) | 85-0044-00 | D | 09-04-85 | 09-03-88 | § 32.200(a)(3) |
| FSA Engineering Consultants (Winfield, KS) | 84-0028-00 | D | 08-26-85 | 08-25-88 | § 32.200(a) |
| Gabey, Martin (Northport, NY) | 83-0040-02 | D | 12-16-83 | 12-15-86 | § 32.200(a) |
| Geuther, Herbert G. (Philadelphia, PA) | 86-0004-04 | D | 03-07-86 | 03-06-89 | § 32.200(a) |
| Goodspeed, Robert (North Hampton, NH) | 83-0007-02 | D | 04-12-84 | 04-11-87 | § 32.200(c)(i) |
| Graves, George William (Wilmington, NC) | 85-0069-02 | D | 03-05-86 | 03-04-89 | § 32.200(a) |
| Hansen, Leonard A. (St. Peter, MN) | 85-0019-02 | D | 09-26-85 | 09-25-88 | § 32.200(a)(3) |
| Hector Construction Co., Inc. (Caledonia, MN) | 85-0056-00 | S | 03-18-86 | Open | § 32.300(b) |
| Herring, Donald W. (Wilson, NC) | 83-0044-01 | D | 10-11-84 | 10-10-87 | § 32.200(a) |
| Hi-Way Surfacing, Inc. (Marshall, MN) | 85-0053-00 | D | 12-17-85 | 12-16-88 | § 32.200(a)(3) |
| Hochreiter, Herbert (Roslyn, NY) | 85-0008-01 | D | 09-11-86 | 09-10-89 | § 32.200(a)(b) |
| Hodges Electric Co. (Wilmington, NC) | 85-0070-00 | D | 04-04-86 | 04-03-89 | § 32.200(a) |
| Hopper, Thomas G. (Bedford, MA) | 86-0095-03 | S | 06-24-86 | Open | § 32.300(b) |
| Howard P. Foley, Co. (Washington, DC) | 86-0004-00 | D | 03-07-86 | 03-06-89 | § 32.200(a) |
| Hugo Schulz, Inc. (Lakefield, MN) | 85-0047-00 | D | 05-01-86 | 04-30-89 | § 32.200(a) |
| Insulation Speciality and Supply, Inc. (Cleveland, OH) | 84-0025-00 | D | 10-04-84 | 10-03-87 | § 32.200(c)(i) |
| J.A. LaPorte, Inc. (Arlington, VA) | 86-0037-00 | D | 08-29-86 | 08-28-89 | § 32.200(a)(3) |
| Jerlow, John A. (Lakefield, MN) | 85-0047-02 | D | 05-01-86 | 04-30-89 | § 32.200(a) |
| Johnson, C. Theodore (Indianapolis, IN) | 84-0023-04 | D | 03-04-86 | 03-03-89 | § 32.200(a)(f) |
| Johnson, Richard (Hinsdale, NH) | 83-0007-03 | D | 04-12-84 | 04-11-87 | § 32.200(c)(i) |
| Jopel Contracting and Trucking Corp. (Bronx, NY) | 85-0022-00 | S | 07-30-85 | Open | § 32.300(b) |
| Komatz Construction Co., Inc. (St. Peter, NM) | 85-0019-00 | D | 09-26-85 | 09-25-88 | § 32.200(a)(3) |
| Komatz, Thomas P. (St. Peter, MN) | 85-0019-01 | D | 09-26-85 | 09-25-88 | § 32.200(a)(3) |
| Krueger, Joseph (Cleveland, OH) | 84-0025-01 | D | 10-04-84 | 10-03-87 | § 32.200(c)(i) |
| Kruse, Lloyd C. (Lakefield, MN) | 85-0047-01 | D | 05-01-86 | 04-30-89 | § 32.200(a) |
| Law, David P. (Greenwell Springs, LA) | 85-0064-00 | S | 07-29-85 | Open | § 32.300(b) |
| Law, Theresa McBeth (Greenwell Springs, LA) | 85-0064-01 | S | 07-29-85 | Open | § 32.300(b) |
| Lee, Herbert P., III. (Sumter, SC) | 84-0013-01 | VE | 02-14-85 | 12-31-87 | § 32.200(a) |
| Lench, Frank P. (Lafayette, CA) | 86-0004-01 | D | 03-07-86 | 03-06-89 | § 32.200(a) |
| Leyendecker Highway Contractors, Inc. (Laredo, TX) | 86-0014-00 | D | 07-17-86 | 03-25-88 | § 32.200(a) |
| Lizza Industries, Inc. (Roslyn, NY) | 85-0008-00 | D | 09-11-86 | 09-10-89 | § 32.200(a)(b) |
| Marshall, Weymouth (Gloucester, MA) | 83-0007-01 | D | 04-12-84 | 04-11-87 | § 32.200(c)(i) |
| Masselli, William P. (Bronx, NY) | 85-0022-02 | S | 07-30-85 | Open | § 32.300(b) |
| McDowell Contractors, Inc. (Nashville, TN) | 84-0014-00 | VE | 12-23-85 | 12-22-88 | § 32.200(a) |
| Midhampton Asphalt (Roslyn, NY) | 85-0008-03 | D | 09-11-86 | 09-10-89 | § 32.200(a)(b) |
| Modern Electric Co. (Statesville, NC) | 85-0004-00 | D | 01-06-86 | 01-05-89 | § 32.200(a) |
| Moore, Gray E. (Jr.) (Greenwood, SC) | 86-0108-00 | D | 08-19-86 | 08-18-89 | § 32.200 |
| Moorehead, Dennis L. (Graniteville, SC) | 84-0006-01 | D | 01-11-85 | 01-10-88 | § 32.200(a) |

EPA MASTER LIST OF DEBARRED, SUSPENDED AND VOLUNTARILY EXCLUDED PERSONS—Continued

| Name and Jurisdiction | File No. | Status [1] | From | To | Grounds |
|---|---|---|---|---|---|
| Moorse, Lawrence (Marshall, MN) | 85-0053-01 | D | 12-17-85 | 12-16-88 | § 32.200(a)(3) |
| Municipal & Industrial Pipe Services, Ltd. (Douglasville, GA) | 82-0601, 82-0408 | D | 10-07-82 | 02-16-87 | § 32.200(b)(c)(e)(i) |
| Murray Paving Co., Inc. (Whitesboro, NY) | 84-0032-00 | D | 08-19-85 | 10-18-86 | § 32.200(a) |
| Murray, Harry (Whitesboro, NY) | 84-0032-01 | D | 08-19-85 | 10-18-86 | § 32.200(a) |
| Newman, Fred M. (Vienna, VA) | 83-0072-01 | D | 09-30-83 | 09-29-86 | § 32.200(i) |
| Newman, Richard Gordon (Pierre, SD) | 83-0041-00 | D | 11-29-83 | 11-28-86 | § 32.200(a) |
| Newt Solomon, Inc. (Nashville, TN) | 85-0058-00 | D | 10-10-85 | 10-09-88 | § 32.200(e)(i) |
| Owens, Jerry B. (Southfield, MI) | 85-0065-00 | D | 02-24-86 | 03-26-89 | § 32.200(b) |
| Peterson, Roger A. (Cloquet, MN) | 85-0054-02 | D | 02-25-86 | 01-31-87 | § 32.200(a) |
| Pinney, J.A. Bruce (Bala Cynwyd, PA) | 84-0023-06 | D | 01-15-86 | 03-03-89 | § 32.200(a)(f) |
| Pipeline Renovation Service, Inc. (Tacoma, WA) | 86-0078-00 | D | 07-02-86 | 08-07-89 | § 32.200(c)(i) |
| Regenscheid, Charles E. (St. Peter, MN) | 85-0019-03 | VE | 12-19-85 | 12-18-87 | § 32.200(a)(3) |
| Rio Grande Construction Co. (Bunkie, LA) | 85-0063-00 | S | 07-29-85 | Open | § 32.300(b) |
| Rogers, Joseph J. (Pittsburgh, PA) | 86-0004-02 | D | 03-07-86 | 03-06-89 | § 32.200(a) |
| Rothrock Construction, Inc. (Murrells Inlet, NC) | 83-0064-00 | D | 05-17-84 | 05-16-87 | § 32.200(a) |
| Rothrock, Steve D. (Murrells Inlet, NC) | 83-0064-01 | D | 05-18-84 | 05-17-87 | § 32.200(a) |
| Ruggles, Myron R. (Berlin Center, OH) | 85-0016-02 | VE | 07-09-85 | 01-08-87 | § 32.200(a) |
| Rupp Construction Co., Inc. (Slayton, MN) | 85-0048-00 | D | 07-17-86 | 07-16-89 | § 32.200(a) |
| Rupp, Douglas (Slayton, MN) | 85-0048-01 | D | 07-17-86 | 07-16-89 | § 32.200(a) |
| Sarandos, Constantino (Gus) (Tacoma, WA) | 86-0078-02 | D | 07-02-86 | 08-07-89 | § 32.200(c)(i) |
| Sarandos, Dolores K. (Tacoma, WA) | 86-0078-01 | D | 07-02-86 | 08-07-89 | § 32.200(c)(i) |
| Sarandos, George (Tacoma, WA) | 86-0078-03 | D | 07-02-86 | 08-07-89 | § 32.200(c)(i) |
| Sargent, Frederic B. (Pittsburgh, PA) | 85-0020-01 | VE | 07-26-85 | 02-12-87 | § 32.200(a)(3) |
| Saunders, George F. (High Point, NC) | 85-0017-02 | VE | 12-10-85 | 12-09-88 | § 32.200(a)(3) |
| Sauseda, Roy (Burkie, LA) | 85-0063-02 | S | 07-29-85 | Open | § 32.300(b) |
| Schulze, Leland (Caledonia, MN) | 85-0056-01 | S | 03-18-86 | Open | § 32.300(b) |
| Seale, Leonard M. (Bedford, MA) | 86-0095-02 | S | 06-24-86 | Open | § 32.300(b) |
| Shepherd, Frank A. (Clifton, TN) | 85-0059-01 | D | 03-26-86 | 11-03-86 | § 32.200(e)(i) |
| Slattery, Edward J. (Youngstown, OH) | 85-0015-01 | D | 09-15-85 | 03-14-87 | § 32.200(a)(3) |
| Smith, Paul F. (Lakefield, MN) | 85-0047-03 | D | 05-01-86 | 04-30-89 | § 32.200(a) |
| Solomon, Newt (Nashville, TN) | 85-0058-01 | D | 10-07-85 | 10-06-88 | § 32.200(e)(i) |
| Stone, Francis (Swanzey, NH) | 83-0007-04 | D | 04-12-84 | 04-11-87 | § 32.200(a)(c)(f) |
| Stuckey, Floyd D. (Winfield, KS) | 84-0028-01 | D | 08-26-85 | 08-26-88 | § 32.200(a) |
| Tow Brothers Const., Co. (Fairmont, MN) | 85-0054-00 | D | 01-22-86 | 01-21-89 | § 32.200(a) |
| Tow, James (Fairmont, MN) | 85-0054-01 | D | 01-22-86 | 01-21-89 | § 32.200(a) |
| Toy, Daniel Lee (Utica, MI) | 86-0010-03 | D | 12-10-85 | 12-09-88 | § 32.200(a) |
| Tubre Enterprises (Bunkie, LA) | 85-0062-01 | S | 07-29-85 | Open | § 32.300(b) |
| Tubre Enterprises, Inc. (Bunkie, LA) | 85-0062-00 | S | 07-29-85 | Open | § 32.300(b) |
| Tubre, Charles (Baton Rouge, LA) | 85-0062-02 | S | 07-29-85 | Open | § 32.300(b) |
| Tubre, Thomas (Bunkie, LA) | 85-0063-01 | S | 07-29-85 | Open | § 32.300(b) |
| Tucker Brothers Contracting Co. (Pell City, AL) | 83-0061-00 | D | 11-26-84 | 11-25-87 | § 32.200(a) |
| Tucker., Harold Ray (Pell City, AL) | 83-0061-02 | D | 11-26-84 | 11-25-87 | § 32.200(a) |
| Tucker, Kenneth W. (Pell City, AL) | 83-0061-01 | D | 11-26-84 | 11-25-87 | § 32.200(a) |
| Twedell, David Bruce (Gainesville, FL) | 83-0020-01 | D | 08-30-85 | 08-29-87 | § 32.200(a) |
| Ulland Brothers, Inc. (Cloquet, MN) | 85-0054-00 | D | 02-25-86 | 01-31-87 | § 32.200(a) |
| Ulland, Robert O. (Cloquet, MN) | 85-0054-01 | D | 02-25-86 | 01-31-87 | § 32.200(a) |
| Universal Engineering & Supply, Inc. (Sulphur, LA) | 85-0071-00 | D | 03-06-86 | 03-05-89 | § 32.200(a)(b) |
| Universal Engineering (Sulphur, LA) | 85-0071-05 | D | 03-06-86 | 03-05-89 | § 32.200(a)(b) |
| Universal Wheels, Inc. (Sulphur, LA) | 85-0071-06 | D | 03-06-86 | 03-05-89 | § 32.200(a)(b) |
| Valentini, Joseph (Ypsilanti, MI) | 85-0024-01 | D | 02-24-86 | 04-02-89 | § 32.200(a)(b) |
| Vryenhoek, Ralph D. (Pittsburgh, PA) | 85-0020-02 | VE | 07-26-85 | 02-13-87 | § 32.200(a)(3) |
| W.V. Pangborne & Co., Inc. (Bala Cynwyd, PA) | 84-0023-05 | D | 01-15-86 | 10-19-87 | § 32.200(a)(f) |
| Watson Electrical Construction Co. (Wilson , NC) | 83-0044-00 | D | 04-15-85 | 04-14-87 | § 32.200(a) |
| Watson-Flagg Electric, Co., Inc. (Indianapolis, IN) | 84-0023-03 | D | 04-28-86 | 10-19-87 | § 32.200(a) |
| Williams, G. Marvin (Asheville, NC) | 86-0047-02 | D | 03-18-86 | 07-15-89 | § 32.200(i) |
| Wilson, John Bruff (Lebanon, TN) | 84-0014-01 | VE | 10-16-85 | 10-15-86 | § 32.200(a) |
| Wirt, David (Douglasville, GA) | 82-0601, 82-0408 | D | 10-07-82 | 02-16-87 | § 32.200(b)(c)(e)(i) |
| Wirt, Gordon D. (Douglasville, GA) | 82-0406 | D | 12-07-82 | 02-16-87 | § 32.200(c)(e) |
| Wirt, Judith C. (Douglasville, GA) | 82-0408 | D | 12-07-82 | 02-16-87 | § 32.200(c)(e)(i) |
| Wolverine Disposal, Inc. (Ypsilanti, MI) | 85-0024-00 | D | 02-24-86 | 04-02-89 | § 32.200(a)(b) |
| Young, Frank Paul (Sr.) (Glen Burnie, MD) | 86-0011-01 | D | 08-20-86 | 08-19-89 | § 32.200(f)(i) |

[1] D = Debarred; S = Suspended; VE = Voluntarily excluded.

[FR Doc. 86-24323 Filed 10-27-86; 8:45 am]
BILLING CODE 6560-50-M

[FRL-3101-4]

## Low-BTU Coal Gasification Point Source Category, Notice of Availability of Information

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability of information.

**SUMMARY:** EPA has developed a technical support document for the low-Btu coal gasification point source category. This document presents information on wastewater pollution and its control for the industry. This document is entitled, *Low-Btu Gasification Wastewater Technical Support Document.*

**ADDRESSES:** This document is available through the National Technical Information Service, Springfield, Virginia, 703-487-4600. Copies and supporting information are also available for inspection and copying in EPA's Industrial Technology Division and EPA Public Information Reference Unit, Room 2404 (EPA Library), 401 M Street SW, Washington, DC 20460. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Susan de Nagy, Industrial Technology Division (WH-552), U.S. EPA, 401 M Street SW., Washington, DC 20460, 202-382-7131.

**SUPPLEMENTARY INFORMATION:** The Industrial Technology Division of EPA has developed a technical support document for the low-Btu coal

gasification point source category. The purpose of this document is to present the process and wastewater effluent data that were collected and analyzed by the EPA from 1979 to 1981 on the low-Btu gasification industry. It is hoped that this information will be useful to permit writers, industry, and the general public when determining appropriate wastewater pollution control systems for the low-Btu gasification industry. Information is provided on the status of the low-Btu gasification industry (updated as of early 1986), wastewater characterization, production process descriptions, and wastewater treatment technologies.

The low-Btu gasification industry is defined, for purposes of this document, as air blown gasifiers using coal as the primary feedstock and producing a gas with a heating value of approximately 150 Btu/SCF. Most commercial low-Btu gas facilities produce gas for consumption on the site. Typically, the gas is used in process heating where solid fuel is not suitable. The low Btu gas industry over the period from 1975 to 1985 has consisted of 32 facilities: 16 commercial and 16 pilot plants or process development units. Many of the commercial facilities employ fixed bed, atmospheric pressure gasifiers.

Wastewater characterization data for the low-Btu gasification industry were primarily obtained from seven sampling visits at four operating low-Btu gasifiers (one plant was sampled twice, and another three times). Individual wastewater streams produced at these facilities were sampled in order to determine raw wastewater pollutant loadings.

The data were analyzed to determine concentrations of priority pollutants, Appendix C compounds, nonconventional and conventional pollutants, and a number of other organic pollutants specifically singled out for analysis in the synthetic fuels industries.

Following wastewater characterization, methods to treat the wastewater were investigated. This primarily involved a one-year, on-site pilot scale wastewater treatability study at a commercially operating low-Btu gasifier.

This document contains no legally binding regulations or requirements, and nothing contained in the document relieves a facility from compliance with existing or future environmental or permit requirements. Rather this document presents the data obtained by EPA on the low-Btu gasification industry for informational purposes only.

Dated: September 30, 1986.

**Lawrence J. Jensen,**

*Assistant Administrator for Water.*

[FR Doc. 86-24322 Filed 10-27-86; 8:45 am]

BILLING CODE 6560-50-M

---

[FRL-3100-3]

## Ethanol-for-Fuel Point Source Category; Availability of Information

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability of information.

**SUMMARY:** EPA has developed a multimedia technical support document for the enthanol-for-fuel point source category. This document presents guidance on multimedia pollution control for this industry. The document is entitled, *Multimedia Technical Support Document for the Ethanol-for-Fuel Industry* (April 1986, EPA 440/1-86/093).

**ADDRESSES:** This document is available through the National Technical Information Service, Springfield, Virginia, 703-487-4600. Copies and supporting information are also available for inspection and copying in EPA's Industrial Technology Division and the EPA Public Information Reference Unit, Room 2404 (EPA Library), 401 M Street, SW., Washington, DC 20460. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Susan de Nagy, Industrial Technology Division (WH-552), U.S. EPA, 401 M Street, SW., Washington, DC 20460, 202-382-7131.

**SUPPLEMENTARY INFORMATION:** The Industrial Technology Division of EPA has developed a multimedia technical support document for the ethanol-for-fuel point source category. This document presents multimedia pollution control guidance for this industry. Data were originally collected between 1979 and 1981 with the intent of using them as the basis for proposing effluent limitations guidelines. However, in early 1982, EPA decided to develop guidance for the ethanol-for-fuel industry instead of effluent limits. This decision was made because of the decline in the growth of this industry when foreign crude oil became more available and the fuel shortage was somewhat abated.

The ethanol-for-fuel industry is defined as those commercial-size (greater than one million gallons of ethanol per year) facilities that convert biomass (via fermentation) to ethanol for use as a fuel. In September 1985, there were 102 plants in 31 states, each with a capacity of 1 million gallons per year or more. Out of these 102, there were 57 plants in operation and producing, with a capacity of approximately 764 million gallons per year. There were also 15 plants under construction in 12 states, with a capacity of 220 million gallons per year.

In regard to biomass sources, the pollution control strategies discussed in this document for the ethanol-for-fuel industry pertain to facilites that use grain, wood sugar, cane and citrus molasses, and cheese whey as feedstocks. Biomass sources such as cellulose, sugar crops (i.e., sweet sorghum, sugar beets, and sugar cane), and potatoes could not be addressed with the information available at the time this document was completed.

This document discusses various sources of pollution generated from the ethanol-for-fuel facilities on a multimedia basis (air, water, and solid waste). Also, various pollutants of concern associated with each media waste stream are listed. These lists come from an extensive data gathering program also discussed in this document. In addition, a presentation of pollution control alternatives for each media waste stream is included, followed by a discussion of costs for some of these control systems. Emphasis is on wastewater treatment technololgies and their pollutant removal capacities.

Data presented in this document were a result of an extensive multimedia sampling and analysis program performed by the EPA's Industrial Technology Division. Data were also obtained from NPDES permits, an EPA Region IV Surveillance and Analysis Division Program, the IERL-Ci Source Test Evaluation, published literature, and EPA-supported engineering calculations.

This document contains no legally binding requirements, and nothing contained in the document relieves a facility from compliance with existing or future environmental or permit requirements. Rather this document presents guidance in the form of information that permit writers and industrial developers can use (among other sources) in their determination of appropriate pollution control measures.

Dated: September 30, 1986.

**Lawrence J. Jensen,**

*Assistant Administrator for Water.*

[FR Doc. 86-24321 Filed 10-27-86; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3101-7]

## Federal Radiation Protection Guidance; Extension of Comment Period on Proposed Alternatives for Controlling Public Exposure to Radiofrequency Radiation

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Announcement of extension of period for written statements and comments.

**SUMMARY:** The period during which written statements and comments on proposed alternatives for controlling public exposure to radiofrequency (RF) radiation has been extended to December 15, 1986.

**DATE:** Written statements and comments on the proposed alternatives may be entered into the record on or before December 15, 1986.

**ADDRESSES:** Written comments should be submitted to: Central Docket Section (LE-131), U.S. Environmental Protection Agency, Attn: Docket A-81-43, Washington, DC 20460. The rulemaking docket, containing information used by EPA in developing the proposed Guidance is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday at EPA's Central Docket Section, West Tower Lobby, Gallery One, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Norbert N. Hankin, Analysis and Support Division (ANR-461), Office of Radiation Programs, U.S. Environmental Protection Agency, Washington, DC 20460, (202) 475-9630.

**SUPPLEMENTARY INFORMATION:** The proposed alternatives for controlling public exposure to RF radiation were announced in the Federal Register on July 30, 1986, (51 FR 27318).

Dated: October 23, 1986.

**Richard D. Wilson,**

*Assistant Administrator for Air and Radiation.*

[FR Doc. 86-24318 Filed 10-27-86; 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, 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.:* 204-010066-011.

*Title:* U.S. Atlantic & Pacific/Colombia Equal Access Agreement.

*Parties:*

Flota Mercante Grancolombiana, S.A.
United States Lines (S.A.) Inc.
Crowley Caribbean Transport, Inc.
CTMT, Inc.
Lykes Bros. Steamship Co., Inc. (Lykes)

*Synopsis:* The proposed amendment would admit Lykes as a party to the agreement and would reflect Coordinated Caribbean Transport, Inc.'s name change to Crowley Caribbean Transport, Inc. The parties have requested a shortened review period.

*Agreement No.:* 202-010689-018.

*Title:* Transpacific Westbound Rate Agreement.

*Parties:*

American President Lines, Ltd.
Hanjin Container Lines, Ltd.
Hyundai Merchant Marine Co., Ltd.
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha, Ltd.
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Showa Line Ltd.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.

*Synopsis:* The proposed amendment would provide that proposed tariff charges objected to be any party to the agreement will, in any event, become effective 15 days after the date of receipt, or on minimum statutory notice, for the benefit of the proposing party and any other parties who concur in the proposal and would permit Independent Action in regards to Freight Forwarders Compensation when such forwarder is also licensed as a customs broker.

*Agreement No.:* 202-010714-003.

*Title:* Trans-Atlantic American Flag Liner Operators Agreement.

*Parties:*

Farrell Lines, Incorporated
Sea-Land Service, Inc.
United States Lines, Inc.
Lykes Bros. Steamship Co., Inc.

*Synopsis:* The proposed amendment would make certain changes in the language of the agreement concerning payment of freight and credit provisions.

*Agreements No.:* 224-011020, 224-011020-001.

*Title:* Georgia Ports Authority.

*Parties:*

Georgia Ports Authority (Port)
Nedlloyd Lijnen B.V.
Trans Freight Lines

*Synopsis:* The proposed agreement and amendment would permit the Port to lease a paved area in the Port's Garden City Terminal Area to the other agreement parties for the purpose of parking containers with wheels. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: October 23, 1986.

**Joseph C. Polking,**

*Secretary*

[FR Doc. 86-24302 Filed 10-27-86; 8:45 am]

BILLING CODE 6730-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 81G-0095]

### Monsanto Co.; Withdrawal of Petition for Affirmation of GRAS Status

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the withdrawal without prejudice of a petition (GRASP 1G0272) proposing affirmation that sorbic acid and potassium sorbate are generally recognized as safe (GRAS) for use as preservatives in meat products, fresh poultry, and poultry products.

**FOR FURTHER INFORMATION CONTACT:** John W. Gordon, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-5487.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of April 21, 1981 (46 FR 22808), FDA published a notice that it had filed a petition (GRASP 1G0272) from Monsanto Co., 800 North Lindbergh Blvd., St. Louis, MO 63166, that proposed to affirm as GRAS the use of sorbic acid and potassium sorbate as preservatives

in meat products, fresh poultry, and poultry products. Monsanto Co. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: October 17, 1986.

**Sanford A. Miller,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 86-24276 Filed 10-27-86; 8:45 am]

BILLING CODE 4160-01-M

## National Institutes of Health

### National Cancer Institute; Cancer Control Grant Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Control Grant Review Committee, National Cancer Institute, National Institutes of Health, November 3-4, 1986, Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852. This meeting will be open to the public on November 3, from 8:00 a.m. to 8:45 a.m. to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on November 3, from approximately 8:45 a.m. until recess, and on November 4, from 8:00 a.m. until adjournment for the review, discussion and evaluation of grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301-496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Carolyn Strete, Executive Secretary, Cancer Control Grant Review Committee, National Cancer Institute, Westwood Building, Room 822, National Institutes of Health, Bethesda, Maryland 20892 (301/496-2378) will furnish substantive program information.

Dated: October 21, 1986.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 86-24367 Filed 10-27-86; 8:45 am]

BILLING CODE 4140-01-M

## Public Health Service

### Food and Drug Administration; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organizations, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent parts as 50 FR 34759, August 27, 1985, and at 51 FR 8032, March 7, 1986) is amended to update functional statements.

The changes include modifying the functional statements in the Office of Legislative Affairs Staff and retitling it as the Legislation and Special Projects Staff, and establishing a new staff titled the Oversight and Investigations Staff.

*Section HF-B, Organization and Functions* is amended as follows:

1. Delete paragraph (d), *Office of Legislative Affairs (HFAD)* in its entirety and insert a new paragraph (d), *Office of Legislative Affairs (HFAD)* reading as follows:

(d) *Office of Legislative Affairs (HFAD).* Advises and assists the Commissioner and other key officials concerning legislative needs and pending legislation and oversight activities which affect FDA.

Serves as the focal point for overall legislative liaison activities within FDA and between FDA, the Department, PHS, and other agencies; and analyzes the legislative needs of FDA and drafts or develops legislative proposals, position papers, and Departmental reports on proposed legislation for approval by the Commissioner.

Advises and assists members of Congress and congressional committees and staffs in consultation with the Office of the Secretary, on Agency actions, policies, and issues related to legislation which may affect FDA.

(d-1) *Oversight and Investigations Staff (HFADA).* Serves as the focal point with Congress on all inquiries regarding oversight, investigative and constituent matters.

Develops and coordinates testimony for FDA, PHS, and Department officials on FDA programs and policies for presentation to congressional committees investigation FDA activities.

Directs and coordinates the preparation of data requested by congressional committees on FDA programs and policies.

Initiates and conducts, in collaboration with other FDA and Department offices, appraisals of regulatory and scientific policies to resolve problems pertaining to FDA programs and policies under existing statutes.

Prepares responses to congressional and other sensitive high priority correspondence, inquiries, and requests (including White House, Secretary and Commissioner).

(D-2) *Legislation and Special Projects Staff (HFADB).* Serves as the Agency focal point for legislative liaison activities within the agency and with the Department, PHS, and other agencies and for responding to congressional and priority inquiries and on proposed legislation which may affect the Agency.

Initiates, coordinates, and/or provides in-depth analyses for the Commissioner, other Agency officials, Congress, or OMB on Agency legislative needs and legislation affecting Agency including problem-solving with other Agencies, preparation of supporting documents for Agency views on proposed or pending legislation, and the development of legislative proposals and position papers.

Develops and/or coordinates testimony and data for the Agency and Department for presentation to congressional committees; monitors hearings, edits transcripts of Agency testimony, and provides any requested additional information.

Provides information on the Agency's legislative programs and proposals to consumers and regulated industry.

Coordinates studies and investigations of various organizations including the Office of Technology Assessment, Congressional Research Service, and the General Accounting Office.

Dated: October 17, 1986.

**Wilford J. Forbush,**

*Director, Office of Management.*

[FR Doc. 86-24313 Filed 10-27-86; 8:45 am]

BILLING CODE 4160-1-M

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Oil, Gas and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico

Order

Section 1. *Purpose.* This order revises the rules for concurrent operations in prospecting for, development and production of oil and gas and potash deposits owned by the United States within the designated Potash Area and for revising the designated Potash Area to which the provisions of this Order are applicable.

Section 2. *Authority.* This order is issued in accordance with the authority vested in the Secretary of the Interior in the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*) and the Mineral Leasing Act for Acquired Land of 1947, as amended (43 U.S.C. 351–359).

Section 3. Restatement of Rules for Concurrent Operations in Prospecting for, Development and Production of Oil and Gas and Potash Deposits Owned by the United States within the Designated Potash Area and to Revise the Designated Potash Area as follows:

I

The Order of the Secretary of the Interior dated February 6, 1939 (4 FR 1012), withholding certain lands in New Mexico from application or lease under the provisions of the Mineral Leasing Act of February 25, 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), which Order was revoked by Order of the Secretary of the Interior dated October 16, 1951 (16 FR 10669), shall continue to be revoked. The lands described in the Order of February 6, 1939 (except the E1/2E½, W½SE¼, sec. 25, T. 20 S., R. 20E, New Mexico Principal Meridian, which were withdrawn from all forms of entry by Public Land Order No. 569 (14 FR 1086)), which were opened for oil and gas leasing by the Order of October 16, 1951, shall continue to be open for oil and gas leasing. This Order shall not affect the current status of lands within respect to their being withdrawn from, or open for, entry or leasing.

II

Subject to the provisions of I above, the provisions of the Order of the Secretary of the Interior dated November 5, 1975 (40 FR 51486), are revised to change the Potash Area Designated therein as specified in this Order.

III. General Provisions

*A. Issuance of Oil and Gas Leases*

The Department of the Interior reaffirms its position that the lease stipulations contained in the Order of November 5, 1975, adequately protect the rights of the oil and gas and potash lessees and operators. Therefore, each successful applicant for a noncompetitive oil and gas lease, and any party awarded a competitive lease, for lands included in the designated Potash Area is required, as a condition to the issuance of such lease, to execute a stipulation to the lease as follows:

1. Drilling for oil and gas shall be permitted only in the event that the lessee establishes to the satisfaction of the authorized officer, Bureau of Land Management, that such drilling will not interfere with the mining and recovery of potash deposits, or the interest of the United States will best be served by permitting such drilling.

2. No wells shall be drilled for oil or gas at a location which, in the opinion of the authorized officer, would result in undue waste of potash deposits or constitute a hazard to or unduly interfere with mining operations being conducted for the extraction of potash deposits.

3. When the authorized officer determines that unitization is necessary for orderly oil and gas development and proper protection of potash deposits, no well shall be drilled for oil or gas except pursuant to a unit plan approved by the authorized officer.

4. The drilling or the abandonment of any well on said lease shall be done in accordance with applicable oil and gas operating regulations (43 CFR 3160), including such requirements as the authorized officer may prescribe as necessary to prevent the infiltration of oil, gas or water into formations containing potash deposits or into mines or workings being utilized in the extraction of such deposits.

In taking any action under Part A, Items 1, 2, 3 and 4 of this Order, the authorized officer shall take into consideration the applicable rules and regulations of the Oil Conservation Division of the State of New Mexico.

*B. Renewal or Extension of Oil and Gas Leases*

As a condition to the granting of any discretionary renewal or extension of any existing lease embracing lands included in the designated Potash Area, the lessee shall execute a stipulation identical to that specified in Part A, Items 1, 2, 3 and 4 of this Order.

*C. Potash Leases*

All potash permits and leases hereafter issued or existing potash leases hereafter renewed for Federal lands within the designated Potash Area, shall be subject to a requirement either to be included in the lease or permit or imposed as a stipulation, to the effect that no mining or exploration operations shall be conducted that, in the opinion of the authorized officer, will constitute a hazard to oil or gas production, or that will unreasonably interfere with orderly development and production under any oil or gas lease issued for the same lands.

*D. Mineable Reserves*

1. Each potash lessee shall file annually by January 1, with the District Manager, Bureau of Land Management, a map(s) on which has been delineated the following information with respect to the Federal Potash leases which are then held:

a. The areas where active mining operations are currently in progress in one or more ore zones;

b. The area where operations have been completed in one or more ore zones;

c. Those areas that are not presently being mined which are considered to contain a mineable reserve in one or more ore zone, i.e., those areas (enclaves) where potash ore is kown to exist in sufficient thickness and quality to be mineable under existing technology and economics; and

d. The areas within these enclaves which are believed to be barren of commercial ore.

The authorized officer shall review the information submitted in this regard and make any revisions in the boundaries or the proposed mineable reserves (potash enclaves) which are consistent with the data available at the time of such analyses. The authorized officer shall commit the initial findings to a map(s) of suitable scale and shall thereafter revise that map(s) as necessary to reflect the latest available information.

*E. Oil and Gas Drilling*

1. It is the policy of the Department of the Interior to deny approval of most applications for permits to drill oil and gas test wells from surface locations within the potash enclaves established in accordance with Part D, item 1 of this Order. Two exceptions to this policy shall be permitted under the following conditions.

a. Drilling of vertical or directional holes shall be allowed from barren areas within the potash enclaves when

the authorized officer determines that such operations will not adversely affect active or planned mining operations in the immediate vicinity of the proposed drillsite;

b. Drilling of vertical or directional holes shall be permitted from a drilling island located within a potash enclave when: (1) There are no barren areas within the enclave or drilling is not permitted on the established barren area(s) within the enclave because of interference with mining operations; (2) the objective oil and gas formation beneath the lease cannot be reached by a well which is vertically or directionally drilled from a permitted location within the barren area(s); or (3) in the opinion of the authorized officer, the target formation beneath a remote interior lease cannot be reached by a well directionally drilled from a surface location outside the potash enclave. Under these circumstances, the authorized officer shall establish an island within the potash enclave from which the drilling of that well and subsequent wells will be permitted. The authorized officer, in establishing any such island, will, consistent with present directional drilling capabilities, select a site which shall minimize the loss of potash ore. No island shall be established within one mile of any area where approved mining operations will be conducted within three years. To assist the authorized officer in this regard, he/she may require affected potash mining operators to furnish a three-year mining plan.

2. In order to protect the equities between oil and gas lessees, while at the same time reducing the number of oil and gas wells which operators propose to drill in the Potash Area, the authorized officer shall make greater use of his/her prerogative to require unitizaion pursuant to the regulations in 43 CFR 3180. Unitization shall be mandatory in those cases where completion of the proposed well as a producer might result in the drainage of oil and gas from beneath other Federal lands within a potash enclave. This unitization will be a prerequisite to the approval of any well which is: (1) Located adjacent to a potash enclave (within one-quarter of a mile if an oil test well or one-half mile if a gas test well) and which is to be drilled vertically to the prospective formation; (2) to be directionally drilled from an adjacent surface location to bottom in a formation beneath an enclave; or (3) to be vertically or directionally drilled from a barren area or island within an enclave. Any unit plan hereafter approved or prescribed that includes oil and gas leases covered by this Order shall include a provision embodying in substance the requirements set forth in Part A, items, 1, 2, 3 and 4 of this Order.

3. The Department of the Interior shall cooperate with the New Mexico Oil Conservation Division in the implementation of that agency's rules and regulations. In that regard, the Federal potash lessees shsll continue to have the right to protest to the New Mexico Oil Conservation Division the drilling of a proposed oil and gas test on Federal lands provided that the location of said well is within the State of New Mexico's "Oil-Potash Area" as that area is delineated by New Mexico Oil Conservation Division Order No. R-111, as amended. However, the Department shall exercise its prerogative to make the final decision of whether to approve the drilling or any proposed well on a Federal oil and gas lease within the Potash Area.

4. Applications for permits to drill vertical test wells for oii and gas at locations that are in the Potash Area but outside the State of New Mexico's "Oil-Potash Area" and which do not directly offset an enclave (within one-quarter mile if an oil test well or one-half mile if a gas test well) shall be routinely processed by the authorized officer.

*F. Access to Maps and Surveys*

1. Well records and survey plats that an oil and gas lessee is required to file pursuant to applicable operating regulations (43 CFR 3160), shall be available for inspection at the Roswell District Office, Bureau of Land Management, by any party holding a potash permit or lease on the lands on which the well is situated insofar as such records are pertinent to the mining and protection of potash deposits.

2. Maps of mine workings and surface installations and records of core analyses that a potash lessee is required to file pursuant to applicable operating regulations (43 CFR 3570), shall be available for inspection at the Roswell District Office, Bureau of Land Management, by any party holding an oil and gas lease on the same lands insofar as such records are pertinent to the development and protection of oil and gas deposits.

3. Maps of potash enclaves shall be available for inspection in the Roswell District Office and Carlsbad Resource Area, Bureau of Land Management. Copies of such maps shall be available at the same offices.

*G. Definition*

The term "potash" as used in this Order shall be deemed to embrace potassium and associated minerals as specified in the Act of February 27, 1927 (30 U.S.C. 281–287).

**IV**

The lessee of any existing lease in the designated Potash Area may make such lands subject to the rules and regulations of Part III of this Order by filding an election to do so, in duplicate, with the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico. Except to the extent modified by this Order, the general regulations contained in 43 CFR Parts 3100, 3160 and 3180 (governing the leasing and development of potash deposits) and 43 CFR Group 3500 (governing the leasing and development of potash deposits), shall be applicable to the lands covered by this Order.

**V. The designated Potash Area is as follows**

**New Mexico Principal Meridian**

T 22 S., R. 28 E.,
Secs. 25 and 36.
T. 23 S., R. 28 E.,
Sec. 1.
T. 19 S., R. 29 E.,
Secs. 1 and 2;
Secs 11 to 15 inclusive;
Secs. 22 to 27 inclusive;
Secs. 34 and 36.
T. 20 S., R. 29 E.,
Secs. 1 and 2;
Secs. 11 to 15 inclusive;
Secs. 22 to 27 inclusive;
Secs. 34 and 36 inclusive.
T. 21 S., R. 29 E.,
Secs. 1 to 5 inclusive;
Secs. 10 to 15 inclusive;
Secs. 22 to 27 inclusive;
Secs. 34 and 36 inclusive.
T. 22 S., R. 29 E.,
Secs. 1 to 5 inclusive;
Secs. 8 to 17 inclusive;
Secs. 19 to 36 inclusive.
T. 23 S., R. 29 E.,
Secs. 1 to 17 inclusive;
Secs. 21 to 28 inclusive;
Secs. 33 to 36 inclusive.
T. 24 S., R. 29 E.,
Secs. 1 to 4 inclusive.
T. 18 S., R. 30 E.,
Secs. 8 to 17 inclusive;
Secs 20 to 29 inclusive;
Secs. 32 to 36 inclusive.
T. 19 S., R. 30 E.,
T. 20 S., R. 30 E.,
T. 21 S., R. 30 E.,
T. 22 S., R. 30 E.,
T. 23 S., R. 30 E.,
T. 24 S., R. 30 E.,
Secs. 1 to 18 inclusive.
T. 19 S., R. 31 E.,
Secs. 7, 18;
Secs. 31 to 36 inclusive.
T. 20 S., R. 31 E.,
T. 21 S., R. 31 E.,
T. 22 S., R. 31 E.,
T. 24 S., R. 31 E.,
Secs. 1 to 18 inclusive;
Secs. 35 and 36.

T. 25 S., R. 31 E.,
Secs. 1 and 2.
T. 19 S., R. 32 E.,
Secs. 25 to 28 inclusive;
Secs 31 to 36 inclusive.
T. 20 S., R. 32 E.,
T. 21 S., R. 32 E.,
T. 22 S., R. 32 E.,
Secs. 1 to 12 inclusive.
T. 19 S., R. 33 E.,
Secs. 21 and 36 inclusive.
T. 20 S., R. 33 E.,
T. 21 S., R. 33 E.,
T. 22 S., R. 33 E.,
Secs. 1 to 12 inclusive.
T. 19 S., R. 34 E.,
Secs. 19 and 20;
Secs. 29 to 32 inclusive.
T. 20 S., R. 34 E.,
Secs. 3 and 10 inclusive;
Secs. 15 and 36 inclusive.
T. 21 S., R. 34 E.,
Secs. 5 to 8 inclusive;
Secs. 17 to 20 inclusive;
Secs. 29 to 32 inclusive.
T. 22 S., R. 34 E.,
Sec. 6.

The area described, including public and non-public lands, aggregates 497,002.03 acres, more or less.

Section 4. *Administrative Provisions.* The Director, Bureau of Land Management, is authorized to delegate responsibilities herein as are determined appropriate.

Section 5. *Effective Date.* This Order is effective immediately.

Dated: October 21, 1986.

**Donald Paul Hodel,**

*Secretary of the Interior.*

[FR Doc. 86-24314 Filed 10-27-86; 8:45 am]

BILLING CODE 4310-10-M

## Bureau of Land Management

[I-21104]

## Idaho; Realty Action, Sale of Public Land in Power County

**AGENCY:** Bureau of Land Management, Idaho, Interior.

**ACTION:** Notice of Realty Action, Sale of Public Land in Power County, Idaho.

**DATE AND ADDRESS:** The sale offering will be held on Wednesday, January 14, 1987, at 2:00 p.m. at Deep Creek Resource Area Office, 138 South Main, Malad City, Idaho 83252.

**SUMMARY:** The following described land has been examined and through the public-supported land use planning process have been determined to be suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976, at no less than fair market value as determined by an appraisal:

| Parcel | Legal description | Fair market value | Sale type |
|---|---|---|---|
| I-21104 | T. 10 S., R. 33 E., B.M.; Sec. 17, NE¼SE¼, SW¼ (10 acres). | $2,000 | Direct. |

When patented, the lands will be subject to the following reservations:

| Parcel | Reservations |
|---|---|
| I-21104 | Ditches and canals, oil and gas to U.S. |

Continued use of the land by valid right-of-way holders is proper subject to the terms and conditions of the grant. Administrative responsibility previously held by the United States will be assumed by the patentee.

The previously described lands are hereby segregated from appropriation under the public land laws including the mining laws for a period of 270 days or until patent is issued, whichever comes first.

### Sale Procedures

Sale parcel I-21104 is being offered directly to Luther Estep because of his past inadvertent use of the parcel.

Fair market value must be submitted and will constitute an application to purchase that portion of the mineral estate of no known value for the parcel. A thirty percent (30%) deposit must be submitted and an additional $50.000 non-returnable mineral conveyance processing fee is required. The filing fee and deposit must be paid by certified check, money order, bank draft, or cashiers check. Submittal will be rejected if accompanied by a personal check.

**SUPPLEMENTARY INFORMATION:** Detailed information concerning the conditions of the sale can be obtained by contacting Wes Duggan at (208) 766-4766 or Karl Simonson at (208) 678-5514.

For a peroid of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, Rt. 3, Box 1, Burley, Idaho 83318. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

Dated: October 20, 1986.

**John Davis,**

*District Manager, Burley.*

[FR Doc. 86-24263 Filed 10-27-86; 8:45 am]

BILLING CODE 4310-GG-M

[NM-060-07-4322-02]

## Roswell District Grazing Advisory Board; Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Roswell District Grazing Advisory Council Meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Roswell District Grazing Advisory Board.

**DATE:** Tuesday, November 25, 1986, beginning at 10 a.m. A public comment period will be held following the last agenda item.

Location: BLM Roswell District Office, 1717 West Second St., Roswell, NM 88201.

**FOR FURTHER INFORMATION CONTACT:** David L. Mari, Associate District Manager, or Guadalupe Martinez, Public Affairs Specialist, Bureau of Land Management, P.O. Box 1397, Roswell, NM 88201, (505) 622-9042.

**SUPPLEMENTARY INFORMATION:** The proposed agenda will include: (1) Carlsbad RMP Completion; (2) Statewide Road Policy; (3) BLM/FS Land Exchange; (4) Status of FY 86 Range Improvement Projects; (5) Status of FY Range Improvement Projects; (6) Range Improvement Task Force (expenditure of 8100 funds); (7) Operation Respect; (8) Animal Damage Control Plan. The meeting is open to the public. Interested persons may make oral statements to the Council during the public comment period or may file written statements. Anyone wishing to make an oral statement should notify the Associate District Manager by November 14, 1986. Summary minutes will be maintained in the District Office and will be available for public inspection during regular business hours within 30 days following the meeting. Copies will be available for the cost of duplication.

**Francis R. Cherry, Jr.,**

*District Manager.*

[FR Doc. 86-24265 Filed 10-27-86; 8:45 am]

BILLING CODE 4310-FB-M

[Alaska AA-48414-CG]

## Alaska; Proposed Reinstatement of a Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48414-CG has been received covering the following lands:

Fairbanks Meridian, Alaska

T. 18 S., R. 4 E.,
Sec. 25 NW¼NW¼.
(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from January 1, 1986, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48414–CG as set out in Section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective January 1, 1986, subject to the terms and conditions cited above.

Dated: October 20, 1986.

Kay F. Kletka,

*Acting Chief, Branch of Mineral Adjudication.*

[FR Doc. 86–24282 Filed 10–27–86; 8:45 am]

BILLING CODE 4310–84–M

---

[MT–060–07–4322–02]

## Montana; Lewistown District Grazing Advisory Board; Meeting

**AGENCY:** Bureau of Land Management, Lewistown District Grazing Advisory Board, Interior

**ACTION:** Notice of Meeting.

**SUMMARY:** The Lewistown District Grazing Advisory Board will meet November 20, 1986. The agenda will be:

10:00 a.m.—Introductions.
10:15 a.m.—Election of Officers.
10:30 a.m.—Role and Constraints of the Grazing and Advisory Board.
11:00 a.m.—Range Improvement Status and Flood Damagement Assessment.
1:00 p.m.—FY–87 Allotment Management Plan Development.
2:00 p.m.—Rangeland Monitoring.
2:30 p.m.—Grazing Fee Collections.

Public comment will be sought at the end of each agenda item.

**DATE:** November 20, 1986 10:00 a.m. to 3:00 p.m.

**ADDRESS:** Yogo Inn, 211 East Main, Lewistown, Montana.

**FOR FURTHER INFORMATION CONTACT:** Wayne Zinne, District Manager, Bureau of Land Management, 80 Airport Road, Lewistown, Montana 59457.

**SUPPLEMENTAL INFORMATION:** The Lewistown District Grazing Advisory Board is authorized under the *Federal Advisory Committee Act, 5 U.S.C. Appendix 1.* The board advises the Lewistown District Manager concerning the development of allotment management plans and the utilization of range betterment funds.

Dated: October 21, 1986.

Wayne Zinne,

*District Manager.*

[FR Doc. 86–24281 Filed 10–27–86; 8:45 am]

BILLING CODE 4310–DN–M

---

[WY–040–06–4212–21; W–101913]

## Realty Action; Surface Facility Lease

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Surface facility lease of public lands in Sweetwater County, Wyoming to the Winton Coal Company.

**SUMMARY:** The Bureau of Land Management proposes to lease the surface of approximately 11.73 acres of public land for existing coal production related facilities in Sweetwater County. The facilities are currently authorized by a coal lease mine plan which is expected to terminate on December 31, 1986. Surface leasing will authorize the facilities after the mine plan is terminated.

**DATES:** Comments may be submitted on or before December 12, 1986.

**ADDRESS:** Comments may be mailed to the Area Manager, Green River Resource Area, P.O. Box 1170, Rock Springs, Wyoming 82902.

**FOR FURTHER INFORMATION CONTACT:** Duane Feick, (307) 362–6422, Green River Resource Area.

**SUPPLEMENTARY INFORMATION:** The Winton Coal Company has applied for a surface occupancy lease under section 302 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2762; 43 U.S.C. 1732).

The lease would authorize existing coal production related facilities located in portions of the following lands:

T. 20 N., R. 104 W., 6th P.M.,

Sweetwater County, Wyoming

T. 20 N., R. 104 W., 6th P.M.,
Sec. 18: Lot 5, NE¼NW¼; Lot 8, SE¼SW¼.
T. 20 N., R. 105 W., 6th P.M.,
Sec. 24: Lots 1, 8, and 12.
Containing 11.73 acres more or less.

Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action. In absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Donald H. Sweep,

*District Manager.*

October 16, 1986.

[FR Doc. 86–24284 Filed 10–27–86; 8:45 am]

BILLING CODE 4212–21–M

---

[CA–12436]

## California; Exchange of Public Lands in Lessen and Modor Counties

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Amendment of notice of realty action; exchange of public lands in Lassen and Modoc Counties, CA.

**SUMMARY:** This document amends a Notice of Realty Action published in the Federal Register on March 15, 1984 (49 FR 9781–82) and corrected and modified on March 30, 1984 (49 FR 12760), on April 10, 1984 (49 FR 14208), on December 31, 1984 (49 FR 50792), and on June 13, 1986 (51 FR 21632–33). The Notice and subsequent corrections and modifications concerned an exchange of public lands in Lassen and Modoc Counties, California, to be traded for private lands in those same counties. The private landowner is Lyneta Ranches of Alturas, California.

The exchange proposal in the original Notice was protested. A Bureau of Land Management (BLM) decision denying the protest and proceeding with the exchange was appealed to the Interior Board of Land Appeals (IBLA). The IBLA issued a decision on February 27, 1986, vacating the BLM decision and remanding the case to BLM with directions to evaluate the effects of the proposed exchange on the area's floodplain consistent with IBLA's decision and to prepare an appropriate restriction in the deed of conveyance delineating measures for floodplain preservation (90 IBLA 370).

In accordance with the IBLA decision a Floodplain Analysis was prepared under contract by Murray, Burns and Kienlen, consulting civil engineers of Sacramento, California. The BLM Susanville District staff has reviewed this analysis and found that it adequately addresses the effects of the proposed exchange on the floodplain consistent with the IBLA decision. Copies of the Floodplain Analysis and the BLM review are available from the BLM, Alturas Resource Area, P.O. Box 771, Alturas, California 96101.

The floodplain analysis describes the existing floodplain on the western side of the Madeline Plains, in Lassen

County, where the public land in question is located. The analysis describes Lyneta Ranches' planned farming operation, including ditches, canals, reservoirs, and dikes. The analysis provides an evaluation of the effects of the planned improvements on the existing floodplain values. In summary, the only value provided by the Madeline Plains floodplain is flood water storage. The critical floodplain value of the selected public land is flood water storage provided during normal or highwater runoff years. The total storage in the historical Madeline Plains ponded area is 6800 acre feet of water storage. Of this total, the selected public lands provide a floodplain value of 2600 acre feet of flood water storage.

Lyneta Ranches proposed storage ponds and ditches would provide a total water storage volume of 8500 acre feet. During normal or high-water runoff years, the proposed developments would store more flood water than the existing historic ponded area. During major floods that exceed the system capacity, the developments would be inundated completely and the water storage capacity would be the same as if there were no improvements. The flood water storage value of the floodplain would be enhanced by the proposed developments.

To ensure that the floodplain value of the selected public land is preserved, the BLM will place a restriction in the deed of conveyance to require that the public lands' floodplain value of 2600 acre feet of water storage is maintained on the public lands to be conveyed. In a prior **Federal Register** notice of December 31, 1984 (49 FR 50792), a patent restriction was described that would require only non-residential and non-intensive uses in the floodplain. This patent restriction is hereby amended as follows: to ensure the preservation of the floodplain values. The public lands described in the Notice of Realty Action will be patented subject to the following patent restriction:

"Pursuant to the authority contained in section 3(d) of Executive Order 11988 of May 24, 1977, and in section 206 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat 2758; 43 U.S.C. 1716), this patent is subject to a restriction which constitues a covenant running with the land, that the land lying within the Federal, state of local government-designated 100-year floodplain may be used only for: (1) Farming, ranching, or other similar agricultural developments, but not for residential buildings, or (2) for park and non-intensive open space recreation purposes. This patent is also subject to a restriction which constitutes a covenant running with the land, that the patentee and any successor in interest will maintain a floodwater storage capacity of at least 2600 acre feet on lands described in this patent within T.35N., R.13E.; T.35N., R.12E.; and T.36N., R.12E., Mount Diablo Meridian."

**DATE:** The publication date of this amendment will start the 45 day comment period. Within that 45 day time period, interested parties may submit comments to the District Manager.

**ADDRESS:** Comments should be sent to the Susanville District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California 96130.

C. Rex Cleary,

*District Manager.*

October 20, 1986.

[FR Doc. 86-24347 Filed 10-27-86; 8:45 am]

BILLING CODE 4310-40-M

---

[UT-060-07-4351]

## Draft Environmental Assessment, Range Creek Elk Herd Unit, UT

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of comment period and public meeting on draft environmental assessment.

**SUMMARY:** An environmental assessment (EA) will be available for review on October 22, 1986, on a proposal to make a supplemental transplant of 200 elk into the Range Creek Elk Herd Unit in Souheastern Utah. A 30 day comment period will follow with a public meeting to be held on October 29, 1986, at 7:00 p.m. in the Price Office of the Bureau of Land Management, 900 North 700 East, Price, Utah.

The Range Creek elk herd presently supports 50 to 75 head of elk and occupies portions of Desolation Canyon Wilderness Study Area (WSA) UT-060-068A and Turtle Canyon WSA UT-060-067.

For further information contact: Bureau of Land Management, Price River Resource Area, P.O. Drawer AB, Price Utah 84501, (801) 637-4584.

Kenneth V. Rhea,

*District Manager.*

[FR Doc. 86-24280 Filed 10-27-86; 8:45 am]

BILLING CODE 4310-00-M

---

[OR-22020; OR-943-07-4220-11; GP-07-004]

## Conveyance of Public Land: Order Providing for Opening of Lands, Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This action informs the public of the conveyance of 7,209.56 acres of public lands out of Federal ownership. This action will also open 6,508.44 acres of reconveyed lands to surface entry, mining and mineral leasing.

**EFFECTIVE DATE:** December 1, 1986.

**FOR FURTHER INFORMATION CONTACT:** Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, (Telephone 503-231-6905).

**SUPPLEMENTARY INFORMATION:** 1. Notice is hereby given that in an exchange of lands made pursuant to Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 7,209.56 acres of lands in Crook County, Oregon, from Federal to private ownership.

2. In the exchange, the following described lands has been reconveyed to the United States:

**Willamette Meridian**

T. 2 S., R. 18 E.,
  Sec. 12, E½NE¼, SE¼SW¼, N½SE¼, and SW¼SE¼.
T. 2 S., R. 19 E.,
  Sec. 6, S½NE¼SE¼ and SE¼SE¼.
  Sec. 7, lot 1, N½NE¼, and NE¼NW¼.
T. 17 S., R. 22 E.,
  Sec. 36, SE¼SE¼.
T. 17 S., R. 23 E.,
  Sec. 8, SE¼NW¼, N½SW¼, and SW¼SW¼.
  Secs. 15, 16, 17, 19, and 21.
T. 18 S., R. 23 E.,
  Sec. 1;
  Sec. 2, SW¼NE¼;
  Sec. 7, SE¼NW¼, S½NE¼NW¼, and NE¼NE¼NW¼;
  Secs. 11, 13, and 23.

The areas described aggregate 6,508.44 acres in Crook, Gilliam, and Sherman Counties.

3. At 8:30 a.m., on December 1, 1986, the lands described in paragraph 2, will be open to operation of the public lands laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on December 1, 1986, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 8:30 a.m., on December 1, 1986, the lands described in paragraph 2, will

be open to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

5. At 8:30 a.m., on December 1, 1986, the lands described in paragraph 2 will be open to applications and offers under the mineral leasing laws.

Dated: October 15, 1986.

**B. LaVelle Black,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 86-24283 Filed 10-27-86; 8:45 am]

BILLING CODE 4310-33-M

## Fish and Wildlife Service

### Receipt of Application for Permit; Marine Mammals

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.*, the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531 *et seq.)* and the regulations governing marine mammals and endangered species (50 CFR Parts 17 and 18).

File No. PRT-712512

*Applicant Name:* Chicago Zoological Society, 3300 Golf Road, Brookfield, Illinois 60513.
*Type of Permit:* Public Display.
*Name of Animals:* 1 Polar bear (*Ursus maritimus*).
*Summary of Activity to be Authorized:* The applicant proposes to import one captive-born male polar bear from Adelaide, Australia for public display.
*Source of Marine Mammals for Display:* Royal Zoological Society of South Australia Incorporated, Adelaide, Australia 5000.
*Period of Activity:*

Concurrent with the publication of this notice in the **Federal Register**, the Federal Wildlife Permit Office 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 (FWPO), 1000 North Glebe Road, Room 611, Arlington, Virginia 22201, 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 601 1000 N. Glebe Road, Arlington, Virginia.

Dated: October 21, 1986.

**Earl B. Baysinger,**

*Chief, Federal Wildlife Permit Office.*

[FR Doc. 86-24362 Filed 10-27-86; 8:45 am]

BILLING CODE 4310-SS-M

## Geological Survey

### Freedom of Information Act; Affirmative Disclosure Provisions

**AGENCY:** Geological Survey, Interior.

**ACTION:** Notice.

This notice is published in accordance with the provisions of 5 U.S.C. 552(a)(1) and (a)(2). It provides a brief history of the U.S. Geological Survey (USGS), identifies some primary responsibilities, describes the central and field organization, provides sources for obtaining specific information, and lists indexes on materials in which the public may have interest. This notice updates information previously published in the **Federal Register** by the Department of the Interior (50 FR 51455, December 17, 1985) regarding the USGS.

#### History

The USGS was established by the act of March 3, 1879, (20 Stat. 394; 43 U.S.C. 31), which provided for "the classification of the public lands and the examination of the geological structure, mineral resources, and products of the national domain." The act of September 5, 1962 (76 Stat. 427; 43 U.S.C. 31(b)), expanded this authorization to include such examinations outside the national domain. Topographic mapping and chemical and physical research were recognized as an essential part of the investigations and studies authorized by the act of March 3, 1879, and specific provision was made for them by Congress in the act of October 2, 1888 (25 Stat. 505, 526).

Provision was made in 1894 for gaging the streams and determining the water supply of the United States (28 Stat. 398). Authorizations for publication, sale, and distribution of material prepared by the USGS are contained in several statutes (43 U.S.C. 41-45; 44 U.S.C. 260-262).

Under the Organic Act of 1879 (43 U.S.C. 31(a)) and the Disaster Relief Act of 1974 (Pub. L. 93-288), the USGS has general and broad authority to investigate earthquake, volcano and landslide hazards, to notify appropriate Federal, State, and local authorities of these hazards, and to provide information, as necessary, to insure that timely and effective warning of potential disasters is provided. The Director of the USGS through the Secretary of the Interior has been delegated the responsibility to issue disaster warnings for earthquakes, volcanic eruptions, landslides, and other geologic catastrophes. In the 1980 reauthorization of the Earthquake Hazards Reduction Act of 1977 (Pub. L. 96-472), the Director of the USGS also was given the authority to issue an earthquake advisory or prediction as deemed necessary.

#### Primary Responsibilities

The USGS primary responsibilities are: identifying the Nation's land, water, energy, and mineral resources; investigating natural hazards such as earthquakes, volcanoes, and landslides; and conducting the National Mapping Program. To attain these objectives, the USGS collects, maps, and interprets data on energy, mineral, and water resources and land surface features, performs fundamental and applied research in the sciences and techniques involved, produces and compiles cartographic information, and publishes and disseminates the results of its investigations in thousands of new maps and reports each year.

#### General Course and Method by Which Functions Are Channeled—Description of Organization

Activities of the Geological Survey are carried out through the Office of the Director assisted by an Associate Director and an Executive Committee composed of the following officials:

Associate Director, Chairperson
Assistant Director for Engineering Geology
Assistant Director for Programs
Assistant Director for Administration
Assistant Director for Research
Assistant Director for Information Systems
Assistant Director for Intergovernmental Affairs
Assistant Director for Management Applications
Chief Geologist
Chief Hydrologist
Chief, National Mapping Division.

The headquarters (National Center, 12201 Sunrise Valley Drive, Reston, VA 22092) promulgates national policy and provides overall direction to the USGS regional offices (listed below) and about 200 field offices to accomplish the USGS mission.

Regional offices of the USGS are as follows:

*Eastern*

Alabama, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Vermont, Virgin Islands, Virginia, West Virginia, Wisconsin—109 National Center, Reston, VA 22092, 703–648–4427.

*Central*

Arkansas, Colorado, Iowa, Kansas, Louisiana, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, Wyoming—Box 25046, MS 911, 510 Denver Federal Center, Denver, CO 80225, 303–236–5438.

*Western*

Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Washington—345 Middlefield Rd. Menlo Park, CA 94025 415–323–8111 ext. 2711.

For further information, contact the Public Affairs Officer, U.S. Geological Survey, Department of the Interior, 119 National Center, Reston, VA 22092. Phone, 703–648–4460.

**Sources of Information:**

The public regulations of the Survey pertaining to administering programs authorized by the Water Resources Research Act of 1984 are published in Title 30, Chapter IV of the Code of Federal Regulations.

**Reading Rooms:**

Facilities for examination of reports, maps, publications, and the administrative staff manual ("Survey Manual") of the Geological Survey are located at the Geological Survey's libraries at the National Center, 12201 Sunrise Valley Drive, Reston, VA 22092; 1526 Cole Boulevard, at West Colfax Avenue, Golden, CO 80401; 345 Middlefield Road, Menlo Park, CA 91025; and 2255 North Gemini Drive, Flagstaff, AZ 86001; and Public Inquiries Offices (see Public Inquiries). Maps, aerial photography, and geodetic control data or index material may be examined at the National Cartographic Information Center (NCIC), Room 1C107, National Center, 12201 Sunrise Valley Drive, Reston, VA 22092; Mid-Continent Mapping Center-NCIC, 1400 Independence Road, Rolla, MO 65401; NCIC, National Space Technology Laboratories, Building 3101, NSTL Station, MS 39529; Rocky Mountain Mapping Center-NCIC, Building 25, Denver Federal Center, Box 25046, Denver CO 80225; Western Mapping Center-NCIC, 345 Middlefield Road, Menlo Park, CA 94025; and Alaska-NCIC 4230 University Drive, Anchorage, AK 995084664. Spacecraft and aircraft remote sensor data may be examined at the EROS Data Center, Sioux Falls, SD 57189.

**Contracts, Grants, and Cooperative Agreements**

Write to the Administrative Division, Branch of Procurement and Contracts, 205 National Center, 12201 Sunrise Valley Drive, Reston, VA 22092. Phone, 703–648–7373.

**Publications**

The Geological Survey publishes technical and scientific reports and maps, described in the monthly listing *New Publications of the Geological Survey*, with yearly supplements; *Publications of the Geological Survey, 1879–1961; Publications of the Geological Survey, 1062–1970;* and a variety of non-technical publications described in *General Interest Publications of the United States Geological Survey.*

Book publications are sold by the Geological Survey's Distribution Branch, Books and Open-file Reports Section, Federal Center, Bldg. 41, Box 25425, Denver, CO 80225, and by the Geological Survey's Public Inquiries Offices (see Public Inquiries).

Open-file reports, in the form of microfiche and/or black and white paper copies, are sold by the same facility that sells books. Phone 303–236–7476.

**Maps**

Maps are sold by the Distribution Branch, Geological Survey, Map Distribution, Box 25286, Federal Center, Denver, CO 80225; Alaska Distribution Section, Geological Survey, Box 12, New Federal Building, 101 Twelfth Avenue, Fairbanks, AK 99701; and Public Inquiries Offices (see Public Inquiries).

USGS maps are also sold by several thousand private dealers across the country. Information about the status of Geological Survey mapping in any State and availability of maps by other Federal and State agencies can be obtained from the National Cartographic Information Center, 507 National Center, Reston, VA 22092, Phone, 703–860–6045.

**General Interest Publications**

Single copies of a variety of nontechnical leaflets and special interest publications on earth science subjects and Geological Survey activities are available to the public upon request from the Public Inquiries Office or the Books and Open-file Reports Section, Federal Center, Bldg. 41, Box 25425, Denver, CO 80225. Phone, 303–236–7476. Bulk quantities may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

**Public Inquiries**

A network of 11 public inquiries offices responds to requests for information about the earth sciences and the USGS and its programs that are made in person, by mail, or by telephone, and assists in the selection and ordering of all Geological Survey products:

4230 University Dr., Anchorage, AK 99508–4664. Phone, 907–561–5555.

F–146 Federal Building, 701 C St., Anchorge, AK 99513. Phone, 907–271–4307.

7638 Federal Bldg., 300 N. Los Angeles St., Los Angeles, CA 90012. Phone, 213–894–2850.

Room 3128, Bldg. 3, 345 Middlefield Rd., Menlo Park, CA 94025. Phone, 415–323–8111, ext 2817.

504 Custom House, 555 Battery St., San Francisco, CA 94111. Phone, 415–556–5677.

169 Federal Bldg., 1961 Stout St., Denver, CO 80294. Phone, 303–844–4169

1028 General Services Bldg., 18th and F Sts. NW., Washington, DC 20405. Phone, 202–343–8073.

1C45 Federal Bldg., 1100 Commerce St., Dallas, TX 75242. Phone, 214–767–0198.

8105 Federal Bldg., 125 S. State St., Salt Lake City, UT 84138. Phone,801–524–5652.

503 National Center, Room 1C402, Reston, VA 22092. Phone, 703–648–6892.

678 U.S. Courthouse, W. 920 Riverside Ave., Spokane, WA 99201. Phone, 509–456–2524.

**Water Data**

Information on the availability of and access to water data acquired by the Geological Survey and other local, State, and Federal agencies may be obtained from the National Water Data Exchange, 421 National Center, Reston, VA 22092. Phone, 703–648–5683. Information is also available from about 40 Water Resources Division district offices located across the country.

The Hydrologic Information Unit (HIU) answers general questions on hydrology, water resources, hydrologic mapping, publications, activities, projects, and services of the USGS Water Resources Division. HIU maintains a microfilm file of flood-prone area maps for the United States, and functions as the focal point for reporting current hydrologic conditions and extreme hydrologic events for the USGS. "National Water Conditions," a monthly summary of hydrologic conditions in the United States and southern Canada, is prepared by HIU with both single copies and subscriptions free on application to Hydrologic Information Unit, U.S.

Geological Survey, 419 National Center, Reston, VA 22092. Phone, 703–648–6817, 6818.

News Media Services

The Public Affairs Office of the Geological Survey responds to news media inquiries, arranges interviews, and prepares news and feature releases and related visual material pertaining to USGS programs and activities for news media use. The headquarters office is located at 119 National Center, Reston, VA 22092. Phone, 703–648–4460. The Public Affairs Office in Menlo Park-San Francisco, CA provides news media service for the eight far western states. Phone, 415–323–8111, ext. 2953.

Films

Sound/color 16mm earth sciences-related films are available for short-term loan to the general public. Film inquiries should be addressed to the Visual Information Services Group, Geological Survey, 790 National Center, Reston, VA 22092. Phone, 703–648–4357.

Availability of Indexes

By notice in the **Federal Register** (41 FR 37633, September 7, 1976), the Geological Survey is exempt from the quarterly or more frequent publication and dissemination of indexes to its administrative staff manual. Notice of the availability of the index of the USGS administrative staff manual and other material is published in the **Federal Register's** "Availability of Agency Index Material."

Dated: October 21, 1986;

**Dallas L. Peck,**

*Director.*

[FR Doc. 86–2485 Filed 10–27–86; 8:45 am]

BILLING CODE 4310-31-M

## Minerals Management Service

### Development Operations Coordination; Chevron U.S.A., Inc.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 1240, Block 51, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Leeville, Louisiana.

**DATE:** The subject DOCD was deemed submitted on October 17, 1986.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1420 South Clearview Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736–2867.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: October 21, 1986.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 86–24264 Filed 10–27–86; 8:45 am]

BILLING CODE 4310-MR-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 within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 395–7313.

Title: Permanent Program Performance Standards—Underground Mining Activities 30 CFR Part 817

Abstract: Section 516 of Pub. L. 95–87 provides that permitters conducting surface coal mining operations with underground mine activities shall meet all applicable performance standards of the Act. This information is used by the regulatory authority in monitoring and inspecting underground mining activities to ensure that they are conducted in a manner which preserves and enhances environmental and other values of the Act.

Bureau Form Number: None

Frequency: On occasion, quarterly, and annually

Description of Respondents: Underground coal mining operators

Annual Responses: 135,610

Annual Burden Hours: 284,927

Bureau clearance officer: Darlene Grose Boyd, 202–343–5447.

Dated: October 2, 1986.

**Carson W. Culp,**

*Assistant Director for Budget and Administration.*

[FR Doc. 86–24287 Filed 10–27–86; 8:45 am]

BILLING CODE 4310-05-M

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Public Information Collection Requirements Submitted to OMB for Review

October 21, 1986.

The Agency for International Development submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than November 7, 1986. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Fred D. Allen, (703) 875–1573, IRM/PE, Room 1100–B, SA–14, Washington, DC 20523.

*Date Submitted:* October 20, 1986.

*Submitting Agency:* Agency for International Development.

*OMB Number: 0412–0007.*

*Type of Submission:* Renewal

*Title:* Report of loss, Damage or Misuse of Commodities Donated Under Pub. L. 480, Title II Activities.

*Purpose:* U.S. non-profit voluntary agencies and foreign governments

receiving U.S. donated Title II commodities for use in programs overseas (worldwide) to alleviate hunger and malnutrition are required under AID Regulation 11 to account for these commodities and provide reports that they are being used for purposes set forth in the legislation. Therefore, a report must be provided of all commodity losses due to theft, damage and misuse by cooperating sponsores implementing the program to the U.S. Government.

Reviewer: Francine Picoult (202) 395–7231, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

Dated: October 20, 1986.

**Fred D. Allen,**

*Planning and Evaluation Division.*

[FR Doc. 86–24236 Filed 10–27–86; 8:45 am]

BILLING CODE 6116-01-M

## DEPARTMENT OF JUSTICE

### Destruction of Goods Bearing Counterfeit "Nexxus" Trademarks

**AGENCY:** U.S. Department of Justice Criminal Division.

**ACTION:** Notice of the Destruction of Goods Bearing Counterfeit "Nexxus" Trademarks.

**SUMMARY:** Notice is hereby given that the approximately 995 boxes containing approximately 11,940 bottles of shampoo and hair products bearing counterfeit "Nexxus" trademarks will be destroyed in compliance with the order of the United States District Court for the District of Maryland in the case of Criminal Nos. JH 86–0134 and JH 86–0239, unless certain conditions are met. If the conditions set forth in the order are met, the shampoo and hair products may be given gratis to any governmental or non-profit agency.

**DATE:** This action will take place November 27, 1986.

**ADDRESS:** Copies of this order may be obtained from the Clerk's Office, United States District Court for the District of Maryland, 101 W. Lombard Street, Baltimore, Maryland 21201.

**FOR FURTHER INFORMATION CONTACT:** Scott J. Glick, Attorney, General Litigation and Legal Advice Section, Criminal Division, U.S. Department of Justice, Box 887, Ben Franklin Station, Washington, DC 20044, (202) 724–6893.

**SUPPLEMENTARY INFORMATION:** The following is the full text of the Order of the United States District Court for the District of Maryland regarding the destruction of approximately 995 boxes containing approximately 11,940 bottles of shampoo and hair products bearing counterfeit "Nexxus" trademarks.

**In the United States District Court for the District of Maryland**

[Criminal Nos. JH–86–0134 and JH–86–0239]

In the matter of approximately 995 boxes containing 11,940 bottles of shampoo and hair products bearing counterfeit "Nexxus" trademarks relating to United States v. Aaroni Jacob Shinyder, also known as Roni Jacobs, also known as Roni Shinyder.

*Order*

Upon due consideration of the United States' motion for destruction of the goods bearing counterfeit "Nexxus" trademarks, the memorandum of Nexxus Products Company (hereinafter "Nexxus") in response thereto, and upon all the papers and proceedings relating to this case, it is this 4th day of September, 1986, hereby,

Ordered that the United States' motion for the destruction of approximately 995 boxes containing approximately 11,940 bottles of shampoo and hair products bearing counterfeit "Nexxus" trademarks be, and hereby is, GRANTED; and it is further,

Ordered, upon consent of the United States, the Federal Bureau of Investigation or any agent thereof shall set aside from the boxes of counterfeit "Nexxus" trademark shampoo and hair products ("Product(s)") held in Baltimore, Maryland, Tampa, Florida and Detroit, Michigan, four (4) bottles of each product type and each product size from each location, from the products available at each location, and notify in writing counsel for Nexxus of the set-aside and that Nexxus has two weeks from the date of notification to retrieve from each location the products set aside and if those set-aside products are not retrieved within two weeks of notification, then they may be destroyed pursuant to the following paragraph of this Order; and it is further,

Ordered that upon complying with the next preceding and the following paragraphs of this Order, any agent of the Federal Bureau of Investigation is authorized to destroy the following boxes containing the following bottles of shampoo and hair products bearing counterfeit "Nexxus" trademarks: approximately 476 boxes containing approximately 5,712 bottles in Baltimore, Maryland; approximately 20 boxes containing approximately 240 bottles in Tampa, Florida; and approximately 499 boxes containing approximately 5,988 bottles in Detroit, Michigan, provided that said hair care products may be given gratis to any governmental or nonprofit agency which will obliterate the offending marks to the satisfaction of Nexxus, will test representative samples of said products for safety to the satisfaction of the United States of America, and will assume all potential liability from Nexxus and the United States of America for any and all future consumers thereof, which agency/(cies) shall promptly make appropriate arrangements with the Federal Bureau of Investigation for transfer of custody of said products at the expense of the agency)cies); and it is further

Ordered that a copy of this Order shall be published in the Federal Register and otherwise disseminated, and that none of said products shall be destroyed until four weeks have elapsed following the aforementioned publication.

Joseph C. Howard,

*United States District Judge*

Copies to: Lester B. Seidel, Esquire, Protas & Spivok, 6001 Montrose Road, Suite 700, Rockville, Maryland 20852, (301) 984–3900, Maryland Counsel for Nexxus Products Co.

James L. Bikoff, Esquire, Anthony M. Keats, Esquire, Hawkins, Bikoff & Newton, 220 Montgomery Street, Penthouse One, San Francisco, California 94104, California Counsel for Nexxus Products Co.

Scott J. Glick, Esquire, U.S. Department of Justice, Criminal Division, General Litigation and Legal Advice Section, Box 887, Ben Franklin Station, Washington, DC 20044, (202) 724–6893

Gregg L. Bernstein, Esquire, Melnicove, Kaufman, Weiner, Smouse & Garbis, 36 South Charles Street, Baltimore, Maryland 21201

J. Anthony Russo, c/o Beltway Beauty Supply, 6210 Greenbelt Road, Greenbelt, Maryland 20770

John Cirella, c/o Cicely's Beauty Supply, 406 W. Columbus Drive, Tampa, Florida 33606

Howard Hester, c/o John's Mini Warehouse, 12050 Inkster Road, Redford, Michigan 48239.

Dated: October 15, 1986.

Approved by:

**Victoria Toensing,**

*Acting Assistant Attorney General, Criminal Division.*

[FR Doc. 86–24289 Filed 10–27–86; 8:45 am]

BILLING CODE 4410-01-M

### Lodging of Consent Decree; Pursuant to the Clean Air Act

In accordance with departmental policy, 28 CFR 50.7, notice is hereby given that on October 14, 1986 a proposed Consent Decree in *United States* v. *P.C. & J. Contracting Co., Inc.*, Civil Action No. C84–4141 was lodged with the United States District Court for the Northern District of Iowa. The proposed Consent Decree concerns violations of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos. 40 CFR Part 61. The proposed Consent Decree requires defendant P.C. & J. Contracting Co., Inc. to comply with the provisions of the asbestos NESHAP, to engage in a special compliance program, and to pay a civil penalty of $105,000.

The Department of Justice will receive comments relating to the proposed Consent Decree for period of thirty (30) days from the Assistant Attorney General of the Land and Natural Resources Division, Department of

Justice, Washington, DC 20530, and should refer to *United States* v. *P.C. & J. Contracting Co., Inc.*, D.J. Ref. 90–5–2–1–701.

The proposed Consent Decreee may be examined at the Office of the United States Attorney for the Northern District of Iowa, Western Division, Room 327, U.S. Post Office and Courthouse, Sioux City, Iowa 51102 and at the Region VII, Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

**F. Henry Habicht II,**

*Assistant Attorney General Land and Natural Resources Division.*

[FR Doc. 86–24290 Filed 10–27–86; 8:45 am]

BILLING CODE 4410–01–M

---

### Consent Decree Pursuant to Resource Conservation and Recovery Act, Clean Water Act, and Comprehensive Environmental Response, Compensation, and Liability Act of 1980

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 16, 1986 a proposed consent decree in *United States of America and the State of Washington* v. *Western Processing Company, Inc., et al.*, Civil Action No. C83–252M, was lodged with the United States District Court for the Western District of Washington. The complaint filed by the United States sought civil penalties and injunctive relief pursuant to the Resource Conservation and Recovery Act and Clean Water Act against Western Processing Company, Inc. and its principals, due to the release of hazardous substances into soil and water at the Western Processing site near Kent, Washington. In addition, the complaint alleged claims for cost recovery and injunctive relief under the Comprehensive Environmental Response, Compensation, and Liability Act against Western Processing, its principals and companies that generated or transported hazardous waste found at the site.

The consent decree provides that 181 defendants will perform work to remedy contamination at the site, and will reimburse the United States for a portion of its past response costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Western Processing*. D.J. Ref. 90–7–1–233.

The proposed consent decree may be examined at the office of the United States Attorney, 3600 Seafirst Fifth Avenue Plaza, Seattle, Washington 98104 and at the Region X office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Nature Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

In requesting a copy, please enclose a check in the amount of $8.50 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

**F. Henry Habicht II,**

*Assistant Attorney General Land & Natural Resources Division.*

[FR Doc. 86–24291 Filed 10–27–86; 8:45 am]

BILLING CODE 4401–01–M

---

## Antitrust Division

### The National Cooperative Research Act of 1984; Corporation For Open Systems International

The National Cooperative Research Act of 1984—The Corporation for Open Systems International.

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. No. 98–462 (the "Act"), the Corporation for Open Systems International ("COS") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on September 30, 1986 disclosing changes in the membership of COS. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On May 14, 1986, COS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the Federal Register pursuant to section 6(b) of the Act on June 11, 1986. 51 FR 21260 (June 11, 1986). On August 6, 1986, COS filed an additional written notification. The Department published a notice in the Federal Register with respect to this additional notification on September 4, 1986. 51 FR 31735 (September 4, 1986).

On July 21, 1986, Dialcom, Inc. became a party to COS. On September 17, 1986, the following entities became parties to COS:

Central Computer and Telecommunications Agency, Her Majesty's Treasury, British Government

Computer and Telecommunications Division, Ontario. Ministry of Government Services.

RETIX

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 86–24307 Filed 10–27–86; 8:45 am]

BILLING CODE 4410–01–M

---

## Drug Enforcement Administration

**[Docket No. 86–67]**

### Drug Mart Prescription Dept., Inc., Lake Wales, FL; Hearing

Notice is hereby given that on August 8, 1986, the Drug Enforcement Administration, Department of Justice, issued to Drug Mart Prescription Dept., Inc., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke its DEA Certificate of Registration AD2349682, and deny any pending application for renewal of its registration as a retail pharmacy under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held, commencing at 9:30 a.m. on Thursday, November 6, 1986, in the U.S. Tax Court Courtroom, Room 803, Twiggs Building, 700 Twiggs Street, Tampa, FL.

Dated: October 21, 1986.

**John C. Lawn,**

*Administrator, Drug Enforcement Administration.*

[FR Doc. 86–24260 Filed 10–27–86; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 86-49]

### Thomas Parker Elliott, D.O., Largo, FL; Hearing

Notice is hereby given that on May 13, 1986, the Drug Enforcement Administration, Department of Justice, issued to Thomas Parker Elliott, D.O., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration AE7940441, and deny any pending application for renewal of such registration.

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held, commencing at 10:00 a.m. on Wednesday, November 5, 1986, in the U.S. Tax Court Courtroom, Room 803, Twiggs Building, 700 Twiggs Street, Tampa, Florida.

Dated: October 21, 1986.

**John C. Lawn,**

*Administrator, Drug Enforcement Administration.*

[FR Doc. 86-24262 Filed 10-27-86; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-47]

### Terrence M. Sokoloff, D.D.S., Coral Gables, FL, and Miami, FL; Hearing

Notice is hereby given that on May 13, 1986, the Drug Enforcement Administration, Department of Justice, issued to Terrence M. Sokoloff, D.D.S., an Order To Show Cause as to why the Drug Enforcement Administration should not deny his applications, dated November 19, 1985, for registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held, commencing at 9:30 a.m. on Tuesday, November 4, 1986, in the U.S. Tax Court Courtroom, Room 803, Twiggs Building, 700 Twiggs Street, Tampa, Florida.

Dated: October 21, 1986.

**John C. Lawn,**

*Administrator, Drug Enforcement Administration.*

[FR Doc. 86-24261 Filed 10-27-86; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Addition to List of Labor Surplus Areas

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**DATE:** The addition to the labor surplus area list is effective on October 1, 1986.

**SUMMARY:** The purpose of this notice is to announce an addition to the list of labor surplus areas.

**FOR FURTHER INFORMATION CONTACT:** William J. McGarrity, Labor Economist, Employment and Training Administration, 200 Constitution Avenue NW., Room N4470, Attention: TEESS, Washington, DC 20210. Telephone: 202-535-0186.

**SUPPLEMENTARY INFORMATION:** Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under the Order for classifying and designating areas as labor surplus areas.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Procurement Regulations Temporary Regulation 57 (41 CFR Chapter 1, Appendix), issued by the General Services Administration on January 15, 1981, (46 FR 3519), implements Executive Order 12260. Executive agencies should refer to Temporary Regulation 57 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR Part 654, Subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas on October 11, 1985 (50 FR 41606).

Supart B of Part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under Subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The area described below has been classified by the Assistant Secretary of Labor as a labor surplus area pursuant to 20 CFR 654.5(b) (48 FR 15615 April 12, 1983) and is added to the list of labor surplus areas, effective October 1, 1986. The classification of the area is effective through September 30, 1987.

The following addition to the list of labor surplus areas is published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, DC, on October 7, 1986.

**Roger D. Semerad,**

*Assistant Secretary of Labor*

ADDITION TO THE ANNUAL LIST OF LABOR SURPLUS AREAS

[October 1, 1986]

| Labor surplus area | Civil jurisdiction included |
|---|---|
| New Mexico: | |
| Lea County | Lea County |

[FR Doc. 86-24338 Filed 10-27-86; 8:45 am]

BILLING CODE 4510-30-M

## Mine Safety and Health Administration

[Docket No. M-86-7-M]

### Climax Molybdenum Co.; Petition for Modification of Application of Mandatory Safety Standard

Climax Molybdenum Company, AMAX Center, Greenwich Connecticut 06836 has filed a petition to modify the application of 30 CFR 57.4533 (mine opening vicinity) to its Climax Mine (I.D. No. 05-00354) located in Lake County, Colorado. 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 surface buildings within 100 feet of mine openings used for intake air or within 100 feet of mine openings that are designated escapeways in exhaust air be constructed of fire-resistant materials.

2. As an alternate method, petitioner proposes to use a positive pressure ventiliation system in the underground mine which eliminates the hazard of smoke or gas from a surface fire entering the underground mine.

3. In support of this petitioner states that:

(a) There are a number of designated escapeways for the Storke Level. In addition to the portal, miners can exit directly into the open pit;

(b) The first one hundred forty feet of the Storke Portal is lined and supported with concrete;

(c) A mine dispatcher, who is trained and has the authority to initiate firefighting procedures without leaving his or her post, is stationed at the entrance of the Storke Level whenever persons are working underground;

(d) No flammable materials are stored in any of the structures within 100 feet of the portal;

(e) Ethyl Mercaptan is introduced into the mine intake air and compressed air systems in the event of a surface or underground emergency which may effect underground miners;

(f) The firefighting facilities maintained at the mine consist of—

(1) Over 2,000 fire extinguishers;

(2) A fire truck capable of pumping 1200 gallons per minute, which is located on the surface at all times;

(3) Two diesel powered fire trucks equipped with 450 pounds of multi-purpose dry chemical and 100 gallons of aqueous film forming foam, which are located underground and can be dispatched to a surface or underground fire;

(4) A fire hydrant and hose are located in the Storke Yard adjacent to the portal; and

(5) All personnel are trained annually in fire prevention and firefighting.

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 November 28, 1986. Copies of the petition are available for inspection at that address.

Dated: October 16, 1986.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 86-24339 Filed 10-27-86; 8:45 am]

BILLING CODE 4510-43-M

---

**[Docket No. M-86-9-M]**

## FMC Wyoming Corp.; Petition for Modification of Application of Mandatory Safety Standard

FMC Wyoming Corporation, Box 872, Green River, Wyomimg 82935 has filed a petition to modify the application of 30 CFR 57.21097 (general requirements for blasting) to its Green River Mine (I.D. No. 48-00152) located in Sweetwater County, Wyoming. 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 permissible blasting units of a capacity suitable for the number of holes in a round to be blasted to used unless the round is fired from the surface when all persons are out of the time.

2. Fragmentation of trona ore is difficult and there is no permissible blasting unit of sufficient capacity available at the present time. Use of the smaller permissible unit that is available lwould require some piecemeal blasting to be undertaken which could introduce hazards.

3. Petitioner states that is is very unsafe for a large group of blasters and foremen to attempt to field-fit the under-capacity permissible blasting unit into their ever-changing blasting situations. This could lead to misfires and poorly broken rounds.

4. To comply with the existing standard would require one round of twelve to sixteen shots to be fired; the second round would then be charged and shot before loading operations were begun. Going back in to prepare the second round would be exposing miners to hazards conditions.

5. As an alternate method, petitioner proposes that permissible blasting untis or those of a capacity suitable for the number of holes in a round to be blasted shall be used unless the round is fired from the surface with all persons out of the mine. No more than 20 shots will be fired at any one time. Each round will consist of 12 to 16 shots and generally two-way and sometimes three-way rounds will occur together in the same heading when necking off crosscuts. Twenty-four to 48 shots will be normally fired at once, before the loading machine is brought to the face area.

6. In support of this request, petitioner states that the blaster will always be several crosscuts away from the place he or she is shooting and around at least two corners. There is no need to take the blasting unit in by the last open crosscut where methane might occur. The special blasting regulations pertaining to the use of ammonium nitrate fuel oil mixtures for trona blasting will be strictly complied with.

7. For these reasons, petitioner requests a modification of 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 November 28, 1986. Copies of the petition are avaiable for inspection at that address.

Dated: October 20, 1986.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 86-24340 Filed 10-27-86; 8:45 am]

BILLING CODE 4510-43-M

---

**[Docket No. M-86-10-M]**

## General Chemical Corp.; Petition for Modification of Application of Mandatory Safety Standard

General Chemical Corporation, P.O. Box 551, Green River, Wyoming 82935 has filed a petition to modify the application of 30 CFR 57.21097 (general requirements for blasting) to its Alchem Mine (I.D. No. 48-00155) located in Sweetwater County, Wyoming. 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 permissible blasting units of capacity suitable for the number of holes in a round to be blasted be used unless the round is fired from the surface when all persons are out of the mine.

2. Trona ore fragmentation is difficult and the use of small permissible blasting units would require numerous changes in blasting procedures which would be hazardous.

3. Strict compliance with the existing standard would require that no more than twenty caps be fired at once any

one time. This would be exposing miners to hazardous conditions due to the necessity of going back into a shot area numerous times to reload and reshoot the area.

4. As an alternate method, petitioner proposes to use the Dupont CD–600 and updated VME 450 blasting units.

5. In support of this request, petitioner states that the shot firer is always around at least two corners and will be away from the area being blasted. There is no need to take the blasting machine in by the last open crosscut.

6. For these reasons, petitioner requests a modification of 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 November 28, 1986. Copies of the petition are available for inspection at that address.

Dated: October 20, 1986.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 86–24341 Filed 10–27–86; 8:45 am]

BILLING CODE 1510-43-M

---

[Docket No. M–86–8–M]

## Pathfinder Mines Corp.; Petition for Modification of Application of Mandatory Safety Standard

Pathfinder Mines Corporation, Shirley Basin, Wyoming 82615 has filed a petition to modify the application of 30 CFR 56.18020 (working alone) to its Shirley Basin Mine (I.D. No. 48–00490) located in Carbon County, Wyoming. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the peititioner's statements follows:

1. The petition concerns the requirement that no employee be assigned, or allowed, or be required to perform work alone in any area where hazardous conditions exist that would endanger his or her safety unless he or she can communicate with others, can be heard or can be seen.

2. As an alternate method, petitioner proposes to allow the operator of the SK35 Reed hydraulic drill to work alone on weekends.

3. In support of this request, petitioner states—

(a) The operator will be equipped with two FM radios; one in the vehicle and the other hand-held portable unit;

(b) Project security personnel are available for FM radio communication 24 hours per day;

(c) A desk FM radio is located in the project's mill 1X control office where mill personnel would be available to provide assistance;

(d) The drill operator will receive operating instructions that prohibit the performance of any maintenance work on the drill; and that if he or she has any problems, to discontinue the task. The operator will not be allowed to shovel drill hole castings;

(e) A cable loop assembly has been placed on the drill that totally eliminates the possibility of drill pipe falling from the rack; and

(f) Project security pesonnel will be instructed to visit the drill site at intervals not to exceed two hours.

4. For these reasons, petitioner requests a modification of 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 November 28, 1986. Copies of the petition are available for inspection at that address.

Dated: October 16, 1986.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 86–24342 Filed 10–27–86; 8:45 am]

BILLING CODE 4510-43-M

---

## Occupational Safety and Health Administration

### Alaska State Standard; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On August 10, 1973, notice was published in the **Federal Register** (38 FR 21628) of the approval of the Alaska plan and the adoption of Subpart R to Part 1952 containing the decision.

The Alaska plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective status of the State program, and program change supplement to a State plan shall be required.

In response to Federal standards changes, the State has submitted by letter dated July 16, 1985, from Jim Robison, Commissioner, to James W. Lake, Regional Administrator, and incorporated as part of the plan, an Administrative adoption and incorporation of State standards comparable to 29 CFR Part 1910, Subpart T, Appendix B, Guidelines for Scientific Diving, as published in the **Federal Register** (50 FR 1046) on January 9, 1985. The guidelines related to 29 CFR 1910.401(a)(2)(iv). The State's comparable standard, AAC 06.100(b)(4), received approval as identical in the **Federal Register** (49 FR 32126) on August 10, 1984. The Alsaka State Attorney General has determined that Appendix B, Guidelines for Scientific Diving, is advisory in nature and does not provide additional requirements for employers. Therefore, he has approved an Administrative Adoption of the guidelines, effective on July 9, 1985, which are identical to the Federal guidelines. Consequently no formal promulgation process has been accomplished, which eliminates the requirements for public comments and hearings.

2. *Decision.* The above State guidelines have been reviewed and compared with the relevant Federal guidelines. OSHA has determined that the State response is identical and therefore approves this Administrative Adoption.

3. *Location of supplement for inspection and copying.* A copy of the standard supplement, along with the approved plan, may be inspected and copied during the normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; State of Alaska, Department of Labor, Office of the Commissioner, Juneau, Alaska 99801; and the Office of

State Programs, Room N3476, 200 Constitution Avenue NW., Washington, DC 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Alaska State Plan as proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

The Guidelines were administratively adopted in accordance with the procedural requirements of State law, which does not require public comments and public hearings.

This decision is effective October 28, 1986.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 [29 U.S.C. 667])

Signed at Seattle, Washington, this 25th day of September 1986.

**James W. Lake,**

*Regional Administrator.*

[FR Doc. 86–24343 Filed 10–27–86; 8:45 am]

BILLING CODE 4510–26–M

## Puerto Rico State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On August 30, 1977, notice was published in the **Federal Register** (42 FR 43628) of the approval of the Puerto Rico plan and the adoption of Subpart FF to Part 1952 containing the decision. The Puerto Rico plan provides for the adoption of Federal standards as State standards by reference. Section 1953.20 of Title 29, CFR, provides that "where any alteration in the Federal program could have an adverse impact on the 'at least as effective as' status of the State program, a program change supplement to a State plan shall be required."

In response to Federal standards changes, the State has submitted by letter dated March 12, 1986, from Francisco Rivera Garcia, Director for OSHA, to Regional Administrator Gerald P. Reidy, and incorporated as part of the plan, State standards comparable to the Occupational Safety and Health Administration standards for Commercial Diving, Deletions to Subpart T of 29 CFR 1910.411, as published in the **Federal Register** (49 FR 881) dated January 6, 1984. These standards which are contained in the Puerto Rico Regulations, Number Four (equivalent to 29 CFR Part 1910) were promulgated by resolutions adopted by the Puerto Rico Department of Labor and Human Resources on July 10, 1985, pursuant to the Puerto Rico Act Number 16 and Chapter 52 of the Puerto Rico Rules and Regulations Act of 1958.

The State has submitted by letter dated June 16, 1986, and incorporated as part of the plan, State standards comparable to the Occupational Safety and Health Administration standards for Occupational Exposure to Cotton Dust, Amendment to 29 CFR 1910.19, 1910.1000 and 1910.1043, as published in the **Federal Register** (50 FR 51120) dated December 13, 1985. These standards which are contained in the Puerto Rico Rules and Regulations, Number Four (equivalent to 29 CFR/1910) were promulgated by resolution adopted by the Puerto Rico Department of Labor and Human Resources on March 24, 1985, pursuant to the Puerto Rico Act Number 16 and Chapter 52 of the Puerto Rico Rules and Regulations Act of 1958.

The State has submitted by letter dated June 27, 1986, and incorporated as part of the plan, State standards comparable to the Occupational Safety and Health Administration standards for Coke Oven Emissions; Conforming Deletions to 29 CFR 1910.1029, as published in the **Federal Register** (50 FR 37352) dated September 13, 1985. These standards which are contained in the Puerto Rico Rules and Regulations, Number Four (equivalent to 29 CFR Part/1910) were promulgated by resolution adopted by the Puerto Rico Department of Labor and Human Resources on November 25, 1985, pursuant to the Puerto Rico Act Number 16 and Chapter 52 of the Puerto Rico Rules and Regulations Act of 1958.

The State has submitted by letter dated July 9, 1986, from Filiberto Cruz Aguila, Acting Director, to Acting Regional Administrator Byron R. Chadwick, and incorporated as part of the plan, State standards comparable to the Occupational Safety and Health Administration Interim Final Rule and Corrections to the Hazard Communication Standard, 29 CFR 1910.1200, as published in the **Federal Register** (50 FR 48750) dated November 27, 1985. These standards which are contained in the Puerto Rico Rules and Regulations, Number Four (equivalent to 29 CFR Part 1910) were promulgated by resolution adopted by the Puerto Rico Department of Labor and Human Resources on June 6, 1985, pursuant to the Puerto Rico Act Number 16 and Chapter 52 of the Puerto Rico Rules and Regulations Act of 1958.

2. *Decision.* Having reviewed the State submission in comparsion with the Federal standards it has been determined that the State standards are identical to the Federal standards and accordingly are hereby approved.

3. *Location of supplement for inspection and copying.* A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 3445, 1515 Broadway, New York, New York 10036; Puerto Rico Department of Labor and Human Resources, Prudencio Rivera Martinez Bldg., Munoz Rivera Avenue 505, Hato Rey, Puerto Rico 00917; and the Directorate of Federal-State Operations, Room N3476, 200 Constitution Avenue NW, Washington, DC 20210.

4. *Public Participation.* Under 29 CFR 1953.2 (c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Puerto Rico State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirement of State Law and further participation would be unnecessary.

This decision is effective October 28, 1986.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 [29 U.S.C. 6671].

Signed at New York, New York, this second day of October 1986.

**James W. Stanley,**

*Acting Regional Administrator.*

[FR Doc. 86–24344 Filed 10–27–86; 8:45 am]

BILLING CODE 4510–26–M

### Utah State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 10, 1973, notice was published in the **Federal Register** (38 FR 1178) of the approval of the Utah Plan and adoption of Subpart E to Part 1952 containing the decision.

The Plan provides for the adoption of Federal Standards as State Standards by:

1. Advisory Committee recommendation.

2. Publication in newspapers of general/major circulation with a 30-day waiting period for public comment and hearings.

3. Commission order adopting and designating an effective date.

4. Provision of certified copies of Rules and Regulations or Standards to the Office of the State Archivist.

OSHA regulations (29 CFR 1953.22 and .23) require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Fedeal Register**, and within 30 days for emergency temporary standards. Although adopted State standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in Part 1953, they are enforceable by the state prior to Federal review and approval. By letter dated July 28, 1986, from Douglas J. McVey, Administator, Utah Occupational Safety and Health Division, to Byron R. Chadwick, OSHA Regional Administator, the State submitted rules and regulations in response to Federal OSHA's General Industry Standards (29 CFR 1910.1029: Coke Oven Emissions Standard; Conforming Deletions (50 FR 37352), September 13, 1985).

The above adoptions of Federal standards have been incorporated in the State Plan, and are contained in the Utah Occupational Safety and Health Rules and Regulations for General Industry, as required by Utah Code annotated 1943, Title 63–46–1. In addition, the standards were published in newspapers of general/major circulation throughout the State. No public comments were received and no hearings were held.

State Standards for 29 CFR 1910.1029: Coke Oven Emissions Standard; Conforming Deletions, were adopted by the Industrial Commission of Utah, Archive's File Number 8202 on December 20, 1985, (effective February 1, 1985) pursuant to Title 35–9–6, Utah Code, annotated 1953. The State Standard on Coke Oven Emissions Standard; Conforming Deletions is indentical to the Federal standard action, with the only exception being paragraph numbering.

2. Decision. The above State Standard has been reviewed and compared with the relevant Federal Standard and OSHA has determined that the State Standard is at least as effective as the comparable Federal Standard, as required by section 18(c)(2) of the Act. OSHA has also determined that the differences between the State and Federal Standards are minimal and that the Standards are thus identical. OSHA therefore approves this standard; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. Location of Supplement for Inspection and Copying.

A copy of the standard supplement, along wtih the approved plan, may be inspected and copied during normal business hours at the followig locations: Office of the Regional Administrator, Room 1554, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; Utah State Industrial Commission, UOSHA Offices at 160 East 300 South, Salt Lake City, Utah 84111; and the Office of State Programs, Room N–3476, 200 Constittution Avenue, NW., Washington, DC 20210.

4. *Public Participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Utah State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason(s):

The standards were adopted in accordance with the precedural requirements of State law which included public comment and further public participation would be repetitious. This decision is effective October 28, 1986.

(Sec. 18, Pub. Law 91–596, 84 Stat. 1608 [29 U.S.C. 667]).

Signed at Denver, Colorado, this 8th day of September, 1986.

**Harry C. Borchelt,**

*Acting Regional Administator.*

[FR Doc. 24345 Filed10–27–86; 8:45 am]

BILLING CODE 4510–26–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 86–77]**

### NASA Advisory Council, Aeronautics Advisory Committee; 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, Aeronautics Advisory Committee, Ad Hoc Review Team on Computational Fluid Dynamics (CFD).

**DATE AND TIME:** November 13, 1986, 8:30 a.m. to 5 p.m.; November 14, 1986, 8:30 a.m. to 12:30 p.m.

**ADDRESS:** Langley Research Center, Building 1219, Room 225, Hampton, VA 23665.

**FOR FURTHER INFORMATION CONTACT:** Dr. R.A. Graves, Code RF, National Aeronautics and Space Administration, Washington, DC 20546, (202) 453–2828.

**SUPPLEMENTARY INFORMATION:** The AAC Ad Hoc Task Team on CFD Validation was established to assess CFD validation activities in the Office of Aeronautics and Space Technology (OAST). This team, chaired by Dr. Richard Bradley, is comprised of nine members. The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the subcommittee members and other participants).

Type of Meeting: Open.

Agenda

*November 13, 1986*

8:30 a.m.—Introduction.

8:40 a.m.—Overview of NASA Validation Activities.

8:55 a.m.—Overview of CFD Code Development.

9:30 a.m.—Overview of Langley Validation Experiments.

10 a.m.—Review of Individual Validation Experiments.
5 p.m.—Adjourn.

*November 14, 1986*

8:30 a.m.—Committee Discussion of Presentations.
12:30 p.m.—Adjourn.

**Richard L. Daniels,**
*Advisory Committee Management Officer, National Aeronautics and Space Administration.*
October 20, 1986.
[FR Doc. 86-24303 Filed 10-27-86; 8:45 am]
BILLING CODE 7510-01-M

[Notice 86-78]

## NASA Advisory Council (NAC), Life Sciences Advisory Committee; 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, Life Sciences Advisory Committee (LSAC).

**DATE AND TIME:** November 24-25, 1986, 8:30 a.m. to 5 p.m., each day.

**ADDRESS:** Capitol Holiday Inn, Columbia Room, 550 C Street SW., Washington, DC. 20024.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ronald J. White, Code EBF, National Aeronautics and Space Administration, Washington, DC 20546 (202-453-1470).

**SUPPLEMENTARY INFORMATION:** The Life Sciences Advisory Committee provides advice and coordination of NASA Life Sciences research programs. They assist in long-range planning for Spacelab, Space Station, and Space Transportation System (STS) experiments, as well as ground-based biomedical research. The Committee, chaired by Dr. Robert E. Moser, is composed of approximately 27 members. The session on November 24, 1986, from 2:30 p.m. to 5:00 p.m., will be closed to the public. During this time the Committee will discuss and evaluate candidates being considered for membership. During the meeting, the qualifications of the candidates will be candidly discussed and appraised. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that this session should be closed to the public.

Type of meeting: Open except for the closed session noted in the following agenda.

Agenda

*November 24, 1986*

8:30 a.m. Welcoming Remarks.
8:45 a.m. Status Report of Actions from Previous Meeting.
9 a.m. Office of Space Science and Applications (OSSA) and Agency Status.
9:30 a.m. Life Sciences Status.
10:30 a.m. New Initiatives-Controlled Ecological Life Support System (CELSS).
1 p.m. New Initiatives-Search for Extraterrestrial Intelligence (SETI).
2:30 p.m. Closed Session on Membership.
5 p.m. Adjourn.

*November 25, 1986*

8:30 a.m. New Initiatives-Radiobiology.
10 a.m. New Initiatives-Space Station.
1 p.m. Review of Decision Regarding Space Station Animal Environmental Controlled Life Support (ECLS) Requirements.
2 p.m. Current Configuration for Space Station.
3:30 p.m. Biospherics program.
4:30 p.m. Responsibilities of LSAC Center Representatives.
5 p.m. Adjourn.

**Richard L. Daniels,**
*Advisory Committee Management Officer, National Aeronautics and Space Administration*
October 22, 1986.
[FR Doc. 86-24304 Filed 10-27-86; 8:45 am]
BILLING CODE 7510-01-M

## NATIONAL CREDIT UNION ADMINISTRATION

### Agency Forms Submitted to the Office of Management and Budget for Clearance

The following package is being submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Subject: Semiannual Financial and Statistical Report, NCUA 5300 (3133-0004)
Respondents: Federally Insured Credit Unions
Abstract: 701.13 Financial and Statistical and Other Reports—the regulation requires each federally insured credit union to submit to the NCUA a completed Financial and Statistical Report NCUA 5300 for midyear and year-end.
OMB Desk Officer: Robert Neal.

Copies of the above information collection clearance package may be obtained by calling the National Credit Union Administration, Administrative Office on (202) 375-1055.

Written comments and recommendations for the listed information collection should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: October 21, 1986.

**Rosemary Brady,**
*Secretary of the NCUA Board.*
[FR Doc. 86-24292 Filed 10-27-86; 8:45 am]
BILLING CODE 7535-01-M

## NUCLEAR REGULATORY COMMISSION

### Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Services. This series has been developed to describe and make available to the public methods acceptable to the NRC staff for implementing specific parts of the Commission regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its revision of applications for permits and licenses.

The draft guide, temporarily identified by its task number, MS 021-5 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Containment System Leakage Testing" and is intended for Division 1, "Power Reactors." It is being developed to provide guidance on procedures acceptable to the NRC staff for conducting containment leakage tests. This draft guide endorses American National Standard ANSI/ANS-56.8-1981, "Containment System Leakage Testing Requirements."

This draft guide, as issued for comment, proposes endorsement of the 1981 version of ANSI/ANS 56.8. It should be noted that a revision to ANSI/ANS 56.8 is being completed. Roughly two-thirds of the positions in the draft guide are expected to parallel revisions made to ANSI/ANS 56.8. The current apparent large number of differences between the guide and the standard will therefore be greatly reduced to a relatively few actual differences upon publication of the new ANSI/ANS 56.8 standard. For information regarding the pending revision to ANSI/ANS 56.8-

1981, contact the American Nuclear Society, 555 North Kensington Avenue, La Grange Park, Ilinois 60525.

This draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. It has received complete staff review but does not represent a final NRC staff position.

A separate regulatory analysis has not been prepared for this guide. This is because an extensive analysis, including a contractor-generated cost/benefit analysis, has been prepared and made available in conjunction with the proposed revision to 10 CFR Part 50, Appendix J, that is also being published for public comment in the **Federal Register**. This regulatory guide clarifies acceptable positions for implementing the criteria for the proposed revision to Appendix J. As such, it has been an inherent portion of the development package for the proposed Appendix J revision. Readers are therefore referred to the proposed Appendix J revision and to supporting documentation for a comprehensive perspective on the use of this guide.

Public comments are being solicited on the draft guide (including any implementation schedule). Comments should be sent to the Division of Rules and Records, Office of Administration, Room 4000 MNBB, Washington, DC 20555.

Although a time limit is given, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW, Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 21st day of October 1986.

Guy A. Arlotto, *Director,*
*Divison of Engineering Safety, Office of Nuclear Regulatory Research.*

[FR Doc. 86-24331 Filed 10-27-86; 8:45 am]
BILLING CODE 7590-01-M

## Advisory Committee on Reactor Safeguards Meeting of the Subcommittee Waste Management; Revised

The **Federal Register** published Friday, October 10, 1986 (51 FR 36501) and Tuesday, October 21, 1986 (51 FR 37357) contained notices of a meeting of the ACRS Subcommittee on Waste Management scheduled for October 30 and 31, 1986. In addition to the items previously cancelled, the following item will also *not* be discussed:

(1) The NRC Staff's review of DOE's Final Environmental Assessments for the five nominated geologic repository sites.

The remaining topics to be reviewed by the Subcommittee are:

(1) The BWIP (Hanford) site, including issues that have been raised pertaining to that site,

(2) Assessing compliance with the EPA Standard,

(3) Rulemaking conforming Part 60 to the EPA Standards,

(4) The Stats' implementation of the Low-level Radioactive Waste Policy Amendments Act of 1985 (LLRWPAA),

(5) Status of alternatives to shallow land burial,

(6) Safety assessment of alternatives to shallow land burial, and

(7) Status of the NRC waste package corrosion program.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Owen S. Merrill (telephone 202/634-1413) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the schedued meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated October 22, 1986.

Marton W. Libarkin,

*Assistant, Executive Director for Project Review.*

[FR Doc. 86-24334 Filed 10-27-86; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-029]

## Yankee Atomic Electric Co.; Yankee Nuclear Power Station; Environmental Assesssment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR 50.44(c)(3)(iii) to Yankee Atomic Electric Company (the licensee) for the Yankee Nuclear Power Station (Yankee) located at the licensee's site near Rowe, Massachusetts.

### Environmental Assessment

*Identification of Proposed Action*

The exemption would provide relief from control room operability requirements of 10 CFR 50.44(c)(3)(iii) for the Yankee high point vents. The proposed exemption is in accordance with the licensee's request for exemption dated October 3, 1986.

*The Need for the Proposed Action*

10 CFR 50.44(c)(3)(iii) requires that high point vents be provided for the reactor coolant system and the reactor vessel head and that the high point vents must be remotely operated from the control room. The vents are presently operational from the control room. However, to prevent spurious operation in the event of a fire, the licensee desires to remove power from the valves such that an operator action outside the control room would be required to operate the vent system. The licensee, therefore, asked for an exemption from the control room operability requirement in the October 3, 1986 application.

*Environmental Impact of the Proposed Action*

The proposed exemption from the control room operability requirements will not result in a significant environmental impact because: (1) The required operator action would be performed in the switchgear room, which is located directly under the control room and is easily accessible; (2) sufficient time exists to restore power to the valves prior to the need for their use; and (3) the removal of power from the valves will reduce the change of inadvertent opening of the vent valves and thus reduce the chance of initiation of an accident.

Our evaluation of the proposed exemption indicates that the exemption will not significantly increase the probability or consequences of any radiological releases, and there is no significant increase in occupational exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves systems located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

*Alternatives to the Proposed Action*

Since we have concluded that the environmental effects of the proposed action are not significant, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts and could result in the licensee being in violation of the Commission's regulations.

*Alternative Use of Resources*

This action does not involve the use of resources beyond the scope of resources used during normal plant operation.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

**Finding of no Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated October 3, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Bethesda, Maryland, this 21th day of October, 1986.

For the Nuclear Regulatory Commission.

**Morton B. Fairtile,**

*Acting Director, PWR Project Director No. 1, Division of PWR Licensing-A.*

[FR Doc. 86-24337 Filed 10-27-86; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF PERSONNEL MANAGEMENT

### Proposed Extension of an Information Collection for OMB Review

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980, this notice announces a proposed extension of a survey used to collect data for the Federal Civilian Workforce Statistics—Occupations of Federal White-Collar and Blue-Collar Workers. Every 2 years, ten agencies submit reports for which data are not in the Central Personnel Data File or otherwise available to the Office of Personnel Management. (Three of the agencies submit their data through one of the other responding agencies.) The data are used by the Office of Personnel Management to manage personnel programs and evaluate policy alternatives, by the National Science Foundation to analyze occupational data on scientists and engineers, and by the Bureau of Labor Statistics for inclusion in national labor force statistics. For copies of this proposal, call James M. Farron, Agency Clearance Officer, on (202) 632-7714.

**DATE:** Comments on this proposal should be received within 10 working days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—

James M. Farron, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, DC 20415

and

Katie Lewin, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, DC 20503

**FOR FURTHER INFORMATION CONTACT:** James M. Farron, (202) 632-7714.

Office of Personnel Management.

**Constance Horner,**

*Director.*

[FR Doc. 86-24300 Filed 10-27-86; 8:45 am]

BILLING CODE 6325-01-M

### Excepted Service, Positions Placed or Revoked

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

**FOR FURTHER INFORMATION CONTACT:** Tracy Spencer, (202) 632-6817.

**SUPPLEMENTARY INFORMATION:**

The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on September 23, 1986 (51 FR 33825). Individual authorities established or revoked under Schedule A, B, or C between September 1, 1986, and September 30, 1986, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

**Schedule A**

The following exception was established:

*Department of the Navy*

One position at GS-12 or above that will provide technical, administrative, or managerial support on highly classified functions to the Deputy Chief of Naval Operations (Plans, Policy and Operations). Effective September 16, 1986.

The following exception was revoked:

*Department of Justice*

The Community Relations Service's Schedule A excepted appointing authority for staff positions concerned with the resettlement of Cuban and Haitian entrants was revoked because it had expired by its own terms. Effective September 5, 1986.

**Schedule B**

No Schedule B execptions were established or revoked during September.

**Schedule C**

The following exceptions have been established:

*Department of Agriculture*

One Southwest Area Director to the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service. Effective September 4, 1986.

One Director, Office of Analysis and Evaluation to the Administrator. Effective September 18, 1986.

One Member, Board of Directors, Federal Crop Insurance Corporation, to the Secretary of Agriculture. Effective September 29, 1986.

One Confidential Assistant to the Administrator, Agricultural Marketing Service. Effective September 29, 1986.

*Department of Commerce*

One Congressional Affairs Specialist to the Legislative Director, Office of Congressional Affairs, National Oceanic and Atmospheric Administration. Effective September 9, 1986.

One Congressional Affairs Specialist to the Legislative Director, Office of Congressional Affairs, National Oceanic and Atmospheric Administration. Effective September 9, 1986.

One Confidential Assistant to the Deputy Assistant Secretary for Export Administration, International Trade Administration. Effective September 16, 1986.

*Department of Defense*

One Staff Specialist to the Deputy Director, Strategic Defense Initiative Organization. Effective September 8, 1986.

One Writer (Printed Media) to the Assistant Secretary of Defense (Force Management and Personnel). Effective September 15, 1986.

*Department of Education*

One Special Assistant to the Executive Assistant for Private Education. Effective September 2, 1986.

One Special Assistant to the Executive Director, Intergovernmental Advisory Council on Education. Effective September 16, 1986.

One Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective September 16, 1986.

One Staff Assistant to the Executive Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective September 17, 1986.

One Special Assistant to the Assistant Secretary for Civil Rights. Effective September 19, 1986.

One Confidential Assistant to the Assistant Secretary for Special Education and Rehabilitative Services. Effective September 22, 1986.

One Confidential Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective September 23, 1986.

One Confidential Assistant to the Assistant Secretary, Office of Civil Rights. Effective September 26, 1986.

*Department of Energy*

One Confidential Assistant to the Assistant Secretary for International Affairs and Energy Emergencies Effective September 26, 1986.

*Department of Health and Human Services*

One Director, Office of Family Planning, to the Deputy Assistant Secretary for Population and Affairs; Office of the Assistant Secretary for Health, Public Health Service. Effective September 2, 1986.

One Confidential Assistant to the Administrator, Health Care Financing Administration. Effective September 2, 1986.

Three External Affairs Advisors to the Senior Advisor for External Affairs, Office of the Commissioner, Social Security Administration. Effective September 5, 1986.

One Special Assistant to the Under Secretary. Effective September 5, 1986.

One Executive Assistant to the Commissioner, Social Security Administration. Effective September 17, 1986.

*Department of Housing and Urban Development*

One Staff Assistant to the Deputy Under Secretary for Intergovernmental Relations. Effective September 11, 1986.

One Executive Assistant to the Secretary for Business Relations/ Director, Office of Small and Disadvantaged Business Utilization. Effective September 30, 1986.

One Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective September 30, 1986.

One Special Assistant to the Deputy Assistant Secretary for Single Family Housing. Effective September 30, 1986.

*Department of the Interior*

One Secretary (Typing) to the Secretary. Effective September 26, 1986.

*Department of Justice*

One Confidential Assistant to the Associate Deputy Attorney General. Effective September 2, 1986.

One Special Assistant to the Assistant Attorney General, Tax Division. Effective September 23, 1986.

One Special Assistant to the Attorney General. Effective September 23, 1986.

One Confidential Assistant to the Associate Deputy Attorney General. Effective September 29, 1986.

One Attorney-Advisor to the Assistant Attorney General, Civil Division. Effective September 29, 1986.

*Department of Labor*

One Assistant to the Secretary's Representative. Effective September 4, 1986.

*Department of State*

One Special Assistant to the Deputy Assistant Secretary for International Social and Humanitarian Affairs, Bureau of International Organization Affairs. Effective September 8, 1986.

One Protocol Officer (Ceremonials) to the Chief of Protocol. Effective September 12, 1986.

*Agency for International Development*

One Special Assistant to the Director, Office of Foreign Disaster Assistance. Effective September 24, 1986.

*Consumer Product Safety Commission*

One Special Assistant to the Executive Director. Effective September 17, 1986.

*Environmental Protection Agency*

One Special Assistant to the Director, Office of Public Affairs. Effective September 9, 1986.

*Export-Import Bank of the U.S.*

One Special Assistant to the President and Chairman. Effective September 16, 1986.

*Farm Credit Administration*

One Executive Assistant to a Member. Effective September 17, 1986.

*Federal Communications Commission*

One Deputy Director for Legislative Policy to the Director, Office of Congressional and Public Affairs. Effective September 23, 1986.

*Federal Emergency Management Agency*

One Confidential Staff Assistant to the Director, Office of External Affairs. Effective September 26, 1986.

*Interstate Commerce Commission*

One Staff Advisor (Economics) to the Director, Office of Public Assistance. Effective September 30, 1986.

*National Aeronautics and Space Administration*

One Special Assistant (Liaison to the Vice President) to the Administrator. Effective September 19, 1986.

*Office of Management and Budget*

One Confidential Assistant to the Executive Associate Director for Budget and Legislation. Effective September 19, 1986.

*President's Commission on Executive Exchange*

One Public Affairs Specialist to the Executive Director. Effective September 26, 1986.

*Small Business Administration*

One Executive Assistant to the Director of Women's Business Ownership. Effective September 17, 1986.

*United States Information Agency*

One Corporate Liaison Officer to the Associate Director for Programs. Effective September 26, 1986.

One Staff Assistant to the Special Assistant, Office of Private Sector Committees. Effective September 30, 1986.

**Authority:** 5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., P. 218.

U.S. Office of Personnel Management.

**Constance Horner,**

*Director.*

[FR Doc. 86–24301 Filed 10–27–86; 8:45 am]

BILLING CODE 6325–01–M

## SECURITIES AND EXCHANGE COMMISSION

### Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

October 20, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

Conseco, Inc. Common Stock, No Par Value (File No. 7–9285)
Eldon Industries, Inc. Common Stock, $1.00 Par Value (File No. 7–9286)
Graco, Inc. Common Stock, $1.00 Par Value (File No. 7–9287)
Oakwood Homes Corp. Common Stock, $.50 Par Value (File No. 7–9288)
Reliance Group Holdings, Inc. Common Stock, $.10 Par Value (File No. 7–9289)
The Zewig Fund Common Stock, $.10 Par Value (File No. 7–9290)
Placer Development Corp. Common Stock, No Par Value (File No. 7–9291)
Entertainment Marketing Inc. Common Stock, $.01 Par Value (File No. 7–9292)
Mitral Medical International Inc. Common Stock, $1.00 (File No. 7–9293)
Mitral Medical International Inc. Common Stock, (File No. 7–9294)
Pier 1 Inc. (Delaware) Common Stock, $.50 Par Value (File No. 7–9295)
Chemical Waste Management Inc. Common Stock, $.01 Par Value (File No. 7–9296)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 10, 1986, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 86–24295 Filed 10–27–86; 8:45 am]

BILLING CODE 8010–01–M

**[Release No. 34–23725; File No. SR–MSRB–86–12]**

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

The Municipal Securities Rulemaking Board ("MSRB"), Suite 800, 1818 N Street, NW., Washington, DC 20036–2491, submitted on September 4, 1986, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to amend MSRB rule G–26 on customer account transfers.

Rule G–26 is designed to ensure that customer account transfers are accomplished in a timely and efficient manner by municipal securities dealers. The rule parallels rules adopted by the New York Stock Exchange ("NYSE") and the National Association of Securities Dealers ("NASD") and ensures that a uniform account transfer standard applies to all municipal securities dealers. For the Board's account transfer procedure to remain similar to that required by the NYSE and the NASD rules, the Board determined to amend rule G–26 to conform to certain NYSE and NASD provisions adopted after the effective date of rule G–26 that have application to municipal securities. The proposed rule change provides that if an account includes a "nontransferable" asset, the dealer carrying the account must request, in writing, instructions from the customer as to the disposition of the asset, which includes liquidation of the asset or retention by the carrying dealer. In addition, the proposed rule change would allow the carrying dealer to take exception to a transfer instruction only if: (1) It has no record of the account on its books; (2) the transfer instruction is incomplete; or (3) the transfer instruction contains an improper signature. The proposed rule change also designates a transfer instruction form, Form G–26, for use for transfers of customers' municipal securities accounts. Finally, the proposed rule change provides for other technical amendments to rule G–26, including the type of informatoin regarding the securities in the customer account which the carrying dealer must deliver to the receiving dealer.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 23604 (51 FR 32706, September 15, 1986). No comments were received regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and, in particular, the requirements of section 15B and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 17, 1986.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 85–24293 Filed 10–27–86; 8:45 am]

BILLING CODE 8010–01–M

**[Release No. 34–23729; File No. SR–NASD–86–26]**

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Temporary Extension of the Period of Effectiveness of the Pilot Program With The Stock Exchange, London, England, for the Exchange and Distribution of International Securities Information

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 16, 1986, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange

Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of substance of the Proposed Rule Change**

The National Association of Securities Dealers, Inc. ("NASD") is requesting approval from the Securities and Exchange Commission ("SEC") to extend the period of effectiveness of the Pilot Program undertaken by the NASD and The Stock Exchange, London, England ("Exchange") which was the subject of a previous filing made by the NASD in File No. SR–NASD–86–4. The filing was approved by the Commission on April 21, 1986 and provided for implementation of the Pilot Program for a period of six (6) months, which expires on October 21, 1986. The NASD is seeking the extension of this approval until January 2, 1987. The terms of substance of the proposed Pilot Program are set forth below.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purposes of and basis for the proposal and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B) and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of this rule filing is to obtain an extension of the SEC's six (6) month approval of the two (2) year Pilot Program through the end of the year so as to prevent the termination of the NASD's link with the Exchange, on October 21, 1986.

The Pilot Program, the first transatlantic communication link of its kind between major domestic and foreign equities marketplaces, provides an opportunity to gather and analyze information leading to the efficient and effective development of international trading, related regulatory programs and potentially new systems designs. The Pilot Program filed with the SEC requested approval for a two year period. Notwithstanding this rule filing which, at the SEC's request, asks for an extension of its Pilot Program only until January 2, 1987, the NASD believes it should be approved for the remainder of the full two year period. The NASD believes this to be the minimum period necessary for the Program to be productive in terms of the stated purpose. This would encompass a period prior to "Big Bang Day" in the United Kingdom followed by a reasonable period during which the Exchange supplied bid and offer quotations and last sale information could be fully incorporated into the Pilot Program and adequately evaluated in terms of the appropriateness of the categories, the number of securities included in the Pilot Program and the adequacy and sufficiency of the information format presented in each country. More importantly, however, the changes which are expected to occur in The Stock Exchange market after Big Bang Day are integral components of the evolving international market structure. The Pilot Program will provide an opportunity to evaluate these changes in a cooperative operational and regulatory environment. Representatives from the NASD and the Exchange have established and continue to maintain a dialogue which is anticipated to lead to a number of important trading and regulatory initiatives to be developed in close cooperation with the SEC and its staff.

The NASD believes that the premature termination of the Pilot Program would ill serve the longer term interests of the securities industry and the investors it serves. In originally filing the Pilot Program with the SEC, the NASD and the Exchange recognized the evolutionary nature of an international linkage and crafted a proposal which provides adequate flexibility to adapt to the changing conditions of the market in London both before and after Big Bang Day. The Pilot Program, if permitted to continue by the SEC, will yield invaluable operational and regulatory experience during this evaluation period.

In its release approving the implementation of the Pilot Program for the initial period, the SEC stated its belief that "a two-year pilot program for the exchange of quotation information is a useful first step to ascertain the degree of interest in London for OTC securities and in the U.S. for Exchange securities. The two-year pilot program will enable the NASD and Exchange to explore the possibility for and implications of a trading link between the two entities while they address any problems that might arise with the information exchange."

The SEC in its release also raised two issues as being of potential concern, namely, enforcement of U.S. securities laws in the context of international transactions and the potential competitive impact of the information exchange upon Instinet. The NASD does not believe these concerns present a problem sufficient to terminate this invaluable international experiment. As to the enforcement of U.S. securities laws in the context of international transactions, it would appear the SEC's concern has been allayed somewhat with the execution of an agreement with the United Kingdom Department of Trade and Industry covering the sharing of information. Tangible progress has, thus, been demonstrated in this area.

The second issue, involving Instinet's concern over the exchange of information between the NASD and the Exchange without the imposition of separate charges upon their respective subscribers, remains unresolved at this point. Nevertheless, the NASD does not believe this concern justifies termination of the Pilot Program. During the requested extension only information on a limited group of securities of international interest will be exchanged on a like kind basis in lieu of separate and offsetting monetary transfers. The NASD and the Exchange do not contemplate the introduction of an automatic execution linkage during the additional period.

The statutory basis for the Pilot Program and the requested extension thereof, is found in section 11A(a)(1)(B) and (C), 15A(b)(6), and 17A(1)(B) and (C) of the Securities Exchange Act of 1934 ("Act"). Section 11A(a)(1)(B) and (C) sets forth the Congressional goal of achieving more efficient and effective market operations, the availability of information with respect to quotations for securities and the execution of investor orders in the best market through new data processing and communications techniques. Section 15A(b)(6) requires that the rules of the Association be designed "to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market . . ." Section 17A(a)(1) sets forth the Congressional goal of linking all clearance and settlement facilities and reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD

believes that the extension of the approval for the Pilot Program will further these ends by providing the cooperative regulatory environment and operating experience necessary to enhance the potential for achievement of these goals in the international marketplace.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Pilot Program proposed herein could well be an important part of the foundation for the ultimate, more broadly based linkage of global markets and necessary regulatory harmonization, the paramount purpose of which is protection of the investing public. Much is yet to be learned about international links and the NASD believes this can be achieved only be on line experience. Therefore, in evaluating the competitive impact of this rule proposal, the Commission is requested to carefully consider the importance of its benefit to the investing public and issuers. Such, in our view, is and properly should be the primary focus in developing international mechanisms for the safe and efficient trading of securities, especially when these mechanisms may provide the framework and foundaion for systems which could well have worldwide scope and long term application. This should be the paramount consideration at this time. The NASD believes other considerations should be secondary in view of these more important and overriding considerations.

The Commission has set forth in its release approving the Pilot Program the arguments made by Instinet regarding the competitive impact which it believes the Program will have upon it. In sum, Instinet asserts that the NASD is granting and receiving access to securities information through the link on uniquely favorable terms as a result of its status as a self-regulatory organization (SRO) and that such preferential position is unfair and anticompetitive. These assertedly favorable terms are that no separate charge is received by the NASD or the Exchange for the information and that such information may be used by the NASD or the Exchange for automated trading purposes. It asserts the NASD's use of its SRO status to achieve this preferential position is unfair and anticompetitive.

The NASD believes that its Pilot Program will serve to materially advance competition for execution of internationally traded equities at the best price available either here or in the United Kingdom. The greater exposure of nondomestic equities information which this Pilot Program provides will assist in broadening the depth and liquidity of the markets and further the ability of issuers to raise capital for future expansion on a truly global basis. More importantly, however, regulatory cooperation is being significantly advanced to the benefit of the entire investing public. During the planned two-year period of the Pilot Program, no direct exchange of payments between the NASD and Exchange had been contemplated. Both entities view the provision of securities information to the other as equivalent to a payment in kind which generally accomplishes the same result, certainly in the short term. Further, during the period of extension requested herein, no use will be made of the information exchanged for purposes of operation of an automatic execution system. Given the limited numbers of securities involved, the limited use to be made of the information exchanged, and the remaining opportunity to address Instinet's concern during the future course of the Pilot Program, the NASD submits that the benefits to be dervied from the temporary extension of the Pilot Program significantly outweigh any potential burden upon competition and materially advance the purposes to be served under the above-referenced sections of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Not applicable.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The NASD requests the Commission to find good cause for approving the proposed rule change prior to the 35th day after its publication in the *Federal Register*, and, in any event, by October 21, 1986, the expiration date for the Pilot Program previously approved by the Commission. The NASD believes that the continuation of the Pilot Program provides an opportunity to develop additional information leading to the efficient and effective development of international trading, related regulatory programs and the potential for new system designs. Accordingly, the NASD believes that good cause exist to accelerate the effectiveness of the rule change to October 21, 1986.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 11A(a)(1)(B) and (C), 15A(b)(6), and 17A(1)(B) and (C) the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that accelerated approval and the continuation of the Pilot Program will benefit public investors and provide the opportunity to develop additional information leading to the efficient and effective development of international trading, related regulatory programs and the potential for new system designs. The Commission recognizes that without accelerated approval the authorization for the Pilot Program will expire on October 21, 1986. The Commission believes that the benefits of extending its approval of the Pilot Program on a temporary basis outweighs any potential adverse effects during the period of the rule change's effectiveness. The Commission notes, however, that issues raised in the original approval order remain unresolved by the NASD. The Commission expects those issues to be resolved by the expiration of this extension on January 2, 1987.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 18, 1986.

IT IS THEREFORE ORDERED, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 20, 1986.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 86-24294 Filed 10-27-86; 8:45 am]

BILLING CODE 8010-01-M

## Self-regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

October 20, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Jefferson-Pilot Corporation, Capital Stock, $1.25 Par Value (File No. 7-9297)

Martrix Corporation, Common Stock, $1.00 Par Value (File No. 7-9298)

Decision Industries Corporation, Common Stock, $0.10 Par Value (File No. 7-9299)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 10, 1986, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 86-24296 Filed 10-27-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15369; File No. 812-6341]

## Application and Opportunity for Hearing: Sun Life Assurance Company of Canada (U.S.) et al.

October 20, 1986.

Notice is hereby given that Sun Life Assurance Company of Canada (U.S.) ("Sun Life"), Sun Life of Canada (U.S.) Variable Account E ("Account E"), of One Sun Life Executive Park, Wellesly Hills, Massachusetts 02181 and Clarendon Insurance Agency, Inc., of 200 Berkeley Street, Boston, Massachusetts 02116 (collectively, "Applicants") filed an application on April 7, 1986 and an amendment thereto on September 5, 1986 requesting an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") granting exemptions from the provisions of section 2(a)(32), 2(a)(35), 9(a), 13(a), 15(a), 15(b), 22(c), 26(a)(1), 26(a)(2), 27(a)(1), 27(c)(2), 27(d) and 27(f) of the Act and Rules 6e-2(b)(1), 6e-2(b)(12), 6e-2(b)(13)(i), 6e-2(b)(13)(iii), 6e-2(b)(13)(iv), 6e-2(b)(13)(viii), 6e-2(b)(15), 6e-2(c)(1), 6e-2(c)(4), 22c-1 and 27f-1 to the extent necessary to permit the offer of certain single premium variable life insurance contracts (the "Contracts") as described in the application. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and the rules thereunder for a statement of the relevant provisions.

Applicants state that Sun Life is a stock life insurance corporation incorporated under the laws of Delaware, and Account E is a separate account of Sun Life registered as a unit investment trust under the Act. Applicants state that Sun Life and Account E intend to offer and sell the Contracts, which will be funded through Account E, and that several subaccounts of Account E will each invest its assets exclusively in shares of a corresponding investment portfolio of MFS/Sun Life Series Trust (the "Series Fund"). Applicant represent that they are buying on Rule 6e-2 under the Act, but that they require additional exemptions in connection with certain features of the Contracts, are described below.

*Custody Requirements:* Applicants request exemptive relief from section 26(a)(1), 26(a)(2) and 27(c)(2) of the Act and Rule 6e-2(b)(13)(iii) in order to permit Account E to hold shares of the Series Fund, or such other registered management investment companies in which Account E may in the future invest, under an open account arrangement without the use of stock or other certificates and without Sun Life acting as a trustee or custodian pursuant to a trust indenture. Applicants represent that Sun Life will comply with all other applicable provisions of section 26 as if it were a trustee, depositor or custodian for Account E; Sun Life will file with the insurance commissioner of the State of Delaware an annual statement of financial condition, which most recent statement indicates that it has a combined capital and surplus of not less than $1,000,000; and Sun Life is examined from time to time by the insurance commissioner of the State of Delaware as to its financial condition and other affairs and that Sun Life is subject to supervision and inspection with respect to Account E's operations. Applicants assert that the safekeeping of the assets of Account E does not depend on the issuance of certificates or interposition of a trustee and trust indenture, which measures would, in fact, result in additional unnecessary expense.

*Mixed Funding:* Applicants request exemptions from section 9(a), 13(a), 15(a) and 15(b) of the Act and Rule 6e-2(b)(15) to permit Account E to invest its assets in the Series Fund or additional registered management investment companies which may be established in the future, shares of which are presently, or are expected to be, sold to separate accounts established by Sun Life or its affiliates in order to fund variable annuity contracts ("Mixed Funding"). Applicants state that these separate accounts currently include Sun Life of Canada (U.S.) Variable Account A and Sun Life (N.Y.) Variable Accounts B and C. Applicants state that Rule 6e-2(b)(15) expressly requires that all assets of the separate account consist of shares of registered management investment companies which offer their shares *exclusively* to variable life insurance separate accounts of the life insurer or its affiliates. Applicants assert that there is no policy reason for excluding situations involving mixed funding, from the exemptions in paragraph (b)(15) and that the monitoring costs that section 9(a) would entail would not result in any corresponding benefit to contractowners. Moreover, Applicants state that the use of a common underlying fund benefits both variable annuity and variable life insurance contract owners because it avoids additional start up and ongoing expenses for the operation and administration of funds. In addition, maintain the Applicants, the increased size of the resulting fund may benefit contract owners by economics of scale,

reduced investment management fees and the possible inclusion of additional portfolios.

In order to meet concerns regarding conflicts of interest between holders of variable life insurance contracts and variable annuity contracts, Applicant represent that they will comply with the following conditions:

1. The Series Fund and any other underlying fund which is organized in the future will comply with all provisions of the Act requiring voting by shareholders, and, in particular, such fund will either provide for annual meetings or comply with section 16(c) of the Act as well as with section 16(a) and, if and when applicable, section 16(b).

Further, such fund will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

2. A majority of the Board of Trustees/Directors of each fund shall be persons who are not interested persons of the fund within the meaning of section 2(a)(19) of the Act.

3. The Board of each fund will monitor the fund for the existence of any irreconcilable material conflict between the interests of variable annuity contract owners and the interests of owners of variable life contracts that provide for investment in shares of the fund.

4. Sun Life and/or any affiliated insurance company, a separate account of which invests in such fund, will be responsible for reporting any potential or existing conflicts to the Board of Directors/Trustees, and providing all information required to enable the Board to consider the matter. If it is determined by either the Board of Trustees/Directors of a fund, a majority of its Disinterested Trustees/Directors or Sun Life or an affiliate whose separate account invests in the fund, that an irreconcilable material conflict exists, Sun Life or its affiliate shall, at their expense and to the extent reasonably practicable (as determined by a majority of the Disinterested Trustees/Directors), take whatever steps are necessary to remedy such conflict, including but not limited to establishing a new registered management investment company or unit investment trust, or a new series of a series fund, segregating the assets of any appropriate group (such as annuity contract owners or owners of variable contracts of a particular company), or submitting the question of such remedy to all affected contract owners. Notwithstanding the foregoing, neither Sun Life nor its affiliate nor any fund shall be required by this condition to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of the contract owners materially adversely affected by the irreconcilable material conflict.

*Contingent Deferred Sales Charge:* Applicants state that under the Contracts, no sales charge is deducted from premium payments. Instead, state Applicants, a contingent deferred sales charge ("CDSL") will be assessed if a Contract is surrendered before thirty days prior to the tenth contract anniversary. According to Applicants the CDSL will be a percentage of the premium payment declining from eight percent during the first two contract years to two percent in the tenth year. Applicants request exemption from section 2(a)(32), 2(a)(35), 22(c), 26(a)(2)(C), 27(a)(1), 27(c)(1), 27(c)(2) and 27(d) of the Act and Rules 6e–2(b)(1), 6e–2(b)(12), 6e–2(b)(13)(i), 6e–2(b)(13)(iv), 6e–2(c)(4) and 22c–1 thereunder to the extent deemed necessary to permit imposition of this CDSL.

Applicants state that the CDSL will not be imposed in connection with a cancellation of the contract pursuant to the "free-look", privilege, a transfer of amounts under the Contract between sub-accounts or payment of the death benefit. Applicants assert that the imposition of a CDSL rather than a front-end sales load operates to the advantage of contract owners in that the entire premium payment will be invested from the time of receipt of the payment and completed application and the sales load will remain fully invested until the Contract is surrendered. Applicants further represent that the CDSL will never exceed eight percent of the premium payment and will thus never be greater than the charge that could have been deducted as a front-end sales load under section 27(a)(1) of the Act and Rule 6e–2.

Applicants state that the CDSL will be imposed, if at all, at the time a contract owner surrenders or converts his or her Contract. They assert that the mere fact that the timing of Applicants' sales load may not fall within the literal pattern of section 2(a)(35) and Rule 6e–2(c)(4) does not change its essential nature. The CDSL will cover expenses associated with the offer and sale of the Contract, including commissions paid to sales personnel, promotional expenses and sales administration expenses, just as other forms of sales loads do.

On the basis of the foregoing, Applicants believe that a CDSL is consistent with the definition of "sales load" set out in Rule 6e–2(c)(4). However, in order to avoid any question concerning full compliance with the Act and rules thereunder, Applicants request exemption from section 2(a)(35) and Rule 6e–2, paragraphs (b)(1) and (c)(4), to the extent necessary, to be deemed to contemplate the CDSL under Applicants' Contract. For the same reasons, Applicants also request exemptions from sections 26(a)(2)(C) and 27(c)(2).

Applicants state that, although sections 2(a)(32) and 27(c)(1) do not specifically contemplate the imposition of a sales charge at the time of redemption, such a charge is not necessarily inconsistent with the definition of redeemable security. Applicants submit that deferring the imposition of the sales charge in no way restricts the contractholder from receiving his proportionate share of the value of Account E on redemption. On the basis of the foregoing, Applicants believe that a contract providing for a CDSL is consistent with the definition of redeemable security within the meaning of sections 2(a)(32) and 27(c)(1), as adapted for variable life insurance by Rule 6e–2, paragraphs (b) (12) and (13)(iv). However, in order to avoid any question concerning full compliance with the Act and rules thereunder, Applicants request exemption from such sections and rules, to the extent deemed necessary, to permit the CDSL under the Contract.

Applicants also request exemption from section 22(c) and from Rules 6e–2(b)(12) and 22c–1 to the extent deemed necessary to permit the CDSL. Applicants state that the redemption price will be based on the then current net asset value. Applicants argue that Rule 6e–2(b)(12) was intended to afford exemptive relief from 22c–1 with respect to redemption procedures in the context of variable life insurance, including surrender and exchange procedures but that Rule 6e–2(b)(12) could be read as not recognizing such a deferred sales load. Applicants maintain that their CDSL will not have the dilutive effect Rule 22c–1 was designed to prohibit.

*Charge for Insurance Protection:* Applicants state that under the Contracts, Sun Life will impose a monthly charge for insurance protection against the account value based on the net amount at risk under the Contract. Applicants state further that this charge, including charges for substandard risks, will be determined from time to time by Sun Life based on its expectations of future mortality experience, but it will never be higher than an amount based upon the 1980 Commissioners' Standard Ordinary Blended Mortality Table C ("1980 CSO Table"). Applicants request

exemptions from sections 26(a)(2) and 27(c)(2) of the Act and Rules 6e-2(b)(13)(iii) and 6e-2(c)(4) to the extent necessary to permit use of the 1980 CSO Table as opposed to the 1958 CSO Table specified in Rule 6e-2, and to permit deduction of this charge monthly, based on the amount at risk under each Contract. Applicants assert that the 1980 CSO Table reflects improved mortality experience among all age groups over the 1958 Table. Applicants further assert that monthly deduction of the cost of insurance charge, as described, is more equitable and beneficial to contract owners because it increases the amount initially invested on their behalf and permits deductions on an ongoing basis directly from each Contract rather than from the premium payment based on estimates and assumptions regarding various factors considered in determining the net amount at risk over the life of the Contract. Applicants represent that any extra charge for cost of insurance for insureds in substandard risk catagories will not be included in the "premium" figures for the purpose of calculating CDSL.

*Minimum Death Benefit Guarantee Charge:* Applicants request an exemption from sections 26(a)(2) and 27(c)(2) of the Act and Rule 6e-2(b)(13)(iii) to permit Sun Life's deduction from Account E of a charge for the minimum death benefit guarantee equal, on an annual basis, to 0.25% for the first ten years of the Contract, to compensate Sun Life for the risk it assumes in providing such guarantee. No charge is deducted after the tenth Contract year. Applicants represent that they have reviewed the level of minimum death benefit guarantee charges under other single premium variable life insurance contracts and that the charge under the Contracts is reasonable in relation to the risks assumed under the Contracts and is within the range of industry practice, taking into account differences in product design and the timing and manner of deducting this risk charge in contrast with differing features of other products. Applicants further represent that Sun Life will maintain and make available to the Commission upon request a memorandum explaining the basis for this representation and the documents used to support this representation including the identity of the other products compared.

Applicants state that the CDSL may cover the expenses of distributing the Contracts but that surplus arising from the minimum death benefit guarantee charge and from other sources may be used for distribution.

Applicants represent that Sun Life has concluded and represents that there is a reasonable likelihood that the distribution financing arrangement being used to sell the Contracts will benefit Account E and contract owners. Applicants also represent that Sun Life has prepared an will maintain, and make available to the Commission upon request, a memorandum setting forth the basis of this representation.

*Investment Experience during the "Free-Look" Period:* Applicants request an exemption from the provisions of section 27(f) of the Act and Rules 6e-2(b)(13)(viii) and 27f-1 to permit, upon return of the Contract during the "free-look" period, a refund in an amount that reflects the investment experience during that period of any Sub-Account of account E to which the Premium Payment is allocated. Applicants argue that it is consistent with the policies of section 27(f) to have the contract owner bear the risk and enjoy the benefit of investment experience during the "free-look" period. Applicants note that Rule 6e-2(b)(13)(viii) requires a return of premium payments, but argue that although this is not significant in a context in which the amount invested on behalf of the contract owner during the "free-look" period is very small, under the Contracts a large single premium payment is invested immediately. Therefore, Applicants' conclude, material appreciation or depreciation in the Contract's Account Value could occur during the "free-look" period. Applicants represent that upon cancellation, the contract owners will receive the contract's account value, plus any daily or monthly deductions.

**Conclusion**

With respect to the exemptive relief requested, Applicants submit that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants further submit that the Commission has recognized the public interest served by such relief in its promulgation of Rule 6e-3T and its proposed amendments to Rule 6e-2.

Notice is further given that any interested person wishing to request a hearing on the Application may, not later than November 14, 1986 at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reason for such request and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of service (by affidavit or in the case of an attorney-at-law, by certificate) shall be filed with the request. After the above date an order disposing of the Application will be issued as of course unless the Commission orders a hearing upon hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 86-24297 Filed 10-27-86; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster Loan Area No. 2253, Amendment No. 1]**

### Wisconsin; Declaration of Disaster Area

The above-numbered Declaration (51 FR 36892) is hereby amended in accordance with Notices of Amendment from the Federal Emergency Management Agency, dated October 14 and October 15, 1986, to include the Counties of Dodge, Washington and Waukesha as adjacent areas due to flooding which occurred September 10-11, 1986. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on December 8, 1986, and for economic injury until the close of business on July 7, 1987.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Dated: October 21, 1986

**Bernard Kulik,**

*Deputy Associate Administrator for Disaster Assistance.*

[FR Doc. 86-24272 Filed 10-27-86; 8:45 am]

BILLING CODE 8025-01-M

### Region IV Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region IV Advisory Council located in the geographical area of Miami, Florida, and Jacksonville, Florida, will hold a joint public meeting at 10:00 a.m., on Tuesday, October 28, 1986, at the Holiday Inn-Tampa Airport, 4500 West Cypress, Tampa, Florida, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call John L. Carey, District Director, U.S. Small Business Administration, 1320 S. Dixie Highway, Suite 501, Coral Gables, Florida 33134, telephone (305) 536–5533, or Douglas E. McAllister, District Director, U.S. Small Business Administration, 400 West Bay Street, Box 35067, Jacksonville Florida 32202, telephone (904) 291–3103.

Jean M. Nowak,

*Director, Office of Advisory Councils.*

October 21, 1986.

[FR Doc. 24324 Filed 10–27–86; 8:45 am]

BILLING CODE 8025–01–M

### Region VII Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region VII Advisory Council located in the geographical area of Cedar Rapids, Iowa, will hold a public meeting at 9:00 a.m. on Wednesday, November 12, 1986, at the Management Development Center, Seerley Hall, University of Northern Iowa, Cedar Falls, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Ralph W. Potter, District Director, U.S. Small Business Administration, 373 Collin Road NE, Cedar Rapids, Iowa 52402, telephone number (319) 399–2571.

Jean M. Nowak,

*Director, Office of Advisory Councils.*

October 21, 1986.

[FR Doc. 86–24325 Filed 10–27–86; 8:45 am]

BILLING CODE 8025–01–M

### Region VI Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region VI Advisory Council located in the geographical area of New Orleans, will hold a public meeting at 1:00 p.m. on Thursday, November 20, 1986, at the New Orleans Hilton Hotel, 2 Poydras Street, Windsor Room New Orleans, Louisiana, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Robert M. Crochet, District Director, U.S. Small Business Administration, 1661 Canal Street, Suite 2000, New Orleans, Louisiana 70112–2890, (504) 589–2744.

Jean M. Nowak,

*Director, Office of Advisory Councils.*

October 21, 1986.

[FR Doc. 86–24326 Filed 10–27–86; 8:45 am]

BILLING CODE 8025–01–M

### Region II Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region II Advisory Council, located in the geographical area of New York, will hold a public meeting at 12:00 p.m., on Thursday, October 30, 1986, at Citibank Headquarters, 399 Park Avenue on the 39th floor, New York, New York, to discuss such matters as may be presented my members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Bert X. Haggerty, District Director, U.S. Small Business Administration, 26 Federal Plaza, 31st Floor, New York, New York, 10278, (212) 264–1318.

Jean M. Nowak,

*Director, Office of Advisory Councils.*

October 21, 1986.

[FR Doc. 86–24327 Filed 10–27–86; 8:45 am]

BILLING CODE 8025–01–M

## DEPARTMENT OF THE TREASURY

### Office of the Secretary

**[Department Circular—Public Debt Series—No. 33–86]**

### Treasury Notes of October 15, 1993, Series H–1993

Washington, October 22, 1986.

*1. Invitation for Tenders*

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $7,000,000,000 of United States securities, designated Treasury Notes of October 15, 1993, Series H–1993 (CUSIP No. 912827 UD 2), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

*2. Description of Securities*

2.1. The Notes will be dated November 3, 1986, and will accrue interest from that date, payable on a semiannual basis on April 15, 1987, and each subsequent 6 months on October 15 and April 15 through the date that the principal becomes payable. They will mature October 15, 1993, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

*3. Sale Procedures*

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard time, Tuesday, October 28, 1986. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, October 27, 1986, and received no later than Monday, November 3, 1986.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount.

Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender alloted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

*4. Reservations*

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

*5. Payment and Delivery*

5.1. Settlement for the notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, November 3, 1986. Payment in full must accompany tenders submitted to all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, October 30, 1986. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, November 3, 1986. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

*6. General Provisions*

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the notes. Public announcement of such changes will be promptly provided.

6.3. The notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

**Gerald Murphy,**

*Fiscal Assistant Secretary.*

[FR Doc. 86-24415 Filed 10-27-86; 11:06 am]

BILLING CODE 4810-40-M

# Sunshine Act Meetings

Federal Register
Vol. 51, No. 208
Tuesday, October 28, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## CONTENTS

| | Item |
|---|---|
| Federal Election Commission | 1 |
| Federal Reserve System | 2 |
| Interstate Commerce Commission | 3 |
| Securities and Exchange Commission | 4 |
| United States Institute of Peace | 5 |
| United States International Trade Commission | 6 |

### 1

**FEDERAL ELECTION COMMISSION**

**"FEDERAL REGISTER" NO. 86-23537.**

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Thursday, October 23, 1986, 10:00 a.m.

Pursuant to 11 CFR 2.7(d)(2) the Commission added the following matter to the agenda:

Reconsideration of Advisory Opinion 1986-35 as approved on September 25, 1986.

**PERSON TO CONTACT FOR INFORMATION:** Mr. Fred Eiland, Information Officer, 202-376-3155.

Mary W. Dove,
*Administrative Assistant.*
[FR Doc. 86-24393 Filed 10-24-86; 10:19 am]
BILLING CODE 6715-01-M

### 2

**FEDERAL RESERVE SYSTEM**
**BOARD OF GOVERNORS**

**TIME AND DATE:** 10:00 a.m., Friday, October 31, 1986.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 23, 1986.

James McAfee,
*Associate Secretary of the Board.*
[FR Doc. 86-24363 Filed 10-23-86; 4:38 am]
BILLING CODE 6210-01-M

### 3

**INTERSTATE COMMERCE COMMISSION**

**TIME AND DATE:** 10:00 a.m., Tuesday, November 4, 1986.

**PLACE:** Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue, NW., Washington, DC 20423.

**STATUS:** Open Special Conference.

**MATTER TO BE DISCUSSED:**

Ex Parte 187—Railroad Transportation Contracts

**CONTACT PERSON FOR MORE INFORMATION:** Alvin H. Brown, Office of Legislative and Public Affairs, Telephone: (202) 275-7252.

Noreta R. McGee,
*Secretary.*
[FR Doc. 86-24431 Filed 10-24-86; 1:18 pm]
BILLING CODE 7035-01-M

### 4

**SECURITIES AND EXCHANGE COMMISSION**

**STATUS:** Closed Meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission held a closed meeting on Tuesday, October 21, 1986, at 4:00 p.m., to consider the following item:

Institution of injunctive action.

Commissioner Grundfest, as deputy officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Gerald Laporte at (202) 272-3085.

Jonathan Katz,
*Secretary.*
October 22, 1986

[FR Doc. 24418 Filed 10-24-86; 11:30 am]
BILLING CODE 8010-01-M

### 5

**UNITED STATES INSTITUTE OF PEACE**

**TIMES AND DATES:** 9:00 a.m.-5:p.m., Thursday, November 6, 1986; 9:00 a.m.-5:p.m., Friday, November 7, 1986;

**PLACE:** Tayloe House, National Courts Building, 717 Madison Place, NW., Washington, DC 20005.

**STATUS:** Open (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Codes, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. 98-525).

**AGENDA** (Tentative):

Meeting of Board of Directors convened. Consideration of minutes of sixth meeting. Plenary meeting. Committee reports. Grants program update and program discussion. Consideration of grant applications.

**CONTACT:** Mrs. Olympia Diniak. Telephone: (202) 789-5700.

Dated: September 24, 1986.

Robert F. Turner,
*President, United States Institute of Peace.*
[FR Doc. 86-24445 Filed 10-24-86; 1:19 pm]
BILLING CODE 3455-01-M

### 6

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

[USITC SE-86-37A]

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENTS:** 51 FR 36897, Thursday, October 16, 1986.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** Monday, October 20, 1986, 10:00 a.m.

**CHANGE IN THE MEETING:** Change in the Date of the Commission Meeting: Thursday, October 23, 1986.

In conformity with 19 CFR 201.37, Commissioners Liebeler, Brunsdale, Stern, Eckes, and Rohr determined by recorded vote that Commission business requires the change in date of the Commission meeting, and affirmed that no earlier announcement of the change in date was possible, and directed the issuance of this notice at the earliest practicable time. Commissioner Lodwick disapproved.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth R. Mason, Secretary, (202) 523–0161.

Kenneth R. Mason,

*Secretary.*

October 20, 1986.

[FR Doc. 86–24457 Filed 10–24–86; 3:18 p.m.]

BILLING CODE 7020–02–M

Federal Register

Tuesday
October 28, 1986

Part II

# Department of Defense
# General Services Administration
# National Aeronautics and Space Administration

48 CFR Parts 7, 17, and 52
Federal Acquisition Regulation (FAR); Subcontract Competition and Options; Proposed Rules

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 7**

**Federal Acquisition Regulation (FAR); Subcontract Competition**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a change to Federal Acquisition Regulation (FAR) 7.105(b)(2). When subcontract competition is both feasible and desirable, the proposed coverage will require contracting officers to address in acquisition plans how subcontract competition will be sought, promoted, and sustained throughout an acquisition.

**DATE:** Comments should be submitted to the FAR Secretariat at the address shown below on or before December 29, 1986, to be considered in the formulation of a final rule.

**ADDRESS:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405. Please cite FAR Case 86–57 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

**SUPPLEMENTARY INFORMATION:**

A. Background

Because of continued emphasis within the Department of Defense on fostering competition in acquisition, the Defense Acquisition Regulatory Council published in the **Federal Register** on March 3, 1986 (51 FR 7295), a Notice of Intent to develop a proposed rule to promote competition at the subcontract level. As a result of the nature of the comments received, coverage is being proposed for FAR 7.105.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) does not apply because the proposed revision is not a "significant revision" as defined in FAR 1.501–1; i.e., it does not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies. Accordingly, and consistent with section 1212 of Pub. L. 98–525 and section 302 of Pub. L. 98–577 pertaining to publication of proposed regulations (as implemented in FAR Subpart 1.5, Agency and Public Participation), solicitation of agency and public views on the proposed revision is not required. Since such solicitation is not required, the Regulatory Flexibility Act does not apply. Although such solicitation is not required, comments are invited.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed change to FAR 7.105(b)(2) does not impose any additional reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et. seq.

List of Subjects in 48 CFR Part 7

Government procurement.

Dated: October 20, 1986.

**Lawrence J. Rizzi,**

*Director, Office of Federal Acquisition and Regulatory Policy.*

Therefore, it is proposed that 48 CFR Part 7 be amended as set forth below:

## PART 7—ACQUISITION PLANNING

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

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

2. Section 7.105 is amended by adding paragraph (b)(2)(iv) to read as follows:

**7.105 Contents of written acquisition plans.**

* * * * *

(b) * * *

(2) * * *

(iv) When effective subcontract competition is both feasible and desirable, describe how such subcontract competition will be sought, promoted, and sustained throughout the course of the acquisition. Identify any known barriers to increasing subcontract competition and address how to overcome them.

[FR Doc. 86–24266 Filed 10–27–86; 8:45 am]

BILLING CODE 6820–61–M

**48 CFR Parts 17 and 52**

**Federal Acquisition Regulation (FAR); Options**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to Federal Acquisition Regulation (FAR) 17.206 and 17.207 to clarify when agencies should evaluate offers for option quantities in awarding the basic contract and when exercise of an option will satisfy the requirements of full and open competition contained in Part 6 of the FAR. Related editorial revisions are made to FAR 17.208 and 52.217–5.

**COMMENTS:** Comments should be submitted to the FAR Secretariat at the address shown below on or before December 29, 1986, to be considered in the formulation of a final rule.

**ADDRESS:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405. Please cite FAR Case 86–52 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

**SUPPLEMENTARY INFORMATION:**

A. Background

After auditing various DoD contracts for base support services, the General Accounting Office recommended that contracting agencies evaluate, as part of the initial award, options to extend these contracts when exercise is likely and no advantage accrues to the Government from not evaluating the options. The GAO further recommended that agencies should price all contract options when the initial contract is awarded or justify the use of other than full and open competition as a condition to exercising unevaluated options. The proposed rule proposes revisions to FAR 17.206 to establish a policy that the contracting officer should normally evaluate offers for option quantities in awarding the basic contract when subsequent exercise of these options is likely. In addition, the rule proposes to revise FAR 17.207(f) to specify criteria which exercise of an option must meet to satisfy the requirements of Part 6 of the FAR regarding full and open

competition. More specifically, the contracting officer must have evaluated the option as a part of the initial full and open competition and be able to exercise the option at an amount specified in, or reasonably determinable from, the terms of the basic contract. The proposed revision to FAR 17.207(f) goes on to list examples of when the basic contract either specifies or provides a reasonable basis for determining the option price.

B. Regulatory Flexibility Act

The proposed rule will not have a significant effect beyond the internal operating procedures of procuring agencies, or a significant cost or administrative impact on contractors or offerors. Section 19 of the Office of Federal Procurement Policy Act does not, therefore, require publicizing the rule for public comment. Consequently, the Regulatory Flexibility Act does not apply to the current proposal. Nevertheless, since time permits, public comments are solicited to facilitate maximum participation in fashioning sound procurement regulations.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the proposed changes do not impose any additional reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 17 and 52

Government procurement.

Dated: October 20, 1986.

**Lawrence J. Rizzi,**

*Director, Office of Federal Acquisition and Regulatory Policy.*

Therefore, it is proposed that 48 CFR Parts 17 and 52 be amended as set forth below:

1. The authority citation for Parts 17 and 52 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

## PART 17—SPECIAL CONTRACTING METHODS

2. Section 17.206 is revised to read as follows:

**17.206 Evaluation.**

(a) In awarding the basic contract, the contracting officer shall normally evaluate offers for any option quantities contained in a solicitation when it has been determined prior to soliciting offers that the Government is likely to exercise the options.

(b) The contracting officer need not evaluate offers for any option quantities when it is determined that evaluation would not be in the best interests of the Government and this determination is approved at a level above the contracting officer. The following are examples of circumstances that may support a determination not to evaluate offers for option quantities:

(1) There is not a reasonable certainty funds will be available to permit exercise of the option.

(2) The option would not be exercisable at an amount specified in, or reasonably determinable from, the terms of the basic contract.

3. Section 17.207 is amended by revising paragraph (f) to read as follows:

**17.207 Exercise of options.**

* * * * *

(f) Before exercising an option, the contracting officer shall make a written determination for the contract file that exercise is in accordance with the terms of the option, the requirements of this section, and Part 6. To satisfy requirements of Part 6 regarding full and open competition, the option must have been evaluated as part of the initial competition and be exercisable at an amount specified in or reasonably determinable from the terms of the basic contract, e.g.,

(1) A specific dollar amount;

(2) An amount to be determined by applying provisions (or a formula) provided in the basic contract, but not including renegotiation of the price for work in a fixed-price type contract;

(3) In the case of a cost-type contract, if—

(i) The option contains a fixed or maximum fee; or

(ii) The fixed or maximum fee amount is determinable by applying a formula contained in the basic contract (but see 16.102(c));

(4) A specific price that is subject to an economic price adjustment provision; or

(5) A specific price that is subject to change as the result of changes to prevailing labor rates provided by the Secretary of Labor.

* * * * *

4. Section 17.208 is amended by redesignating and revising paragraph (c)(1) as paragraph (c) and removing paragraph (c)(2) to read as follows:

**17.208 Solicitation provisions and contract clauses.**

* * * * *

(c) The contracting officer shall insert a provision substantially the same as the provision at 52.217-5, Evaluation of Options, in solicitations when:

(1) The solicitation contains an option clause;

(2) An option is not to be exercised at the time of contract award;

(3) A firm-fixed-price contract, a fixed price contract with economic price adjustment, or other type of contract approved under agency procedures is contemplated; and

(4) A determination has been made as specified in 17.206(a).

* * * * *

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

**52.217-5 [Amended]**

5. Section 52.217-5 is amended by inserting a colon in the introductory text following the word "solicitations" and removing the remainder of the sentence and by removing *Alternate I.*

[FR Doc. 86-24267 Filed 10-27-86; 8:45 am]

BILLING CODE 6820-61-M

Federal Register

Tuesday
October 28, 1986

Part III

# Department of Health and Human Services

Public Health Service

42 CFR Part 57

Health Professions Student Loan Program; Deferment Provisions; Notice of Proposed Rulemaking

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Public Health Service**

**42 CFR Part 57**

## Health Professions Student Loan Program; Deferment Provisions

**AGENCY:** Public Health Service, HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would amend existing regulations governing the Health Professions Student Loan (HPSL) program to include the deferment provisions of Pub. L. 99–129, the Health Professions Training Assistance Act of 1985, enacted on October 22, 1985.

**DATE:** Comments on this proposal are invited. To be considered, comments must be received by December 29, 1986.

**ADDRESSES:** Respondents should address written comments to the Director, Bureau of Health Professions (BHPr), Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Support, BHPr, Room 7–74, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301–443–4540.

**SUPPLEMENTARY INFORMATION:** Prior to the enactment of Pub. L. 99–129, the HPSL statute authorized deferment for the following activities: (1) Up to 3 years of active duty as a member of a uniformed service; (2) up to 3 years of service as a volunteer under the Peace Corps Act; and (3) all periods of advanced professional training including internships and residencies. As amended by Pub. L. 99–129, the HPSL statute continues to authorize deferment as indicated above, and also states that the following periods are eligible for deferment: (1) Not in excess of 2 years during which a borrower who is a full-time student in a health professions school leaves the school, with the intent to return to the school as a full-time student, to engage in a full-time educational activity which is directly related to the health profession for which the borrower is preparing; and (2) not in excess of 2 years during which a borrower who is a graduate of a health professions school participates in a fellowship training program or a full-time educational activity which is directly related to the health profession for which the borrower prepared at the health professions school and is engaged in by the borrower within 12 months after the completion of the borrower's participation in advanced professional training as described in § 57.210(a)(2)(iii), or prior to the completion of such borrower's participation in such training.

In addition to revising the deferment provisions as indicated above, Pub. L. 99–129 also requires that the Secretary promulgate regulations to carry out these deferment provisions. The regulations must: (1) Prescribe criteria for determining the types of fellowship training programs and full-time educational activities which will be permitted under the revised deferment provisions; (2) require the school in which a borrower is enrolled as a full-time student to determine, prior to the borrower's leaving school, whether an educational activity for which the student proposes to interrupt his or her studies qualifies for deferment under these provisions; and (3) establish procedures for a graduated borrower to receive a determination whether a particular fellowship training program or full-time educational activity qualifies for deferment under these provisions.

In accordance with the legislative requirement to promulgate regulations which prescribe criteria for the revised deferment provisions, this notice of proposed rulemaking (NPRM) would require that, to qualify for deferment, an educational activity for which a borrower proposes to interrupt his or her studies must be one which:

(1) Is part of a joint-degree program in conjunction with the health profession for which the borrower is preparing at the school. This criterion is intended to assure that a borrower who is in a joint-degree program is not required to begin repayment of the HPSL loan while completing that part of the education that is not in a discipline eligible for HPSL funds; or

(2) Is an activity which will enhance the borrower's knowledge and skills in the health profession for which the borrower is preparing at the school, as determined by the school. This criterion recognizes that there are educational activities which, although not part of a joint-degree program, will assist in the development of the knowledge and skills needed by the borrower to practice his or her health profession. Since schools have first-hand knowledge of these educational activities, the proposed rule would require each school to determine, for its borrowers, whether a particular activity meets this criterion.

This NPRM also proposes the following criteria for determining whether a fellowship training program is eligible for deferment under the revised provisions:

(1) The fellowship training program must be an activity which is directly related to the educational activity for which the borrower received the HPSL loan and must begin within 12 months after the borrower ceases to be a participant in an accredited internship or residency program, or prior to the completion of the borrower's participation in such program. This criterion is consistent with requirements set forth in Pub. L. 99–129.

(2) The fellowship training program must be a full-time program in research or research training. The Congress stated that it amended the HPSL legislation to allow deferment for fellowship training because it recognized the need to encourage talented men and women to pursue additional training that will allow them to make contributions to new knowledge in health care policy and medical science. The Secretary shares this concern and believes that restricting the deferments to full-time research activities carries out this intent. Accordingly, the NPRM proposes to impose this restriction.

(3) The fellowship training program must pay no stipend or one which does not exceed the stipend levels paid by the Public Health Service (PHS) to trainees receiving graduate and professional training under PHS grants. The PHS periodically publishes in its *Grants Administration Manual* annual stipend levels for these trainees. These levels are considered adequate to provide support to trainees and fellows and, thus, are intended to eliminate the need for the trainees or fellows to engage in outside employment. Because the Secretary believes individuals in fellowship positions who receive stipends greater than the levels established by PHS should be able to make payments on their HPSL loans, the proposed rule would restrict eligibility for deferment to individuals in fellowship training programs which pay a stipend that does not exceed these levels.

(4) The fellowship training program must select recipients through a nationally-competitive process. This criterion is intended to exclude those programs which are not well-established

or which have merely been created for specific individuals.

This NPRM proposes a third set of criteria for determining whether a full-time educational activity in which a graduated borrower engages is eligible for deferment under the revised provisions, as follows:

(1) The full-time educational activity must be one which: (a) Is part of a joint-degree program in conjunction with the health profession for which the borrower prepared at the school; (b) is required as part of an internship or residency program; or (c) is required for licensure, registration, or certification in the discipline for which the borrower received the HPSL loan. The Secretary believes that sound program management requires that borrowers be encouraged to begin repayment as soon as possible. Therefore, this criterion is intended to limit deferment under this provision primarily to educational activities that are required for a borrower to practice in his or her field.

(2) The full-time educational activity must begin within 12 months after the borrower ceases to be a participant in an accredited internship or residency program, or prior to the completion of the borrower's participation in such program. This criterion is consistent with requirements set forth in Pub. L. 99–129.

This proposed rule would also authorize health professions schools to determine, based on the criteria indicated above, whether a particular activity qualifies for deferment under this provision. When a school determines that a borrower's activity meets the criteria prescribed in this proposed rule, the school and the borrower could consider this request to be approved by the Secretary as an eligible deferment activity.

The Secretary is requesting comments on these proposed criteria for implementing the revised deferment provisions. The Secretary requests that any respondents who disagree with these criteria provide specific suggestions of other criteria or requirements which they consider appropriate. The Secretary is particularly soliciting comments regarding the stipend level criteria for fellowships. As mentioned previously, interested persons may submit written comments or data relating to this proposed rule to the Director of the Bureau of Health Professions at the address given above.

### Regulatory Flexibility Act and Executive Order 12291

The Secretary certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980. The small entities affected are small health professions schools. The regulation merely proposes to revise the activities for which HPSL borrowers can receive deferment. Further, the rule does not meet the criteria for a major rule under Executive Order 12291 and therefore does not require a regulatory impact analysis and review.

### Paperwork Reduction Act

Section 57.210(a)(3) contains an information collection requirement which is subject to review by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980. We have submitted a copy of this proposed rule to OMB for its review of this information collection. Other organizations and individuals desiring to submit comments on the information collection should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20503, ATTN: Desk Officer for HHS.

### List of Subjects in 42 CFR Part 57

Dental health, Education of disadvantaged, Education facilities, Educational study programs, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Scholarships and fellowships, Student aid.

Accordingly, Subpart C of 42 CFR Part 57 is proposed to be amended as follows:

(*Catalog of Federal Domestic Assistance*, No. 13.342, Health Professions Student Loan Program)

Dated: August 11, 1986.

**Robert E. Windom,**

*Assistant Secretary for Health.*

Approved: October 2, 1986.

**Otis R. Bowen,**

*Secretary.*

## PART 57—[AMENDED]

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

**Authority:** Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); secs. 740–744, Public Health Service Act, 77 Stat. 170–173, 90 Stat. 2266–2268, 91 Stat. 390–391, 95 Stat. 920, 99 Stat. 532 (42 U.S.C. 294m–q).

2. Section 57.210 is amended by revising paragraphs (a)(2)(ii) and (a)(2)(iii), redesignating paragraphs (a)(3) and (a)(4) as (a)(4) and (a)(5), and adding paragraphs (a)(2)(iv), (a)(2)(v), and (a)(3) to read as follows:

**§ 57.210 Repayment and collection of health professions student loans.**

(a) * * *

(2) * * *

(ii) All periods for up to a total of 3 years of service as a volunteer under the Peace Corps Act;

(iii) All periods of advanced professional training including internships and residencies, except as specified in paragraph (a)(2)(v) of this section;

(iv) A period not in excess of 2 years during which a borrower who is a full-time student in a health professions school leaves the school, with the intent to return to such school as a full-time student, to engage in a full-time educational activity which is directly related to the health profession for which the individual is preparing. To qualify for such deferment, the full-time educational activity must be one which: (A) Is part of a joint-degree program in conjunction with the health profession for which the borrower is preparing at the school; or (B) Is an activity which will enhance the borrower's knowledge and skills in the health profession for which the borrower is preparing at the school, as determined by the school. The borrower must request such deferment from the school in which he or she is enrolled no later than 60 days prior to leaving such school to engage in the full-time educational activity. The school must then determine, no later than 30 days prior to the borrower's leaving such school, whether the borrower qualifies for such deferment; and

(v) A period not in excess of 2 years during which a borrower who is a graduate of a health professions school participates in:

(A) A fellowship training program which is directly related to the health profession for which the borrower prepared at the school, as determined by the school from which the borrower received his or her loan, and is engaged in by the borrower no later than 12 months after the completion of the borrower's participation in advanced professional training as described in paragraph (a)(2)(iii) of this section, or prior to the completion of such borrower's participation in such training. To qualify for such deferment, the fellowship training program must be one which:

(*1*) Is a full-time research or research training activity;

(*2*) Pays no stipend or one which does not exceed the stipend levels established by PHS for trainees receiving graduate and professional training under PHS grants, as in effect at the time the borrower requests the deferment; and

(*3*) Selects recipients through a nationally-competitive process; or

(B) A full-time educational activity which is directly related to the health profession for which the borrower prepared at the school, as determined by the school from which the borrower received his or her loan, and is engaged in by the borrower no later than 12 months after the completion of the borrower's participation in advanced professional training as described in paragraph (a)(2)(iii) of this section, or prior to the completion of the borrower's participation in such training. To qualify for such deferment, the full-time educational activity must be one which:

(*1*) Is part of a joint-degree program in conjunction with the health profession for which the borrower prepared at the school; or

(*2*) Is required as part of an internship or residency program; or

(*3*) Is required for licensure, registration, or certification in the discipline for which the borrower received the HPSL loan.

(3) To receive a deferment, a borrower must, no later than 30 days prior to the onset of the activity and annually thereafter, provide the lending school with evidence of his or her status in the deferrable activity, and evidence that verifies deferment eligibility of the activity. It is the responsibility of the borrower to provide the lending school with all required information or other information regarding the requested deferment. The school may deny a request for deferment if it is not filed in accordance with the requirements of this section.

* * * * *

[FR Doc. 86-24220 Filed 10-27-86; 8:45 am]
BILLING CODE 4160-15-M

federal register

Tuesday
October 28, 1986

Part IV

# Department of Health and Human Services

Public Health Service

42 CFR Part 60

Health Education Assistance Loan Program; Revised Deferment Provisions; Notice of Proposed Rulemaking

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**42 CFR Part 60**

## Health Education Assistance Loan Program; Revised Deferment Provisions

**AGENCY:** Public Health Service, HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would amend existing regulations governing the Health Education Assistance Loan (HEAL) program to include the revised deferment provisions which are part of Pub. L. 99–129, the Health Professions Training Assistance Act of 1985, enacted on October 22, 1985.

**DATE:** As discussed below, comments are invited. To be considered, comments must be received by December 29, 1986.

**ADDRESSES:** Respondents should address written comments to Mr. Thomas D. Hatch, Director, Bureau of Health Professions (BHPr), Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Support, BHPr, Room 7–74, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: (301) 443–4540.

**SUPPLEMENTARY INFORMATION:** On October 22, 1985, the President signed Pub. L. 99–129, the Health Professions Training Assistance Act of 1985. Prior to the enactment of this law, the repayment provisions of the HEAL program required that repayment begin not earlier than 9 months nor later than 12 months after the date on which the borrower: (1) Ceases to participate in an accredited internship or residency program, or (2) if he or she does not participate in such program, ceases to carry, at an eligible institution, the normal full-time academic workload as determined by the institution. In addition, the HEAL program provided for deferment of the payment of installments during any period during which the borrower: (1) Participates in a full-time course of study at a HEAL school or at an institution of higher education that is a "participating school" in the Guaranteed Student Loan Program; (2) Participates in an accredited internship or residency program for up to 4 years (excluding any participation in programs prior to the onset of the repayment period); (3) Is a member of the Armed Forces of the United States for up to 3 years; (4) Is a volunteer under the Peace Corps Act for up to 3 years; (5) Is a member of the National Health Service Corps for up to 3 years; or (6) Is a full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973 for up to 3 years.

Section 208(b)(1) of Pub. L. 99–129 revised the repayment provisions to require that repayment begin not earlier than 9 months nor later than 12 months after the later of the date on which the borrower: (1) Ceases to be a participant in an accredited internship or residency program of not more than 4 years in duration; or (2) Completes the fourth year of an accredited internship or residency program of more than 4 years in duration; or (3) If not a participant in (1) or (2), ceases to carry, at an eligible institution, the normal full-time academic workload as determined by the institution; or (4) Who is a graduate of an eligible institution ceases to be a participant in a fellowship training program not in excess of 2 years or in an educational activity not in excess of 2 years which is directly related to the health profession for which the borrower prepared at the HEAL school. The HEAL statute continues to authorize deferment for activities which were approved prior to the enactment of Pub. L. 99–129. However, Pub. L. 99–129 limits the period of deferment for participation in internship or residency programs to a total of 4 years, whether engaged in before the onset of the repayment period or after the repayment period has begun.

In addition to revising the provisions for deferment of either the onset of the repayment period or of installments after the repayment period has begun, as indicated above, Pub. L. 99–129 also requires that the Secretary promulgate regulations to carry out that portion of the revised deferment provisions relating to fellowship training programs or educational activities. These regulations must: (1) Prescribe criteria for determining the types of fellowship training programs and educational activities which will be permitted under the revised deferment provisions; and (2) Establish procedures for a borrower to receive a determination whether a particular fellowship training program or full-time educational activity qualifies for deferment under this provision.

In accordance with the legislative requirement to promulgate regulations addressing the revised deferment provision, this notice of proposed rulemaking (NPRM) proposes criteria for determining whether a fellowship training program is eligible for deferment of either the onset of the repayment period or of installments after the repayment period has begun under the revised provision, as follows:

(1) The fellowship training program must be an activity which is directly related to the discipline for which the borrower received the HEAL loan and must begin within 12 months after the borrower ceases to be a participant in an accredited internship or residency program, as described in § 60.11(a)(2), or prior to the completion of the borrower's participation in such program. These criteria are consistent with the requirements set forth in Pub. L. 99–129.

(2) The fellowship training program must be a full-time program in research or research training. Congress stated that it amended the HEAL legislation to allow deferment for fellowship training because it recognized the need to encourage talented men and women to pursue additional training that will allow them to make contributions to new knowledge in health care policy and medical science. The Secretary shares this concern and believes that restricting the deferments to research activities meets this intent. Accordingly, the regulations propose to include such a restriction.

(3) The fellowship training program must not be an internship or residency program, as described in § 60.11(a)(2), because these internships and residencies are already approved for deferment.

(4) The fellowship training program must pay no stipend or one which does not exceed the stipend levels paid by the Public Health Service (PHS) to trainees receiving graduate and professional training under PHS grants. The PHS periodically publishes in its *Grants Administration Manual* annual stipend levels for these trainees. These levels are considered adequate to provide support to trainees and fellows and, thus, are intended to eliminate the need for the trainees/fellows to engage in outside employment. Because the Secretary believes individuals in fellowship positions who receive stipends greater than the levels established by the PHS should be able to make payments on their HEAL loan, the regulations propose to restrict eligibility for deferment to individuals in fellowship training programs which pay no stipend or one which does not exceed these levels.

(5) The fellowship training program must select recipients through a

nationally-competitive process. This criterion will exclude those programs which are not well-established or which have merely been created for specific individuals.

This NPRM also proposes criteria for determining whether an educational activity is eligible for deferment of either the onset of the repayment period or of installments after the repayment period has begun under the revised provision, as follows:

(1) The educational activity must be directly related to the discipline for which the borrower received the HEAL loan and must begin within 12 months after the borrower ceases to be a participant in an accredited internship or residency program, as described in § 60.11(a)(2), or prior to the completion of the borrower's participation in such program. These criteria are consistent with the requirements set forth in Pub. L. 99–129.

(2) The educational activity must be at an institution defined by section 435(b) of the Higher Education Act of 1965, which is consistent with the statute.

(3) The educational activity must not be an internship or residency program, as described in § 60.11(a)(2), because these internships and residencies are already approved for deferment.

(4) The educational activity must be required by the approved accrediting agency as part of the internship or residency program, as described in § 60.11(a)(2), or for licensure, registration, or certification in the State in which the borrower intends to practice the discipline for which the borrower received the HEAL program loan. The Secretary believes that sound program management dictates that borrowers be encouraged to begin repaying the loan as soon as possible. Therefore, this criterion is intended to allow deferments under this provision only for educational activities needed by the borrower to practice his or her profession.

For the educational and fellowship activities, the NPRM proposes that the lender will make the decision, based on the criteria indicated above, as to whether the request shall be approved. The Secretary believes that this procedure will aid borrowers and lenders in expediting deferment requests. If, however, the borrower disagrees with the lender's decision, the regulations propose to allow the borrower to request that the Secretary review the lender's decision.

This NPRM proposes that the borrower must annually submit to the holder of the note evidence of his/her status in the deferment activity and evidence that verifies deferment eligibility of the activity. The regulations further propose that a lender may rely in good faith upon statements of the borrower, the director of the fellowship activity or other authorized official, and the dean or other authorized school official, or any information received from these individuals, except where those statements or other information conflict with information available to the lender. When those verification statements or other information conflict with information available to the lender, the lender may not approve the deferment.

The Secretary is requesting comments on these proposed regulatory procedures for implementing the revised deferment provisions. The Secretary requests that any respondents who wish to comment on these proposals provide specific suggestions of other proposals which they consider appropriate. The Secretary is particularly soliciting comments regarding the stipend level proposal for fellowships. As previously stated, interested persons are invited to submit written comments or data relating to these proposed regulations. Written comments should be directed to the Director of the Bureau of Health Professions at the address given above.

### Regulatory Flexibility Act and Executive Order 12291

The Department believes that the resources required to implement the proposed new requirements in these regulations are minimal in comparison to the overall resources of the lenders and the schools. Therefore, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have a significant impact on a substantial number of HEAL lenders and schools.

The Department has also determined that this proposed rule is not a major rule under Executive Order 12291; therefore, a regulatory impact analysis is not required. In addition, the proposed rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291.

### Paperwork Reduction Act

Section 60.12(c) contains information collection requirements which are subject to review by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980. This section has been approved by the OMB and assigned control number 0915–0033.

### List of Subjects in 42 CFR Part 60

Educational study programs, Medical and dental schools, Health professions, Reporting requirements, Loan programs-education, Student aid, Loan programs-health.

Accordingly, the Department of Health and Human Services proposes to amend 42 CFR Part 60 as follows:

(*Catalog of Federal Domestic Assistance*, No. 13.108, Health Education Assistance Loan Program)

Dated: August 11, 1986.

**Robert E. Windom,**

*Assistant Secretary for Health.*

Approved: October 2, 1986.

**Otis R. Bowen,**

*Secretary.*

## PART 60—HEALTH EDUCATION ASSISTANCE LOANS

1. The authority citation for Part 60 is revised to read as follows:

**Authority:** Section 215 of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); secs. 727–739 of the Public Health Service Act, 90 Stat. 2243, as amended, 93 Stat. 582, 99 Stat. 529–532 (42 U.S.C. 294–294*l*).

2. Section § 60.11 is amended by revising paragraph (a)(1) to read as follows:

### § 60.11 Terms of repayment.

(a) *Commencement of repayment.* (1) The borrower's repayment period must begin the first day of the 10th month after the month he or she ceases to be a full-time student at a HEAL school. The 9-month period before the repayment period begins is popularly called the "grace period."

(i) *Postponement for internship or residency program.* However, if the borrower becomes an intern or resident in an accredited program within 9 full months after leaving school, then the borrower's repayment period must begin the first day of the 10th month after the month he or she ceases to be an intern or resident. For a borrower who receives his or her first HEAL loan on or after October 22, 1985, this postponement of the beginning of the repayment period for participation in an internship or residency program is limited to 4 years.

(ii) *Postponement for fellowship training or educational activity.* For any HEAL loan received on or after October 22, 1985, if the borrower enters into a fellowship training program or an educational activity, as described in § 60.12(b) (1) and (2), within 9 months after the completion of an accredited internship or residency program or prior to the completion of such program, the borrower's repayment period begins on the first day of the 10th month after the month he or she ceases to be a

participant in such activity. Postponement of the commencement of the repayment period for either activity is limited to two years.

(iii) *Nonstudent borrower.* If a nonstudent borrower obtains another HEAL loan during the grace period or period of internship, residency, or deferment (as defined in § 60.12), the borrower must begin to repay this loan when repayment on the borrower's other HEAL loans begins or resumes.

* * * * *

3. In § 60.12, paragraph (b) is redesignated as paragraph (c) and revised, and a new paragraph (b) is inserted to read as follows:

**§ 60.12 Deferment.**

* * * * *

(b) For any HEAL loan received on or after October 22, 1985, after the repayment period has commenced, installments of principal and interest need not be paid during any period for up to 2 years during which the borrower is a participant in:

(1) A fellowship training program, which:

(i) Is directly related to the discipline for which the borrower received the HEAL loan;

(ii) Begins within 12 months after the borrower ceases to be a participant in an accredited internship or residency program, as described in § 60.11(a)(2), or prior to the completion of the borrower's participation in such program;

(iii) Is a full-time research or research training activity;

(iv) Is not an internship or residency program, as described in § 60.11(a)(2);

(v) Pays no stipend or one which is not more than the annual stipend level established by the Public Health Service for the payment of uniform levels of financial support for trainees receiving graduate and professional training under Public Health Service grants, as in effect at the time the borrower requests the deferment; and

(vi) Selects recipients through a nationally-competitive process; or

(2) A full-time educational activity at an institution defined by section 435(b) of the Higher Education Act of 1965 which:

(i) Is directly related to the discipline for which the borrower received the HEAL loan;

(ii) Begins within 12 months after the borrower ceases to be a participant in an accredited internship or residency program, as described in § 60.11(a)(2), or prior to the completion of the borrower's participation in such program;

(iii) Is not an internship or residency program, as described in § 60.11(a)(2); and

(iv) Is required by the approved accrediting agency as part of the internship or residency program, as described in § 60.11(a)(2), or for licensure, registration, or certification in the State in which the borrower intends to practice the discipline for which the borrower received the HEAL program loan.

(c) To receive a deferment, including a deferral of the onset of the repayment period (see § 60.11(a)), a borrower must at least 30 days prior to, but not more than 60 days prior to, the onset of the activity and annually thereafter, submit to the holder of the note evidence of his/her status in the deferment activity and evidence that verifies deferment eligibility of the activity. It is the responsibility of the borrower to provide the holder with all required information or other information regarding the requested deferment.

(1) Except for the fellowship activities in paragraph (b)(1) and the educational activities in paragraph (b)(2) of this section, if written evidence that verifies eligibility of the proposed deferment activity and of the borrower for the deferment is received by the holder within the required time limit, the holder of the loan must approve the deferment. A lender may rely in good faith upon statements of the borrower, except where those statements or other information conflict with information available to the lender. When those verification statements or other information conflict with information available to the holder, to indicate that the applicant fails to meet the requirements for deferment, the holder may not approve the deferment. In this situation, the Secretary will not review the decision of the holder.

(2) For the fellowship activities in paragraph (b)(1) of this section, if written evidence from the director of the fellowship activity or other authorized official that verifies eligibility of the proposed deferment activity and of the borrower for the deferment is received by the holder within the required time limit, the holder of the loan must approve the deferment. A lender may rely in good faith upon statements of the borrower and the director or other authorized official, except where those statements or other information conflict with information available to the lender. When those statements or other information conflict with information available to the holder, to indicate that the borrower fails to meet the requirements for deferment, the holder may not approve the deferment. In this situation, the Secretary will not review the decision of the holder.

(3) For the educational activities in paragraph (b)(2) of this section, if written evidence from the dean or other authorized official of the school that verifies eligibility of the proposed deferment activity and of the borrower for the deferment is received by the holder within the required time limit, the holder of the note must approve the deferment. A lender may rely in good faith upon statements of the borrower and the dean or other authorized official of the school, except where those statements or other information are in conflict with information available to the lender. When those statements or other information are in conflict with information available to the holder, to indicate that the borrower fails to meet the requirements for deferment, the holder may not approve the deferment. In this situation, the Secretary will not review the decision of the holder.

(4) Except as otherwise provided in this paragraph, the borrower may request that the Secretary review a decision by the holder denying the deferment in paragraphs (b) (1) or (2) of this section by sending to the Secretary copies of the application for deferment and the holder's denial of the request. In this instance, the lender must comply with any requests for information made by the Secretary. If the Secretary determines that the fellowship or educational activity is eligible for deferment and so notifies the holder of the note, the holder must approve the deferment.

(Approved by the Office of Management and Budget under control number 0915–0033)

[FR Doc 86–24219 Filed 10–27–86; 8:45 am]

BILLING CODE 4160–15–M

federal register

Tuesday
October 28, 1986

Part V

# Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Loach Minnow; Final Rule

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

## Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Loach Minnow

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service has determined that a fish, the loach minnow (*Tiaroga cobitis*), is a threatened species. This determination includes a special rule allowing take for certain purposes in accordance with New Mexico and Arizona State laws and regulations. Historically, the loach minnow occurred in the Gila River system upstream from Phoenix, Arizona. Presently it is found only in Aravaipa Creek, Graham and Pinal Counties, Arizona; portions of the Gila River upstream from the Middle Box canyon, Grant and Catron Counties, New Mexico; the San Francisco and Blue Rivers upstream from their confluence, Greenlee County, Arizona, and Catron County, New Mexico; the lower Tularosa River, Catron County, New Mexico; the lower 1.5 kilometers (1 mile) of Whitewater Creek, a tributary of the San Francisco River, Catron County, New Mexico; and a small section of the White and East Fork of the White Rivers at their confluence, Navajo County, Arizona. The historic range of the loach minnow included the upper San Pedro River in Sonora, Mexico, but habitat no longer exists there due to dewatering of the river. The distribution and numbers of the loach minnow have been reduced by habitat destruction due to impoundment, channel downcutting, substrate sedimentation, water diversion, groundwater pumping, and the spread of exotic predatory and competitive fish species. The species continues to be threatened by proposed dam construction, water losses, habitat alteration, and exotic species. Of the approximately 2,600 kilometers (1,600 miles) of stream habitat historically occupied by the loach minnow, 2,220 kilometers (1,364 miles) no longer supports the species. The determination of critical habitat included in the proposed rule is postponed until June 1987. This rule implements the full protection provided by the Endangered Species Act of 1973, as amended, for the loach minnow.

**DATE:** The effective date of this rule is November 28, 1986.

**ADDRESS:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service Regional Office, 500 Gold Avenue SW., Room 4000, P.O. Box 1306, Albuquerque, New Mexico 87103.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gerald L. Burton, Endangered Species Biologist, Office of Endangered Species, U.S. Fish and Wildlife Service, Region 2, Albuquerque, New Mexico (see **ADDRESSES** above) (505/766–3972 or FTS 474–3972).

**SUPPLEMENTARY INFORMATION:**

### Background

The loach minnow, *Tiaroga cobitis*, was first collected in 1851 from the Rio San Pedro in Arizona, and was described from those specimens in 1856 by Girard. It is the only species in the genus *Tiaroga*. It is a small (less than 80 millimeters [3 inches]), slender, elongated fish, olivaceous in color with dirty white spots at the base of the dorsal and caudal fins. It has a highly oblique terminal mouth and its eyes are markedly upward directed. Breeding males develop vivid red-orange markings. The loach minnow inhabits small to large perennial streams, using shallow turbulent riffles with primarily cobble substrate, swift currents, and growths of filamentous algae. Recurrent flooding is very important to *Tiaroga* biology, keeping the substrate free of embedding sediments, and helping to maintain the competitive edge over invading exotic fish species (Minckley 1973).

The loach minnow was once locally common throughout much of the Verde, Salt, San Pedro, San Francisco, and Gila (upstream from Phoenix) River systems, occupying both the mainstream and perennial tributaries up to about 2,200 meters (7,200 feet) elevation (Minckley 1973). Because of habitat destruction, and competition and predation by exotic fish species, its range has been reduced and it is now restricted to approximately 24 kilometers (km) (15 miles) of Aravaipa Creek, Graham and Pinal Counties, Arizona; approximately 93 km (57 miles) of the upper Gila River, upstream from the Middle Box canyon through the Cliff-Gila Valley and the area of the confluence of the East, West, and Middle Forks of the Gila, Grant and Catron Counties, New Mexico; approximately 167 km (103 miles) of the San Francisco and Tularosa Rivers, Catron County, New Mexico; the lower 1.5 km (1 mile) of Whitewater Creek, a tributary of the San Francisco River, Catron County, New Mexico; approximately 95 km (59 miles) of the Blue River, Greenlee County, Arizona; and a short stretch at the confluence of the East Fork and the mainstream of the White River, Navajo County, Arizona (Anderson 1978, Barber and Minckley 1966, Britt 1982, Silvey and Thompson 1978, Propst in prep., Propst *et al.* 1985, USDA 1979). The 380 km (236 miles) of range presently occupied by *Tiaroga* represents approximately 15 percent of its former range.

Land ownership in existing *Tiaroga cobitis* habitat is mixed and is as follows:

*Aravaipa Creek*—(1) USDI Bureau of Land Management—About 75 percent of the perennial length of the stream, most of which is designated as the Aravaipa Canyon Wilderness. (2) Defenders of Wildlife—Most of the perennial stream upstream and downstream from the wilderness area is owned or leased as the George Whittell Wildlife Preserve. (3) Other privately owned—A few scattered parcels along the perennial stream length.

*Gila River*—(1) Privately owned—Most of the Cliff-Gila Valley, also near Gila Hot Springs, and along the East Fork. (2) The Nature Conservancy—A small portion of river upstream from the town of Gila. (3) New Mexico Department of Game and Fish—Approximately 6 km (3¾ miles) of river on the West and Middle Forks near their confluence. In addition, the New Mexico State Land Office has land along ½ km (¼ mile) of river in the Cliff-Gila Valley. (4) National Park Service—Approximately 1 km (0.6 mile) on the West Fork. This is the Gila Cliff Dwellings National Monument, which is currently being administered by the U.S. Forest Service. (5) U.S. Forest Service—A large portion of the river is in the Gila National Forest with sections flowing through the Gila Wilderness, the Lower Gila River Bird Habitat Management Area, and the Gila River Research Natural Area.

*San Francisco and Tularosa Rivers and Whitewater Creek*—(1) Privately owned—Substantial areas near the towns of Cruzville, Glenwood, Reserve, and Alma. (2) U.S. Forest Service—The major portions of these rivers flow through the Gila and Apache-Sitgreaves National Forests.

*Blue River*—(1) U.S. Forest Service—The river is almost entirely contained within the Apache-Sitgreaves National Forest, with a large portion flowing through the Blue Range Primitive Area. (2) Privately owned—Interspersed inholdings within Forest Service lands.

*White River and East Fork of the White River*—Fort Apache Indian Reservation.

The native fish fauna of the Gila River system, including the loach minnow, has been drastically affected by man's alteration of that system, with 35 percent of the native fish presently federally listed as endangered and another 35 percent considered to be threatened or endangered by the States of Arizona and New Mexico and/or the American Fisheries Society. *Tiaroga* has been extirpated from much of the system and was last found in the San Pedro River (except Aravaipa Creek) in 1961, and the Verde River drainage in 1938. It has also retreated at least 60 km (37 miles) upstream in the Gila River in the last 50 years.

The continuing decline in the distribution of the loach minnow has evoked concern from many sources over its survival. It was included by the American Fisheries Society's Endangered Species Committee on their 1979 list (Deacon *et al.* 1979) as a species of special concern due to habitat destruction and to competition/predation from exotic species. Prior to that it was listed as rare and endangered on a 1972 list of threatened freshwater fish of the United States, published by the American Fisheries Society and the American Society of Ichthyologists and Herpetologists (Miller 1972). It has also been listed by the International Union for Conservation of Nature and Natural Resources in its *Red Data Book* (Vol. 4) in 1977. Both the States of Arizona and New Mexico include *Tiaroga cobitis* on their lists of threatened and endangered species (New Mexico State Game Comm. 1985; Arizona Game and Fish Comm. 1982). Because of concern over survival of and to provide protection for native species, including the loach minnow, land has been acquired on the upper Gila River by The Nature Conservancy and on Aravaipa Creek by the Defenders of Wildlife. *Tiaroga cobitis* was included in the Service's December 30, 1982, Vertebrate Notice of Review (47 FR 58454) in category 1. Category 1 includes those taxa for which the Service currently has substantial information to support the biological appropriateness of proposing to list the species as endangered or threatened. A proposed rule to list this species was published on June 18, 1985 (50 FR 25380).

### Summary of Comments and Recommendations

In the June 18, 1985, proposed rule (50 FR 25380) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The original comment period closed on August 19, 1985, but was reopened on October 7, 1985 (50 FR 37703), to accommodate the public hearings and remained open until November 8, 1985. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting general public comment were published in the *Courier* in Prescott, Arizona, on July 5, 1985; in the *Daily Press* in Silver City, New Mexico, on July 13, 1985; and in the *Eastern Arizona Courier* in Safford, Arizona, on July 10, 1985. Ninety-five letters of comment were received from 89 separate parties and are discussed below. Six requests for a public hearing were received. Public hearings were held in Silver City, New Mexico; Safford, Arizona; and Phoenix, Arizona; on October 7, 8, and 9, 1985, respectively. Interested parties were contacted and notified of those hearings, and notices of the hearings were published in the **Federal Register** on September 17, 1985 (50 FR 37703); in the *Daily Press* in Silver City, New Mexico, on September 24, 1985; in the *Eastern Arizona Courier* in Safford, Arizona, on October 2, 1985; in the *Courier* in Prescott, Arizona, on September 27, 1985; and in the *Arizona Republic* in Phoenix, Arizona, on September 26, 1985. Comments received in these hearings are summarized below.

Sixty-seven letters were received in support of the proposal, from 66 separate parties. Twelve letters were received in opposition to the proposal, from 10 separate parties. An additional 16 letters expressed neither support nor opposition, or contained only economic information for use in economic analysis of the critical habitat designation. Many of the letters of comment addressed concerns regarding specific water development or flood control projects and how they would affect or be affected by this proposal. These comments will not be addressed here, unless they requested or resulted in specific changes to the proposal or the rule procedure. All comments received are available for public inspection (see **ADDRESSES**).

Because of the complexity of the economic analysis that must accompany the final rule designating critical habitats and the large number of comments and data received on these habitats, the Service has decided to make final only the listing portion of this rule at this time so that immediate protection of the loach minnow would be possible. Section 4(b)(6)(C)(ii) of the Act allows the Service to postpone designation of critical habitat for up to one year (June 18, 1987, in this case). Hence, the comments pertaining to designation of critical habitat or the potential economic impacts of such designation will not be discussed here but will be addressed in the final rule on critical habitat. Only comments addressing the issue of listing this species are responded to here.

Summaries of all comments addressing the issue of listing the loach minnow and the Service's response to those comments and questions follow:

1. Support for the proposal was received from the Bureau of Land Management, the Desert Fishes Council, the American Society of Ichthyologists and Herpetologists, the International Union for Conservation of Nature and Natural Resources, three Commissioners of the New Mexico Interstate Stream Commission, the Defenders of Wildlife, the Prescott Audubon Society, the Rio Grande Chapter of the Sierra Club, the Tucson Audubon Society, the Maricopa Audubon Society, the Huachuca Audubon Chapter, the Apache County Chapter of the Arizona Wildlife Federation, the Southern New Mexico Sierra Club, the Yuma Audubon Society, the Arizona State University Chapter of the Wildlife Society, the George Whittell Wildlife Trust, the Northern Arizona Paddlers Club, the Rocky Mountain Heritage Task Force of The Nature Conservancy, the Arizona Nature Conservancy, the New Mexico Nature Conservancy, and 42 biologists and private citizens.

2. Dr. John Rinne, of the U.S. Forest Service Rocky Mountain Forest and Range Experiment Station, supports the proposal. Dr. Rinne also suggests that further survey work be done on the upper Salt River system to confirm the loss of *Tiaroga* from that area. The Service replies that such work was conducted in May 1985 (Propst *et al.* 1985), and a small population of *Tiaroga cobitis* was found in the White and East Forks of the White River at their confluence.

3. Dr. Dean Hendrickson, of the Arizona State University Department of Zoology, supports the proposal. At Dr. Hendrickson's suggestion, information regarding the possibility of adverse effects of predation by adult *Notropis lutrensis* on larval *Tiaroga cobitis*, has also been added to the final rule.

4. Dr. Robert R. Miller, of the University of Michigan Museum of Zoology, supports the proposal. Dr. Miller points out that *Tiaroga cobitis* historically occurred in the upper San Pedro River in Sonora, Mexico. That information has been added to the final rule.

5. The Arizona Game and Fish Department supports the proposal, and offered the following comments (*C*=comment, *R*=Service response): *C.* The Department thinks that federally-permitted water diversions and cattle grazing in riparian areas have had, and will continue to have, serious effects on *Tiaroga* and should be included in the Federal activities considered under "Available Conservation Measures." *R.* Livestock grazing on U.S. Forest Service lands is included in the "Available Conservation Measures" section of the rule, as a Federal activity which might be affected by the proposal. It is not included for Bureau of Land Management (BLM) lands, since none of the BLM lands within the present range of the species are currently grazed. Other than the Bureau of Reclamation's Upper Gila Water Supply Study, water diversions involving Federal funding, permits, or actions are generally located on private lands and are included in the paragraph addressing potentially affected activities on private lands. *C.* The Department points out that upstream pesticide use is an additional potential threat to the Aravaipa Creek population. *R.* This has been added to the final rule. *C.* The Department questioned the absence of red shiner in the Gila River in New Mexico prior to 1978. *R.* The red shiner was first collected in the Gila River in New Mexico by Buddy Jensen in 1978.

6. Opposition to the proposal was received from the Southwest New Mexico Industrial Development Corporation, and 2 private citizens.

7. Kirby Kline, of Silver City, New Mexico, opposes the proposal, and recommends that habitat improvement practices, particularly on Federal lands, be initiated in lieu of listing. The Service responds that unless habitat improvement practices can immediately alleviate all threats to all of the populations to the point where the species no longer meets the requirements for listing as threatened or endangered, the Service is required under the Act to list the species. Too little is known about the specific habitat needs of *Tiaroga cobitis* to ensure that habitat improvement practices alone would secure the survival and recovery of this fish, particularly in the face of the many threats to this species which cannot be alleviated by habitat improvements.

8. The Pleasanton Eastside Ditch Company requests that "our stretch of river be deleted from this act due to the presence of our private land, dams and ditches." The Service responds that the proposal to list is made strictly on biological grounds, and populations of a species cannot legally be excluded from the listing based on land ownership or resource uses. The existing dams and ditches have been in operation for many years and are presently coexisting with the species. In addition, Section 7 provisions do not apply to private lands or actions unless they are federally funded, authorized, or constructed.

9. The Hooker Dam Association, of Silver City, New Mexico, opposes the proposal and submitted 2 letters with the following comments (*C*=comment, *R*=Service response): *C.* The Association feels that this proposal has only one focal point, which is to stop the construction of Conner Dam. *R.* The loach minnow has been under consideration by the Service for nearly a decade as part of the continuing program to identify and list endangered and threatened species, and the specific proposal has been in progress since 1982. The Conner Dam alternative of the Upper Gila Water Supply study is only one of many considerations in the proposal and is not the reason for the proposal. *C.* The 380 km (236 miles) of remaining range for *Tiaroga cobitis* provides sufficiently dispersed habitat that the species does not merit listing as threatened. *R.* The remaining range of *Tiaroga* may seem large; however, the species is not uniformly spread over that range. Some of the area, particularly in the San Francisco River, contains interspersed stretches of unsuitable habitat and sparse populations of *Tiaroga*. *C.* The Association thinks that there may be other unsurveyed areas, including the White River and many tributaries of the upper Gila River and East Fork of the Gila River, where *Tiaroga* still exists and which are not included in the proposal. In addition, the Association contends that *Tiaroga* probably exists in the Gila River between the mouth of the East Fork and Mogollon Creek. These assumptions are based, in part, on distributional information on the species given in the Proposed Gila National Forest Plan. *R.* Most of the distributional information on *Tiaroga cobitis* in New Mexico, as used in the proposal for listing, is based on studies done by the New Mexico Department of Game and Fish from 1982 to 1984 (Propst in prep.). That intensive survey and habitat study of the fishes of the upper Gila and San Francisco River drainages in New Mexico included all of the tributaries of those drainages that had a potential for supporting *Tiaroga*. However, no *Tiaroga* were found outside of the known occupied area, as outlined in the "Background" section of this rule, and no *Tiaroga* were found in the Gila River between the mouth of the East Fork and Mogollon Creek. Information on the upper Salt River drainage, including the White River, is sketchy due to the remoteness, rugged terrain, and the need for collecting permission from the White Mountain Apache and San Carlos Indian Tribes. However, many of these areas were surveyed in May 1985, and *Tiaroga* were found only in one small area at the confluence of the White River and East Fork of the White River. This new location is included in the final rule. The differences in distributional information between the listing proposal and the Proposed Gila National Forest Plan reflect the fact that the Forest Plan was compiled prior to the availability of the New Mexico Department of Game and Fish study data, and therefore contains some outdated information. *C.* The Association believes that the 85 percent loss of historic range for *Tiaroga cobitis* is an unintentional exaggeration, due to the scarcity of early collections, poor sampling methods and equipment in early surveys, and to the natural population fluctuations and elusiveness of the species. It feels that large gaps probably existed in the historic range, as represented by the Service, and that the loss of range may be more in the "50 to 60 percent range (or less)." The Association concludes that this smaller range reduction combined with the present numbers of the species is sufficient to show that the species does not meet the criteria for threatened status. *R.* The Service agrees that the historic data are spotty, and that some unoccupied areas may have occurred in the historic range. However, the very elusiveness, fluctuations, and meager sampling that the Association cites as evidence of historically fewer *Tiaroga* and smaller historic range could also be interpreted as indicating a high probability that there were actually more historic *Tiaroga* and a larger historic range than is presently assumed. If the few surveys, using poor equipment, could easily locate an elusive species that fluctuates highly in numbers, then the assumption must be that that species was indeed quite common, and that it most probably extended quite a distance upstream and downstream from range limits as shown by collection records. As for gaps within the historic range, there were undoubtedly areas within that range in which the habitat was not suitable for *Tiaroga*. Canyon areas and areas with slow moving or pooled water were and are scattered along all of the Gila basin rivers, and such areas exist within the limits of what the Service defines as

presently occupied *Tiaroga* range. However, to calculate specific lengths of non-continuous habitat would require intensive mapping of streams and would fail to recognize the importance of the intervening non-habitat areas for migration and gene flow, for food production and transport, and for maintenance of water and channel characteristics such as sediment, temperature, flow moderation, chemistry, and others. *C.* The Association recommends that "positive action" to improve the habitat and numbers of this species be taken for this species rather than listing as threatened. *R.* The Service's response is the same as that for a similar recommendation under item 7 above.

10. The Arizona Cattle Growers Association and the Arizona Mining Association both question the appropriateness of the proposal and submitted similar comments: *C. Tiaroga cobitis* occurred historically in northern Sonora, Mexico. Listing as threatened is not appropriate if the species still occurs in Mexico and the status in Mexico should be determined before final listing. *R. Tiaroga cobitis* was historically found in Mexico only in the upper San Pedro River. However, habitat is no longer found there due to habitat destruction and dewatering. *C.* The Mining Association points out that many of the identified non-native predators that threaten *Tiaroga cobitis*, such as catfish and trout, provide recreation for residents of these areas, as well as creating revenue from sport fishing recreation. *R.* The State of Arizona does not stock warmwater fish in the San Francisco or Blue Rivers, and the State of New Mexico has only occasionally in the past stocked channel catfish into the Gila River. The warmwater fisheries that exist in those rivers are self-sustaining, and do not need stocking in order to continue. The stocking of trout into the higher elevation headwater streams does not appear to have a significant impact on *Tiaroga cobitis*. The areas of such stocking overlap only slightly with that of *Tiaroga* and the stocked fish are primarily rainbow trout which feed more heavily on insects and other invertebrates than on fish. In addition, many of the stocked trout often do not feed at all in the short time they remain in the streams before being caught or dying.

11. The Soil Conservation Service, New Mexico State Office, opposes the proposal and feels that designation of threatened status without a management and statutory effort to control undesirable introduced fish species, is not justified. It also suggests that the final rule clarify the "inferred biological impacts" of agricultural water diversions and include documentation on the effects of water pumping on stream flows. The Service is presently working with the State Game and Fish Departments on the problem of controlling predation by introduced fish species. As was explained under item 10, little or no stocking of warmwater species is now occurring. The existing populations of predatory warmwater species are self-sustaining. Presently available management techniques are not sufficient to allow complete removal of the existing warmwater non-native populations. Regarding the "inferred biological impacts" of agricultural water diversions and the effect of water pumping on stream flow, the statements on such impacts and effects refer to the large areas of the historic range and may or may not apply to each specific area of existing range. In addition, inclusion of extensive data into a published rule would be prohibitively expensive and would not be in keeping with the purpose of a rule, which is to summarize the necessary information. This information, or references to it, is available from the Service (see **ADDRESSES**).

12. J.E. Allensworth, of Silver City, New Mexico, opposes the proposal and submitted the following comments: *C.* The fact that *Tiaroga cobitis* is still found in several streams in two States, and "the sheer numbers of these fish now on record" precludes the need for listing. *R.* See item 9 above. *C.* There has been no attempt by any agency to reintroduce *Tiaroga* into its original range; therefore it should not be listed. *R.* The first step in the process for protecting species under the Endangered Species Act is to place them onto the Federal List of Endangered and Threatened Wildlife as either threatened or endangered. Attempts by the Service to reintroduce listed species back into their historic range are part of the recovery process which is initiated following listing. *C.* Continued introduction of non-native species by the New Mexico Department of Game and Fish has caused the decline of this species. If this practice was corrected no further danger would exist for *Tiaroga cobitis*. *R.* As was pointed out in the proposal, much of the habitat in the historic range of *Tiaroga* has been destroyed by stream alterations, and potential water development threatens to cause further habitat losses. These threats alone would be sufficient to necessitate the listing of *Tiaroga cobitis* as a threatened species. Predatory and competitive interactions with non-native fish are secondary problems. As has been explained under item 10 above, very little stocking of non-native fish now occurs in the areas occupied by *Tiaroga*. The previously introduced non-native fish have become self-sustaining and will continue to be a problem to *Tiaroga*. *C.* Mr. Allensworth feels that the proposal is an attempt by the Service and the New Mexico Department of Game and Fish to slow or stop construction of Conner Dam. He requests that the area of the Conner Dam project be excluded from "further study" because of the economic value of the Conner Dam project and the lack of threat of extinction to *Tiaroga cobitis*. *R.* See item 9 above. *C.* Mr. Allensworth charges that the Service has been remiss by failing to move *Tiaroga* populations away from the Conner Dam project area to other parts of its historic range. *R.* See item 9.

13. Agencies and organizations with land or project involvement in the area affected by this proposal who did not comment on the proposed listing, but submitted economic information for use in the Economic Analysis of critical habitat, include: the U.S. Forest Service; the New Mexico Department of Game and Fish; the Soil Conservation Service, Arizona State Office; the Salt River Project; the Federal Emergency Management Agency; the U.S. Army Corps of Engineers; the Federal Highway Administration; the Bureau of Reclamation; the Environmental Protection Agency; and the New Mexico State Engineers Office.

The three public hearings held were attended by 107 people, with 33 oral or written statements given, 16 in support of the proposal, 12 in opposition, and 5 neither in support nor opposition. These public hearings accepted formal oral and written statements, and included an informal question and answer session. Transcripts of the hearings are available for inspection (see **ADDRESSES**).

The public hearing held in Silver City, New Mexico, was attended by 68 people, including representatives of the Silver City Town Council, the New Mexico Department of Game and Fish (NMGF), the U.S Forest Service (USFS), the New Mexico Interstate Stream Commission, the New Mexico State Engineer Office, the Bureau of Reclamation (BR), the Southwest New Mexico Council of Governments, the Southwest New Mexico Industrial Development Corporation, the Gila Fish and Gun Club, the Hooker Dam Association, the *Silver City Daily Press*, the *El Paso Times*, the Prospectors Organization of the Grant County-Silver

City Chamber of Commerce, Old West Country, the Mimbres Archeological Foundation, and the Southern New Mexico Conservation Coalition. Sixteen oral statements were made, 5 of which were accompanied by written statements. Two additional written statements were submitted. Of the statements given or submitted, 7 were in support of the proposal, 8 were in opposition to the proposal, and 3 neither opposed nor supported the proposal. Summaries of substantive statements follow:

1a. Steve May, Mayor of the Town of Silver City, New Mexico, speaking on behalf of the Town Council, opposed the proposal. Mr. May was concerned regarding his and the Council's understanding that the "management decision" to be made at the hearings was an "approximately 50-year plan", which they felt would unnecessarily lock up Silver City's options for water development on a long-term basis. Service representatives explained that the meetings from which he had gathered that understanding were not in relation to the proposed listing of this fish species, but were meetings specifically regarding BR's Upper Gila Water Supply Study. If *Tiaroga cobitis* is listed, the listing would not have a specified time-period, but would remain in force until such time as the species was delisted due to recovery or extinction. No specific management actions are required by this proposed listing. Any such actions would be a result of the Section 7 consultation process or the recovery planning and implementation process, and would be subject to varying time frames.

2a. Richard Johnson, President of the Hooker Dam Association, presented both oral and written statements in opposition to the proposal. Some of his comments repeated earlier comments made by the Association and these have already been addressed under item 9 above. Other specific comments were: *C.* Mr. Johnson asked for clarification of the effects of flooding on *Tiaroga cobitis*. *R. Tiaroga* in general escapes being washed out by flooding by moving outward with the spreading water, thus keeping out of the heaviest flows. Non-native fish do not generally have such an adaptive mechanism to protect them from damage by the typically severe Gila basin floods. However, under certain conditions flooding can also be detrimental to *Tiaroga*. Much of the Gila River watershed has been damaged by land use practices, and is very susceptible to further damage during flooding, primarily from erosion. A healthy aquatic/riparian system can normally withstand severe flooding with only minor and localized damage. An already damaged system is often severely eroded by flooding and habitat for native fish is lost, as was the case with the lower end of the East Fork of the Gila River in 1978. *C.* Reports by the Service's Albuquerque Ecological Services Office have stated that the area of the Middle Box (proposed site of Conner Dam and Reservoir) has the lowest habitat value for aquatic species and general ecology in that portion of the Gila River from Mogollon Creek downstream through the Red Rock area. That office has also stated that the greatest habitat value to the native fishes is found in the Cliff/Gila/Riverside Valley, where the greatest concentration of existing manmade structures is also found. On this basis, Mr. Johnson asks for clarification of the contradiction between the high habitat rating of the Cliff/Gila/Riverside area and the statements in the proposed rule regarding the destruction of *Tiaroga cobitis* habitat by human activities. *R.* The Service's analysis of the aquatic system habitat values is correct. The Middle Box itself does indeed provide less overall general habitat quality than other stretches. However, the upper end of the Middle Box reach supports a large, healthy population of *Tiaroga cobitis*. The high habitat value of the Gila/Cliff/Riverside Valley is not inconsistent. All manmade structures are not equally destructive of habitat values. Most of the structures in the Cliff/Gila/Riverside area are small and have only minor, localized impacts on the aquatic habitat. In the localized areas of those impacts *Tiaroga* generally do not exist.

3a. Clyde Birkla, President of the Gila Fish and Gun Club, spoke in opposition to the proposal, and stated that his organization felt that the proposed listing was simply a ploy to stop construction of Hooker Dam or suitable alternative (Upper Gila Water Supply Study). The Service has already addressed this question under item 9 above.

4a. Fred Trauger, of Geohydrology Associates, Inc. of Albuquerque, New Mexico, made a statement in opposition to the proposal. Mr. Trauger addressed issues of water supply availability and use. He also stated that evolution and extinction are natural processes, and that the decline of *Tiaroga cobitis* is more likely a natural event, due to climatological changes, than it is a man-caused event. The Service feels that the very rapid decline of *Tiaroga cobitis* removes it from the realm of natural extinctions. Natural extinction, except in rare instances of major, widespread catastrophic events, is a slow process, involving hundreds or thousands of years. The loss of large portions of *Tiaroga* habitat within the past 100 years by conversion to reservoirs or by the complete drying up of the river by diversion or damming can hardly be termed a natural event.

5a. Steve E. Reynolds, Secretary of the New Mexico Interstate Stream Commission, submitted oral and written statements in opposition to the proposal. Mr. Reynolds gave extensive information on water rights, uses, and needs in southwestern New Mexico, and submitted the following suggestion and comment: *C.* Mr. Reynolds suggested that habitat could be enhanced through predator control and reintroduction of *Tiaroga* from Dexter National Fish Hatchery. *R.* Habitat enhancement through predator control and reintroduction are measures which will be considered in the recovery of this species, once it becomes listed. Extensive study will be needed to ensure the success of these techniques for the loach minnow. Control of introduced predaceous fishes will likely be part of the habitat enhancement program for this species. While reintroduction may also play a roll in the recovery of this species the Dexter National Fish Hatchery does not presently maintain stocks of *Tiaroga cobitis*. Space at that facility is limited, and priority is given to species whose survival depends heavily upon artificial propagation. *Tiaroga* is not yet at that point. Before stocks of *Tiaroga* are placed into Dexter National Fish Hatchery for propagation, several years may be needed to develop the techniques required to successfully propagate this species in captivity.

6a. Keith LeMay, President of the Prospectors Organization of the Silver City-Grant County, New Mexico, Chamber of Commerce, made oral and written statements in opposition to the proposal. Mr. LeMay commented on the already addressed topics of the Service's habitat evaluations of the Gila River area (item 2a above) and the use of habitat enhancement in lieu of listing (item 7 above).

7a. J.C. Grimes, President of Old West County, a tourist promotion organization in Silver City, New Mexico, and Allen K. Kaufman, of the Mimbres Archeological Foundation, addressed water development and availability in the area.

8a. George Jackson, Silver City, New Mexico, questioned the ability of *Tiaroga cobitis* to survive in the river during periods of drought when portions

of the river become dry. The Service has extensive data documenting the historic occupation of most of the Gila River basin in New Mexico and Arizona by *Tiaroga cobitis*. There are also data available on the water flows in the upper Gila River since the 1930's, and written accounts of droughts since the early 1800's. *Tiaroga cobitis* was able to survive and thrive historically despite those droughts and periodic drying of portions of some of the occupied streams. Survival during drought periods depended upon movement into pools where water remained, until flow recommenced. Areas where pools were not available, or where dry periods continued for long periods, were probably repopulated from large upstream and downstream populations. The widespread abundance of the species buffered it against localized population losses. That abundance no longer exists, and the consequences of drought are increasingly severe on the species.

9a. The Southwest New Mexico Industrial Development Corporation, of Silver City, New Mexico, submitted a written statement opposing the proposal, and giving information on water uses and economics in the Silver City area.

10a. Seven biologists and private citizens gave oral and written statements in support of the proposal and other wildlife values of the Gila River area, and opposing the need for and construction of a dam on the Gila River in New Mexico.

The public hearing held in Thatcher, Arizona, was attended by 20 people including representatives of the Arizona State Division of Emergency Services, the Upper Gila River Association, the City of Safford, the Graham County Board of Supervisors, the George Whittell Wildlife Preserve, the Graham County Republican Party, the Arizona Nature Conservancy, the Arizona Game and Fish Department, the Greenlee County Board of Supervisors, the Arizona Department of Commerce Advisory Board, the Bureau of Reclamation, the Soil Conservation Service, and the Bureau of Land Management. Five oral statements were made, 4 of which were accompanied by written statements. Much of the comments and discussion concerned flood control problems in the Safford Valley, and those comments will not be summarized here. Of the statements given or submitted, 1 was in support of the proposal, 2 were in opposition to the proposal, and 2 neither opposed nor supported the proposal. Summaries of the statements follow:

1b. Richard A. Colson, Director of the Arizona State Division of Emergency Services, and Carol MacDonald, Mayor of the City of Safford, Arizona, gave an oral and written statement in opposition to the proposal and discussed flood control needs and damages in the Duncan and Safford Valleys.

2b. Kenyon Udall, Chairman of the Upper Gila River Association, submitted oral and written statements discussing flood costs in the Safford Valley and adjacent areas, and challenging the proposal's conclusion that human alterations to the habitat are the primary cause of the decline of *Tiaroga cobitis*. Mr. Udall contends that all dams and diversions in the area were in place and were more numerous, and grazing was heavier in the area, before 1960 which was about when *Tiaroga* began to decline. He also questions the reasons for the loss of the species in Eagle Creek, where he states there are no dams and only one small diversion, no mining or timbering, and only very reduced grazing. It is Mr. Udall's premise that the primary cause of the decline of this species is increased flooding since 1967, and secondarily predation by non-native fish. He proposes that floods be controlled to stay within a range determined to cause the least channel damage, for the benefit of both man and *Tiaroga cobitis*. The Service's response is that the decline of *Tiaroga* began well before 1960, although it was only widely recognized later. The species has been gone from the Verde River drainage since about 1938. There is often a lag time between the adverse modifications to the species' habitat and the decline of the species itself, particularly when there are numerous individual modifications involved. Present use of the habitat is often only one of many factors in the decline of the species. Cumulative effects of numerous adverse habitat modifications over time play a significant part in the decline of many species. In addition, somewhat modified conditions that might have been acceptable to a healthy population of a species may not be sufficient, although improved, for a damaged population to recover. Once this species is listed, planning should be undertaken not only for the recovery of the species but also to develop measures compatible with flood control and recovery of the species.

3b. Joe Carter, County Manager of the Graham County, Arizona, Board of Supervisors, made oral and written statements in opposition to the proposal. Mr. Carter also discussed flood damages, occurrence, and control, and suggested that reintroduction of *Tiaroga cobitis* be carried out in lieu of listing. In addition, speaking for both Graham County and its local governments, he suggested that action on the proposal be postponed until final work and feasibility studies have been completed with respect to the proposed dam sites on the Gila and San Francisco Rivers. The Services's response to both of these requests has been addressed under items 7 and 5a above.

4b. John C. Luepke, Manager of the George Whittell Wildlife Preserve on Aravaipa Creek, Arizona, spoke in support of the proposal and associated wildlife values.

Informal questions raised at the Thatcher hearing were addressed to Service personnel and representatives of other agencies present. Many of these questions were informational in nature and did not request or result in any changes to the proposal, and therefore will not be summarized here. One substantive question was raised at the Thatcher hearing (*Q*=question, *R*=response): *Q*. If *Tiaroga cobitis* has been declining since the 1960's, why was nothing done to help it earlier? *R*. *Tiaroga* has been declining since well before 1960, however little work was being done on this species and the extent of decline was not generally recognized. Prior to the Endangered Species Act, which was passed in 1973, little or no funding or authorization was available for work on nongame fish. With the passage of the Act, work began on rare native fishes, but with limited funds and manpower it was necessary to concentrate on those fish closest to extinction. Now that the most needy fish have been protected we are beginning to turn our attention to those, like *Tiaroga*, which are not so close to extinction.

The public hearing held in Phoenix, Arizona, was attended by 19 people including representatives of the City of Prescott, The Nature Conservancy, the Arizona Cattle Growers Association, the Maricopa Audubon Society, the Arizona Game and Fish Department, the Salt River Project, the Bureau of Reclamation, and the *Phoenix Gazette*. Nine oral statements were made, 4 of which were accompanied by written statements. One additional written statement was submitted. Of the statements given or submitted, 8 were in support of the proposal, 1 was in opposition to the proposal, and 1 addressed only the other proposal under consideration. Summaries of the statements follow:

1c. The Nature Conservancy, the Arizona Game and Fish Department, and five private citizens submitted oral

and written statements in support of the proposal and addressed water development issues.

2c. Lynn Anderson read a statement by John M. Olson, Executive Vice President of the Arizona Cattle Growers' Association, in opposition to the proposal. This statement was identical to that submitted by the Association as a letter of comment and is addressed under item 10 above.

3c. Herbert Fibel, President of the Maricopa Audubon Society, spoke in support of the proposal. Mr. Fibel also read into the record the letter of comment submitted by his organization.

**Summary of Factors Affecting the Species**

After a thorough review and consideration of all information available, the Service has determined that *Tiaroga cobitis* should be classified as a threatened species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1) of the Act. These factors and their application to *Tiaroga cobitis* (loach minnow) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Much of the historic native habitat of *Tiaroga cobitis* has been drastically altered or destroyed by human uses of the rivers, streams, and watersheds. These alterations include: Conversion of flowing waters into still waters by impoundment; alteration of flow regimes (including conversion of perennial waters to intermittent or no flow, and the reduction, elimination, or modification of natural flooding patterns); alteration of water temperatures (either up or down); alteration of silt and bed loads; loss of marshes and backwaters; and alteration of stream channel characteristics from well-defined, surface level, heavily vegetated channels with a diversity of substrate and habitats, into deeply cut unstable arroyos with little riparian vegetation, uniform substrate, and little habitat diversity. Causes of such alterations include: Damming, water diversion, channel downcutting, excessive groundwater pumping, dropping water tables, channelization, riparian destruction, erosion, mining, timber harvest, grazing, and other watershed disturbances. Of the approximately 2,600 km (1,600 miles) of stream habitat historically occupied by *Tiaroga*, 2,220 km (1,364 miles) no longer support populations of this fish. This loss reduces the range of *Tiaroga* by approximately 85 percent.

The biology of *Tiaroga cobitis* is not well enough understood to determine what specific effects each of these habitat changes or losses have had on the survival of the species. However, the conversion of a large portion of the habitat into intermittent or lacustrine waters or totally dewatered channels has had an obvious effect on *Tiaroga* populations by totally eliminating usable habitat in those portions of the streams. Because it lives among the cobble on the stream bottom, *Tiaroga cobitis* is also sensitive to the sedimentation that is a common feature of the habitat alteration occurring throughout historic and existing *Tiaroga* habitats. These habitat changes, together with the introduction of exotic fish species (see factors C and E) have resulted in the extirpation of *Tiaroga cobitis* throughout much of its historic range.

Some of the major reasons for specific *Tiaroga* habitat losses are easily identifiable. The San Pedro River, once a perennial stream, is now severely downcut and has only intermittent flow. The lower Salt and Verde Rivers now have a very limited flow or no flow during portions of the year, due to agricultural diversion and upstream impoundments, and both rivers have multiple impoundments in their middle reaches. The Gila River, after leaving the Mogollon Mountains in New Mexico, is affected by agricultural and industrial water diversion, impoundment, and channelization, and has been subjected to use of chemicals for fish management from the Arizona border downstream to San Carlos Reservoir. The San Francisco and Tularosa Rivers have suffered from erosion and extensive water diversion and at present have an undependable water supply in much of their length. The Blue River has been subjected to channel downcutting and erosion, particularly in its lower reaches.

Remaining *Tiaroga cobitis* habitat is still threatened with further habitat destruction. Aravaipa Creek is relatively protected from further habitat loss because of its status as the USDI Bureau of Land Management Aravaipa Canyon Wilderness. Access and land uses are limited in the canyon and it is managed primarily for natural values and recreation. However, extensive ground water pumping is occurring upstream in the watershed resulting in a continued lowering of the water table that could eventually reduce or eliminate perennial flow in Aravaipa Creek. Channelization and mesquite clearing that is occurring upstream and heavy recreational use within the canyon create excessive sediment which is detrimental to *Tiaroga* habitat. In addition, pesticide use on the agricultural lands upstream from Aravaipa Canyon could have serious adverse effects on *Tiaroga cobitis*, particularly if flows become depleted.

Lands along the Gila, San Francisco, Blue, and Tularosa Rivers are primarily owned by the U.S. Forest Service; however, there are significant stretches of privately owned land. *Tiaroga* habitat receives some protection on Forest Service lands that are designated for special uses and thus subject to access and use restrictions. These are the Gila Wilderness and Primitive Areas, the Blue Range Primitive Area, the Lower Gila River Bird Habitat Management Area, and the Gila River Research Natural Area. Habitat in multiple use Forest Service portions of these rivers is affected, often adversely, by many past and present uses in the watershed and riparian zone, and by water diversion and water development projects. Substantial increases in timber harvest on steep slopes, as called for in the Proposed Gila National Forest Plan (USDA 1985), may have significant impacts on *Tiaroga cobitis* through increased sedimentation. On privately owned lands along the river there is no statutory control of habitat alteration or destruction. Agricultural use, water diversion, highway and bridge construction, and flood control measures in these areas impact the habitat. At present, the San Francisco River often goes dry near the town of Glenwood, due to upstream diversion. The U.S. Army Corps of Engineers has recently completed some work in the Cliff-Gila and Glenwood-Reserve areas on the Gila and San Francisco Rivers, under its Emergency Authority, which allows it to replace or restore damaged flood control structures. Other flood control alternatives considered for this area in the past by the Corps have been set aside; the only current plans for flood control in the New Mexico portion of the Gila Basin are in cooperation with the Bureau of Reclamation's Conner Dam study (U.S. Army Corps of Engineers 1984).

Of particular importance to survival of *Tiaroga cobitis* in the Gila River is the proposed construction of a dam on the Gila River mainstream, as part of the Central Arizona Project Upper Gila Water Supply Study by the U.S. Bureau of Reclamation (USDI 1972). Currently the Bureau of Reclamation is studying six alternatives (USDI 1985a): A high

dam and reservoir at the Conner site on the mainstream Gila River near the lower end of the Middle Box canyon; a slightly smaller dam and reservoir at the Conner site; a small dam at the Hooker site on the mainstream Gila River just downstream from Turkey Creek, with an off-mainstream storage reservoir on Mangas Creek; two levels of direct pumping from the river in the Cliff-Gila Valley to an offstream storage reservoir on Mangas Creek; and a no Federal action alternative. A former alternative, which included a dam on the San Francisco River just downstream from its confluence with the Blue River, has been dropped from current planning. A high dam at the Conner site on the Gila River could have major negative impacts on *Tiaroga cobitis*. Up to 29 km (18 miles) of river, 31 percent of the existing range in the Gila River, would be inundated and thus would no longer support *Tiaroga cobitis*, which lives only in flowing waters. The presence of a dam on the river could also adversely alter habitat downstream from the dam by changing the temperature, bedload, and flow regimes, including the elimination of natural flooding, which is an important factor in riparian and channel maintenance and in the maintenance of the competitive edge of native fish over exotic fish species. Major dam and reservoir construction in the past, on the Salt, Verde, and Gila Rivers, has resulted in the complete extirpation of all *Tiaroga cobitis* downstream of the dam and for up to 65 km (40 miles) above the reservoir. Even with extensive planning for natural flow and temperature maintenance downstream, the construction of a dam on the upper Gila would have a strong impact on *Tiaroga cobitis*, affecting 40 percent of the existing range in the Gila River. A small dam at the Conner site would inundate an estimated 14 km (8½ miles) of river, and would also affect populations upstream and downstream from the reservoir. A small dam at the Hooker site would not affect *Tiaroga cobitis* directly through inundation; however, populations downstream, occupying 40 percent of the range in the Gila River, might be affected. The effects of direct pumping from the river to offstream storage are not completely known, but may include entrapment of fish in pipelines, impingement of fish on intake screens, and depletion of stream flow below the diversion point.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* No threat from overutilization of this species is known to occur at this time.

C. *Disease or predation.* Historically, predation probably was not a significant factor affecting *Tiaroga cobitis* populations; however, in the past 100 years, introduction of exotic predatory fishes has increased the role that predation plays in *Tiaroga* biology. In Aravaipa Creek, there are only two potential predators—the native roundtail chub and the exotic green sunfish, the latter being primarily restricted to side channel pools and kept at low density levels by frequent flooding. Neither are known to be having a significant effect on *Tiaroga cobitis*. Potential predators known to exist in the Blue River are few and include brown trout in the upper reaches and channel catfish near the mouth. In the Gila, San Francisco, and Tularosa Rivers, the native roundtail chub and several exotic fish (black and yellow bullhead, channel catfish, green sunfish, flathead catfish, small and large mouth bass, and brown trout) are probable predators on *Tiaroga cobitis*. Although predation does not seem to be a threat to *Tiaroga* in good habitat conditions, it is probably a negative factor under the altered conditions present in much of the existing habitat. The depletion of native fishes in the East Fork of the Gila River, noted in 1983–84 by Propst (in prep.), is probably due, in part, to increased numbers of smallmouth bass and catfish in that portion of the river. Propst found abundant smallmouth bass and catfish in the East Fork, but few native species. In 1985, after two years with heavy fall/winter flooding, he found fewer exotic species, and higher levels of native species. Construction of dams and reservoirs exacerbates the predation problem by increasing the habitat favorable to exotic predators, decreasing the habitat suitable for *Tiaroga cobitis*, and supplying a ready source of exotic predators from the reservoir. The impact of predation on *Tiaroga* in the Gila River could increase significantly if a mainstream dam is constructed as part of the Upper Gila Water Supply Project.

D. *The inadequacy of existing regulatory mechanisms. Tiaroga cobitis* is protected by the States of New Mexico and Arizona. It is listed by New Mexico as an endangered species, Group 2 (New Mexico State Game Comm. 1985), which are those species ". . . whose prospects of survival or recruitment within the State are likely to be in jeopardy within the foreseeable future." This provides the protection of the New Mexico Wildlife Conservation Act (Section 17–2–37 through 17–2–46 NMSA 1978) and prohibits taking of such species except under the issuance of a scientific collecting permit. *Tiaroga cobitis* is listed by the State of Arizona as a threatened species, Group 3 (Arizona Game and Fish Comm. 1982), which are those species ". . . whose continued presence in Arizona could be in jeopardy in the foreseeable future." This listing does not provide any special protection to the species. Protection provided in the Arizona Game and Fish regulations prohibits taking of *Tiaroga cobitis*, except by angling, an unlikely possibility. Neither State provides any protection for the habitat upon which the species depends.

New Mexico water law does not include provisions for the acquisition of instream water rights for protection of fish and wildlife and their habitat, and Arizona water law has only recently recognized such rights. This deficiency has been a major factor in the survival of those species dependent on the presence of instream water.

State Game and Fish regulations in New Mexico and Arizona allow the use of the red shiner and other live minnows as bait fish in the Gila and San Francisco Rivers in areas containing *Tiaroga cobitis*. This encourages the spread of detrimental exotic species, specifically the red shiner, which appears to replace *Tiaroga cobitis* under certain conditions (see factor E).

E. *Other natural or manmade factors affecting its continued existence.* Existing populations of *Tiaroga cobitis* are threatened by the continued introduction and dispersal of exotic species, particularly *Notropis lutrensis* (red shiner), throughout the Gila River system. Although it is not known by what mechanisms these exotic species affect *Tiaroga*, it is known that the spread of exotic species throughout the Gila system correlates closely to the declining numbers and distribution of *Tiaroga cobitis* and other native species. It has been demonstrated with other native fish that competitive and/or predatory interactions with exotic species have been a major factor in the declining numbers and distribution of those natives. Although *Notropis lutrensis* and *Tiaroga cobitis* generally utilize different habitats, it appears they compete for some habitat factors (Minckley and Carufel 1967). It is also thought that *Notropis lutrensis* may be a significant predator on larval *Tiaroga* (D. Hendrickson, Arizona State Univ., letter, July 8, 1985). In suitable unaltered habitat, it is possible that *Tiaroga* is able to hold its own against invasion of *Notropis lutrensis* or other exotic species; however, this balance may be destroyed in extensively altered habitat where *Tiaroga* populations are already

under stress. A major factor in the displacement seems to be the alteration of natural flooding patterns, since native species such as *Tiaroga cobitis* are adapted to and thrive under a regime of frequent moderate to severe flooding, and *Notropis lutrensis* and other exotic species do not. The controlled flow of flood waters, resulting from impoundment, interrupts this natural pattern in downstream reaches and encourages the spread of *Notropis lutrensis* and other exotics at the expense of *Tiaroga cobitis*. A 1983–84 study for the Bureau of Reclamation found that flooding in the fall of 1983 increased the proportion of native fish in the San Francisco River from 30 percent of the total fish collected to 90 percent (USDI 1985b). The presence of reservoirs also increases the likelihood and rapidity of the spread of *Notropis lutrensis* and other exotics by supplying a ready source of exotic species from the reservoir and its fishery. At present, *Notropis lutrensis* is not found in Aravaipa Creek or the Blue River, but is found in the San Francisco River as far upstream as Kelly Canyon, and is found in the upper Gila River as far upstream as the Highway 180 bridge near Cliff, New Mexico. In 1978, *Notropis lutrensis* had not yet been found in the Gila River in New Mexico.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Tiaroga cobitis* as threatened. Threatened status seems appropriate because of the greatly reduced and fragmented range of the species, and because of the threats to this fish and its remaining habitat. However, since this species is still extant in 380 km (236 miles) of stream it does not appear to be in danger of extinction within the foreseeable future and thus endangered status would not be appropriate. The reasons for postponing the designation of critical habitat are given in the following section. The designation of critical habitat will be through a subsequent and separate rule.

### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Section 4(b)(6)(C) further indicates that a concurrent critical habitat determination is not required if the Service finds that a prompt determination of endangered or threatened status is essential to the conservation of the involved species.

The Service believes that a prompt determination of threatened status for the loach minnow is essential. If the loach minnow were only proposed, but not listed, it would be eligible only for the consideration given under the conference requirement of Section 7(a)(4) of the Act, as amended. This does not require a limitation on the commitment of resources on the part of the concerned Federal agencies. Therefore, in order to ensure that the full benefits of Section 7 and other conservation measures under the Act will apply to the loach minnow, prompt determination of threatened status is essential.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service is in the process of evaluating the information on economic impacts of designating critical habitat that was submitted during the comment period. However, because of the complexities and extent of the activities being assessed, the Service has not completed the evaluation. The Service is, however, currently performing the economic and other impact analyses required for a determination of critical habitat for the species, and plans to make such a determination in the near future. The decision on designation of critical habitat for the loach minnow must be made by June 18, 1987, pursuant to section 4(b)(6)(C)(ii) of the Act, as amended.

### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the the Act have been revised and are published at 51 FR 19926; June 3, 1986. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

No Federal activities are expected to be affected on Bureau of Land Management lands on Aravaipa Creek, because the Aravaipa Canyon Wilderness is presently being managed to protect and enhance natural values, including *Tiaroga cobitis*. However, if existing or increased recreational use within the canyon results in streambank degradation and increased sediment or pollution load in the stream, Section 7 consultation may be necessary.

On U.S. Forest Service lands, little effect is expected from Federal activities from this rule; however, Section 7 consultation may be needed if changes occur in current grazing, mining, timbering, recreational, and other activities affecting *Tiaroga cobitis* and its habitat, or if continuation of present activities are determined to be adversely affecting the species. On the Fort Apache Indian Reservation no existing activities are known that would be affected by this listing action. Future actions by the Bureau of Indian Affairs in the vicinity of the *Tiaroga cobitis* population may become subject to Section 7 consultation.

Proposed dam construction or alternative water projects on the upper Gila River, which have been authorized for study as part of the Bureau of Reclamation's Central Arizona Project Upper Gila Water Supply Study, could be affected by this rule. Any such project would become subject to Section 7 consultation and changes in proposed operations, proposed sites, or choice of alternatives may be necessary to comply with the Act. Proposed projects could be constructed only if the activities were determined not to jeopardize the species or adversely impact its critical habitat.

Known Federal activities on private lands that might be affected by this proposal would be future flood control work funded by the Federal Emergency Management Agency, or carried out by the U.S. Army Corps of Engineers on the Gila River in the Cliff-Gila Valley or on the San Francisco and Tularosa Rivers and Whitewater Creek; federally funded

highway and bridge construction; or future federally funded irrigation projects. Federal funding has been used in the past and is expected to be used in the future for pipeline, water diversion, and land-leveling projects on private agricultural lands in the Cliff-Gila Valley, and along the Tularosa and San Francisco Rivers.

The Act and its implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. The prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce, listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

The above discussion generally applies to threatened species of fish or wildlife. However, the Secretary has the discretion under section 4(d) of the Act to issue special regulations for a threatened species that are necessary and advisable for the conservation of the species. *Tiaroga cobitis* is threatened primarily by habitat disturbance or alteration, not by intentional direct taking or by commercialization. Since the States currently regulate direct and intentional taking of the species through the requirement of State collecting permits, the Service has concluded that the States' scientific collection permit system is adequate to protect the species from excessive taking so long as such taking is limited to: Educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Endangered Species Act. A separate Federal permit system is not required to address the current threats to this species; therefore, a special rule is designated which allows taking to occur for the above stated purposes without the need for a Federal permit, if a State collection permit is obtained and all other State wildlife conservation laws and regulations are satisfied. The special rule also acknowledges the fact that incidental take of the species by State licensed recreational fishermen is not a significant threat to this species. In fact, angling is an unlikely mode of capture of this species. Therefore, such incidental take is not a violation of the Act if the fisherman immediately returns the individual fish taken to its habitat. It should be recognized that any activities involving the taking of this species not otherwise enumerated in the special rule (including, but not limited to, take resulting from habitat disturbance or alteration) are prohibited. Without this special rule, all of the prohibitions of 50 CFR 17.31 would apply. This special rule allows for more efficient management of the species, thus enhancing its conservation. For these reasons, the Service concludes that this special rule is necessary and advisable for the conservation of the species.

General regulations governing the issuance of permits to carry out otherwise prohibited activities involving threatened animal species, under certain circumstances, are set out at 50 CFR 17.22, 17.23, and 17.32.

## National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

### References Cited


Anderson, R.M. 1978. The distribution and aspects of the life history of *Meda fulgida* in New Mexico. Unpubl. M.S. thesis. New Mexico State University, Las Cruces.

Arizona Game and Fish Commission. 1982. Threatened native wildlife in Arizona. Arizona Game and Fish Department Publ. 12 pp.

Barber, W.E., and W.L. Minckley. 1966. Fishes of Aravaipa Creek, Graham and Pinal Counties, Arizona. Southwestern Naturalist 11:313–324.

Britt, K.D., Jr. 1982. The reproductive biology and aspects of life history of *Tiaroga cobitis* in southwestern New Mexico. Unpubl. M.S. thesis. New Mexico State University, Las Cruces.

Deacon, J.E., G. Kobetich, J.D. Williams, and S. Contreras. 1979. Fishes of North America, endangered, threatened, or of special concern: 1979. Fisheries 4(2):29–44.

Girard, C. 1856. Researches upon the cyprinoid fishes inhabiting the fresh waters of the United States of America, west of the Mississippi Valley, from specimens in the museum of the Smithsonian Institution. Proceedings of the Academy of Natural Sciences of Philadelphia 8:165–213.

International Union for Conservation of Nature and Natural Resources. 1977. Red Data Book, Vol. 4: Pisces. Morges, Switzerland.

Miller, R.R. 1972. Threatened freshwater fishes of the United States. Transactions of the American Fisheries Society 101:239–252.

Minckley, W.L. 1973. Fishes of Arizona. Arizona Department of Game and Fish. Phoenix. 293 pp.

Minckley, W.L., and L.H. Carufel. 1967. The Little Colorado River spikedace, *Lepidomeda vittata*, in Arizona. Southwestern Naturalist 12:291–302.

New Mexico State Game Commission. 1985. Regulation No. 624, as amended 28 March 1985. New Mexico Department of Game and Fish, Santa Fe.

Propst, D. In preparation. Distribution, status, and biology of the loach minnow (*Tiaroga cobitis*) in the Gila River basin, New Mexico. New Mexico Department of Game and Fish, Santa Fe.

Propst, D.L., P.C. Marsh, W.L. Minckley. 1985. Arizona survey for spikedace (*Meda fulgida*) and loach minnow (*Tiaroga cobitis*): Fort Apache and San Carlos Apache Indian Reservations and Eagle Creek, 1985. Report to U.S. Fish and Wildlife Service. July 5, 1985. 8 pp.

Silvey, W.T., and M.S. Thompson. 1978. The distribution of fishes in selected streams on the Apache-Sitgreaves National Forest. Arizona Department of Game and Fish, Phoenix. 49 pp.

U.S. Army Corps of Engineers. 1984. Upper Gila River Basin cooperative study. Public information document. Los Angeles District. September 1984. 26 pp.

U.S. Dept. of Agriculture, Forest Service. 1979. Habitat study of roundtail chub (*Gila robusta grahami*), loach minnow (*Tiaroga cobitis*). Gila National Forest, Silver City, New Mexico. November 1979. Final Report Contract No. RFQ–R3–6–79–10B, P.O. 43–8399–9–238.

U.S. Department of Agriculture, Forest Service. 1985. Proposed Gila National Forest Plan. USFS Southwestern Region, Albuquerque, New Mexico. 326 pp.

U.S. Dept. of the Interior, Bureau of Reclamation. 1972. Final environmental statement. Final Central Arizona Project. USBR Region 3. Boulder City, Nevada.

U.S. Dept. of the Interior, Bureau of Reclamation. 1985a. Upper Gila water supply study public meetings announcement and public information document on the environmental impact statement scoping meetings. Bureau of Reclamation, Region 3. Boulder City, Nevada. 8 pp.

U.S. Dept. of the Interior, Bureau of Reclamation. 1985b. Wildlife and fisheries studies, Upper Gila Water Supply Project. Part 2: Fisheries. Prepared by: James M. Montgomery, Consulting Engineers, Inc., Pasadena, California. 127 pp.


## Author


This rule was prepared by S.E. Stefferud, Endangered Species Biologist, Region 2, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

**Regulations Promulgation**

**PART 17—[AMENDED]**

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

**Authority:** Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by adding the following, in alphabetical order under "Fishes," to the List of Endangered and Threatened Wildlife:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| FISHES | | | | | | | |
| * | * | * | * | * | | | |
| Minnow, loach | *Tiaroga cobitis* | U.S.A. (AZ, NM), Mexico | Entire | T | 247 | NA | 17.44(q) |
| * | * | * | * | * | | | |

3. Section 17.44 is amended by adding a new paragraph (q) as follows.

**§ 17.44 Special rules—fishes.**

* * * * *

(q) Loach minnow, *Tiaroga cobitis*

(1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: (i) For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act or, (ii) incidental to State permitted recreational fishing activities, provided that the individual fish taken is immediately returned to its habitat.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species is also a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever any such species taken in violation of these regulations or in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in subparagraphs (1) through (3) of this paragraph.

Dated: October 4, 1986.

**P. Daniel Smith,**

*Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 86–24268 Filed 10–27–86; 8:45 am]

BILLING CODE 4310–55–M

federal register

Tuesday
October 28, 1986

Part VI

# Department of Agriculture

**Agricultural Stabilization and Conservation Service**

**7 CFR Part 713**

**Farm Marketing Quotas, Acreage Allotments, and Production Adjustment; Feed Grain, Rice, Cotton, and Wheat; Interim Rule**

## DEPARTMENT OF AGRICULTURE

### Agricultural Stabilization and Conservation Service

### 7 CFR Part 713

### Farm Marketing Quotas, Acreage Allotments, and Production Adjustment; Feed Grain, Rice, Cotton, and Wheat

**AGENCY:** Commodity Credit Corporation ("CCC"), and Agricultural Stabilization and Conservation Service ("ASCS"), USDA.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule was inadvertently published on October 15, 1986 (51 FR 36780). A final rule which should have been published prior to this interim rule was published on October 16, 1986 (51 FR 36902). Since this interim rule is intended to amend the provisions of that final rule, this interim rule is being republished in its entirety.

This interim amends the regulations found at Part 7 of Chapter VII of the Code of Federal Regulations effective for the 1987 and subsequent crops of feed grains, rice, cotton, and wheat. Included in the changes are amendments with respect to: (1) The limited cross compliance requirement; (2) Adjusting crop acreage bases; (3) Providing "considered planted" credit in 1986 and subsequent years for farms owned by Farmers Home Administration and for farms that are not enrolled in the acreage reduction program in effect for a crop; (4) The appeal of farm program payment yields established for the 1981 through 1985 crop years; (5) The reserve for adjusting crop acreage bases established for extra long staple cotton; (6) The procedure for accepting bids to participate in "cost reduction option" diversion programs; and (7) The rules for use of conserving use acreage and acreage designated as acreage conservation reserve ("ACR"). Inplementation of the changes made by this interim rule will improve the effectiveness of the commodity programs for the 1987 and subsequent crop years.

**EFFECTIVE DATES:** October 27, 1986. Comments must be received on or before November 28, 1986. In order to be assured of consideration.

**ADDRESS:** Submit Comments to: Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, DC 20013.

**FOR FURTHER INFORMATION CONTACT:** Raymond K. Aldrich, Program Specialist, Cotton, Grain, and Rice Price Support Division, ASCS, P.O. Box 2415, Washington, DC 20013, (202) 447–6688.

**SUPPLEMENTARY INFORMATION:** This interim rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified "not major". It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) A major increase in costs or prices for consumers, individual industries, Federal, State or local goverments, or geographic regions; or (3) Significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Regulatory Impact Analyses prepared for the 1986 crops of wheat, feed grains, cotton and rice and the Regulatory Impact Analyses which is being prepared in connection with the determinations for the 1987 crops of such commodities adequately addresses the issues raised by this interim rule.

Copies of the analyses will be available to the public from Director, Commodity Analysis Division, Agricultural Stabilization and Conservation Service, USDA, Room 3741, South Agriculture Building, 14th and Independence, P.O. Box 2415, Washington, DC 20013.

The titles and numbers of the Federal assistance programs to which this interim rule applies are: Cotton Production Stabilization—10.052; Feed Crain Production Stabilization—10.055; Wheat Production Stabilization—10.058; Rice Production Stabilization—10.065 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since neither the Agricultural Stabilization and Conservation Service ("ASCS") nor the Commodity Credit Corporation ("CCC") is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

A draft environmental impact statement pertaining to agricultural acreage adjustment programs has been prepared. Further information is available from Phillip Yasnowsky, Program Analysis Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013; (202) 447–7887.

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

The Office of Management and Budget has approved the information collection requirements contained in these regulations under the provisions of 44 U.S.C. Chapter 35 and OMB Numbers 0560–0030, 0560–0071, 0560–0091, and 0560–0650 have been assigned.

#### Discussion of Changes

1. On May 30, 1986, the Secretary of Agriculture announced certain provisions of the production adjustment and price support programs that will be in effect for the 1987 crops of wheat, feed grains, cotton, and rice. In order to implement these provisions, amendments to the regulations currently found at 7 CFR Part 713 must be made.

(a) Section 503 of the Agricultural Act of 1949 (the "1949 Act") requires that farm acreage bases be established for farms for the 1987 and subsequent crop years. Section 505 of the 1949 Act provides that the Secretary may permit an upward adjustment of any crop acreage base established for a farm, except that such adjustment may not exceed 10 percent of the farm acreage base established for the farm. Such an upward adjustment must be offset by an equivalent downward adjustment in other crop acreage bases established for the farm. The Secretary's May 30, 1986 announcement stated that adjustments using this authority will not be permitted for the 1987 crop year. Accordingly, § 713.11(a) is amended to provide that adjustments made in accordance with section 505 of the 1949 Act will be permitted as determined and announced by the Secretary.

(b) Sections 101A, 103A, 105C, and 107D of the 1949 Act authorize the Secretary to require that, as a condition of eligibility of producers on a farm for loans, purchases, or payments, the acreage planted for harvest on the farm to any other commodity for which an acreage limitation program is in effect must not exceed the crop acreage base for that commodity. This is commonly referred to as "limited cross compliance." "Full cross compliance" is authorized by sections 105C and 107D, if a set-aside program is in effect for a crop of wheat or feed grains. "Full cross compliance" means that, as a condition of eligibility for loans, purchases, or payments, a producer must comply on the farm with the terms and conditions of any other commodity program. The Secretary's May 30, 1986 announcement stated that "limited cross compliance" will be in effect for the 1987 crops of

wheat, feed grains, upland cotton, and rice. Accordingly, § 713.101(a) is amended to set forth the terms of the "limited cross compliance" requirement.

2. Section 1314 of the Food Security Act of 1985 (the "1985 Act") amended section 335 of the Consolidated Farm and Rural Development Act with respect to the sale or leasing of farmland owned by the Farmers Home Administration ("FmHA"). Section 335 sets forth the restrictions which must be followed to sell or lease such land. Section 335(e)(8) provides that compliance by the Secretary with the provisions of section 335(e) shall not cause any acreage allotment, marketing quota, or acreage base assigned to such property to lapse, terminate, be reduced, or otherwise be adversely affected. Accordingly, § 713.3(e) is amended to provide that considered planted credit may be provided in accordance with instructions issued by the Deputy Administrator for crop acreage bases established for farms owned by FmHA.

3. Section 713.3(e)(2)(vii) provides that producers on a farm who do not participate in the production adjustment program in effect for a crop may obtain considered planted credit in order to preserve the crop acreage base when they do not plant the crop. Considered planted credit can be obtained in an amount equal to the acreage of conserving uses credited to the crop and not to exceed the crop acreage base for the crop.

a. Because "limited cross compliance" will be in effect for the 1987 crops, this provision could be abused by producers in areas, such as summer fallow areas, with abundant availability of acreage which may be designated as acreage devoted to conserving uses. For example, a producer on a farm who is not participating in the program for any crop could preserve the crop acreage base for one crop by crediting available acreage as a conserving use in order to receive considered planted credit for such crop and thereby preserve the crop acreage base. Meanwhile the producer could plant an acreage of another program crop that is larger than that commodity's crop acreage base and thereby increase the acreage base for that crop for future years. Producers who do not have access to such acreage which may be considered to be a conserving use would therefore be treated in an inequitable manner since such credit would not be available to them.

b. Producers who plant an acreage of a crop which is less than the total amount of the crop acreage base but do not participate in the program in effect for a crop cannot obtain any considered planted credit in order to preserve the crop acreage base established for the crop for the farm. These producers are treated inequitably in comparison with producers who plant no acreage at all. Producers who do not plant any acreage of a crop for which a crop acreage base has been established may receive considered planted credit in an amount equal to the total amount of the crop acreage base.

In order to alleviate these inequities, § 713.3(e)(2)(vii) is revised to provide that considered planted credit may be approved for any acreage of conserving uses designated to the crop in accordance with § 713.102, regardless of whether any acreage of the crop is planted. Section 713.102 limits the acreage of conserving uses that may be designated to a crop to the difference between the crop acreage base and the sum of the planted acreage, prevented planted acreage, and acreage conservation reserve ("ACR") acreage. § 713.3(e)(2)(vii) is amended to provide that, in accordance with instructions issued by the Deputy Administrator, considered planted credit may be obtained only if producers on the farm have not violated any cross compliance requirement that is in effect for the crop year and have not planted an acreage of the crop in excess of the acreage base for any program crop.

4. Section 509 of the 1949 Act requires the Secretary to establish an administrative appeal procedure which provides for an administrative review of determinations made with respect to farm acreage bases, crop acreage bases, and farm program payment yields. The administrative procedure so established is set forth at 7 CFR Part 780. With respect to farm program payment yields, the 1985 Act provided that such yields for the 1986 and 1987 crop years shall be the average of the farm program payments yields for the farm for the 1981 through 1985 crop years, excluding the year in which such yield was the highest and the year in which such yield was the lowest. The 1985 Act provides that, if no crop of the commodity was produced or no farm program payment yield was established for any of the 1981 through 1985 crop years, the farm program payment yield shall be established on the basis of the average farm program payment yield for such crop years for similar farms in the area. With respect to farm program payment yields established for a crop for any of the 1981 through 1985 crop years before the enactment of the 1985 Act, there is no authority to change or adjust such yields. Accordingly, § 713.155 is amended to clarify that farm program payment yields for the farm which were established before the enactment of the 1985 Act are not appealable. Determinations of farm program payment yields which are established after December 23, 1985 may be appealed in accordance with 7 CFR Part 780.

5. The Extra Long Staple Cotton Act of 1983 authorized a special reserve for adjusting acreage bases established for extra long staple cotton. The authority for this reserve expired with the 1986 crop year. Accordingly, § 713.11(d) which provided for such reserve is deleted.

6. On June 30, 1986, the Secretary announced that the option to implement the cost reduction options authorized by section 1009 of the 1985 Act with respect to the 1987 crop of wheat would not be exercised at that time. Section 1009(e) provides that the Secretary may, at any time prior to harvest, reopen the program for a crop for which a production control or loan program is in effect to participating producers for the purpose of accepting bids from producers for the conversion of acreage planted to such crop to diverted acres in return for payment in kind from CCC surplus stocks of the commodity to which the acreage was planted. In taking such action, the Secretary must determine that (1) changes in domestic or world supply or demand conditions have substantially changed after announcement of the program for such crop, and (2) without action to further adjust production of such crop, the Federal Government and producers will be faced with a burdensome and costly surplus. Such payments in kind shall not be included within the payment limitation of $50,000 per person established under section 1001 of the 1985 Act, but shall be limited to a total of $20,000 per year per producer for any one commodity. Section 713.58 is added to provide the regulations which would apply to a bid diversion program which may be announced under section 1009. These regulations are generally similar to those formerly set forth at 7 CFR Part 770 which were in effect for the 1983 crop year with respect to the Payment-In-Kind Program.

7. Section 713.2 is amended to clarify that contracts to participate in the wheat, feed grain, upland and ELS cotton, and rice programs may be executed by representatives of CCC only in accordance with the terms and conditions determined and announced by the Executive Vice President, CCC.

8. Several comments were received with respect to the haying and grazing provisions of the interim rule published on March 11, 1986 (51 FR 8428) that were

applicable to the 1986 crop year. Due to the need to implement the 1986 programs in a timely manner, some of the proposals presented by these comments which were determined to be meritorious could not be implemented with respect to the 1986 crop year. However, the following revisions have been made with respect to the use of ACR acreage for the 1987 and subsequent crop years:

(a) Section 713.3(d) is amended to provide that State committees must consult with interested parties before deciding whether to authorize haying of conserving use acreage. This section is also amended to provide that acreages which are hayed shall be considered to be nonprogram crop acreages if the State committee has determined that haying of conserving use acreage is prohibited.

(b) Section 713.63(a) has been amended to require the State committee to consult with interested parties before deciding to authorize grazing of ACR acreage and, if authorized, the 5 month nongrazing period applicable to such acreage.

(c) Section 713.63(c)(2) has been amended to clarify that producers may charge fees for hunting and fishing on ACR acreage.

**List of Subjects in 7 CFR Part 713**

Cotton, Feed grains, Price support programs, Wheat, Rice.

**Interim Rule**

**PART 713—[AMENDED]**

Accordingly the regulations found at Part 713 of Chapter VII of Title 7 of the Code of Federal Regulations are amended as follows:

1. The authority citation for Part 713 is revised to read as follows:

**Authority:** Secs. 101A, 103A, 105C, 107C, 107D, 107E, 109, 113, 401, 403, 503, 504, 505, 506, 507, 508, and 509 of the Agricultural Act of 1949, as amended; 99 Stat. 1419, as amended, 1407, as amended, 1395, as amended, 1444, 1383, as amended, 1448; 91 Stat. 950, as amended, 63 Stat. 1054, as amended, 99 Stat. 1461, 1461, as amended, 1462, 1463, 1463, 1464, 1464 (7 U.S.C. 1441–1, 1444–1, 1444b, 1445b–2, 1445b–3, 1445b–4, 1445d, 1445h, 1421, 1423, and 1461 through 1469); sec. 1001 of the Food Security Act of 1985, as amended, 99 Stat. 1444 (7 U.S.C. 1308); sec. 1001 of the Food and Agriculture Act of 1977, as amended, 91 Stat. 950, as amended (7 U.S.C. 1309); Sec. 1009 of the Food Security Act of 1985, 99 Stat. 1453 (7 U.S.C. 1308a).

2. § 713.2 is amended by adding the following new paragraph (f):

**§ 713.2 Administration.**

* * * * *

(f) A representative of CCC may execute a contract to participate in the wheat, feed grain, upland and ELS cotton, and rice programs only under the terms and conditions determined and announced by the Executive Vice President, CCC. Any contract which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by the Executive Vice President, CCC, shall be null and void and shall not be considered to be a contract between CCC and the operator and any other producer on the farm.

3. § 713.3 is amended by revising paragraphs (d)(1) and (e)(2)(vii), and adding paragraph (e)(3) to read as follows (d) introductory text is republished:

**§ 713.3 Definitions.**

* * * * *

(d) "*Conserving uses*" shall mean all uses during a year of cropland as defined in Part 719 of this chapter except for:

(1) Acreage of crops planted for harvest or use during the current crop year, which shall include:

(i) A crop of rice, upland cotton, feed grains, wheat, or ELS cotton;

(ii) A crop of soybeans;

(iii) Any nonprogram crop;

(iv) Any crop for which price support is available through loans and purchases in accordance with chapter XIV of this title; and

(v) In a State where the State committee, after consulting with interested parties, has determined that haying of conserving use acreage shall not be permitted, any acreage which is harvested for green chop, hay, silage, or haylage.

* * * * *

(e) * * *

(2) * * *

(vii) For farms which are not participating in a set-aside, acreage reduction, or diversion program for the crop, the acreage of nonprogram crops and conserving uses credited to the crop in accordance with § 713.102, provided that, in accordance with instructions issued by the Deputy Administrator, producers on the farm are not in violation of any cross compliance requirement in effect in accordance with § 713.100 and such producers have not planted an acreage of a program crop in excess of the acreage base established for the crop for the farm.

(3) With respect to farms owned by the Farmers Home Administration for 1986 and subsequent crop years, an acreage equal to the crop acreage base established for the farm in accordance with instructions issued by the Deputy Administrator.

* * * * *

4. § 713.12 is amended by removing and reserving paragraph (d) and revising paragraph (a)(1) to read as follows:

**§ 713.12 Adjusting crop acreage bases.**

(a) *Adjustments using farm acreage base.*

(1) With respect to the 1987 and subsequent crop years, if determined and announced by the Secretary, an operator of a farm may adjust acreage bases established for crops of wheat, feed grains, upland cotton, and rice in accordance with paragraphs (a)(2) through (4) of this section.

* * * * *

(d) [Reserved]

5. §713.58 is added to read as follows:

* * * * *

5. § 713.58 is added to read as follows:

**§ 713.58 Bid diversion program.**

(a) When there is a production control or loan program in effect for a crop of a major agricultural commodity, the Secretary may determine and announce that the program is being reopened to participating producers for the purpose of accepting bids for the conversion of acreage planted to such crop to diverted acres.

(b) If a determination is made in accordance with paragraph (a), the Executive Vice President, CCC, shall announce the manner in which bids for participation in the program shall be made and the manner in which the program shall be conducted. Such determinations shall include the following:

(1) The period of time during which bids may be submitted;

(2) The form of the bid, i.e. whether the bid shall be as a percentage of the farm program payment yield for the farm, as a number of pounds or bushels per acre, or such other form as may be determined and announced;

(3) The basis for evaluating bids; including any limitation upon the number of acres that may be accepted;

(4) The manner in which payments will be made to producers whose bids are accepted; and

(5) Other requirements of the program.

(c) The operator of a farm and any other producers on the farm may submit a bid for a contract with CCC on a form prescribed by CCC. To be eligible to submit a bid, the operator and any other producers on the farm must be parties to a contract to participate in the program for the applicable commodity for the crop year for the farm and must not

have been determined to be in violation of such contract.

(d)(1) The contract to participate in the bid diversion program may contain requirements as to the eligibility of acres planted to the crop, the time and manner by which the growing crop must be destroyed, limitations on the use of the acreage and the crop residue, provision for assessing liquidated damages in the case of violation of the contract, and such other provisions as may be necessary for effective operation of the program. The bid may be submitted to the appropriate county ASCS office prior to the close of business on a date to be announced by the Executive Vice President, CCC.

(2) If a bid diversion program is offered for more than one commodity, the operator and any other producers may select the commodities to be included in the bid, except that CCC may require that the bid include either both crops or neither crop of corn and grain sorghum, or barley and oats.

(3) After the final date for submitting bids, the bids in each county shall be ranked for each commodity, treating corn and grain sorghum or barley and oats as single commodities, if so required by CCC, on the basis of the percentage of the farm program payment yield, with the lowest percentage being ranked highest, or such other basis as announced by the Secretary. In the case of identical bids, such bids shall be ranked in the order received or, where an appointment procedure was utilized by the county ASCS office during the time in which producers submitted bids, a lottery shall be conducted to determine the order by which such bids should be ranked. The bids for each commodity shall then be accepted in rank order. CCC may establish the number of acres for which bids will be accepted for each commodity in each county.

(4) To the extent practicable, any questions as to the content of the bid shall be resolved by the county committee when bids are opened. Any decision by the county committee may be appealed as provided in § 713.155. If an appeal is resolved in the producer's favor, the bid may then be accepted without regard to whether accepting such bid would result in exceeding the maximum number of acres which may be enrolled in the program as established for the county.

(e) In accordance with the regulations in Part 795 of this chapter, the total amount of payments which a person shall be entitled to receive annually in accordance with the diversion program described in this section shall not exceed $20,000 per commodity. CCC may require that corn and grain sorghum shall be considered as one commodity, that barley and oats shall be considered as one commodity, or that all such commodities shall be considered as one commodity.

6. § 713.63 is amended by revising paragraphs (a) and (c)(2) to read as follows:

**§ 713.63 Use of ACR acreage.**

(a) *State committee determination.* The State committee, after consulting with interested parties, may authorize grazing of ACR acreage for the 1987 through 1990 crops, except during a 5-consecutive-month period for a county as determined by the State committee.

* * * * *

(c) * * *

(2) The ACR acreage may be used for noncommercial recreation, temporary location of beehives, or for home gardens. Fees may be charged for hunting and fishing.

* * * * *

7. § 713.100 is amended by revising paragraph (a) to read as follows:

**§ 713.100 Cross compliance on the farm.**

(a) Whenever an acreage reduction program is determined and announced by the Secretary with respect to a crop of rice, upland cotton, wheat, or feed grains, and the Secretary announces that limited cross compliance is in effect with respect to such a crop, as a condition of eligibility for loans, purchases, and payments with respect to such a crop, producers on a farm shall not plant an acreage of another commodity in excess of the acreage base established for the crop for the farm if an acreage reduction program is in effect for such commodity.

* * * * *

8. § 713.155 is revised to read as follows:

**§ 713.155 Appeals.**

(a) A producer, an assignee of a cash payment, or a holder of a commodity certificate issued in accordance with § 713.154 may obtain reconsideration and review of any determination made under this part in accordance with the appeal regulations found at Part 780 of this chapter.

(b) With respect to farm program payment yields, determinations made before December 23, 1985 are not appealable.

Signed at Washington, DC on October 22, 1986.

**William C. Bailey,**

*Acting Executive Vice President, Commodity Credit Corporation and Administrator, Agricultural Stabilization and Conservation Service.*

[FR Doc. 86-24299 Filed 10-27-86; 8:45 am]

BILLING CODE 3410-05-M

Federal Register

Tuesday
October 28, 1986

Part VII

# Farm Credit Administration

12 CFR Parts 614, 615, and 618
Borrower Rights; Final Rule

**FARM CREDIT ADMINISTRATION**

**12 CFR Parts 614, 615, and 618**

**Borrower Rights**

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rule.

**SUMMARY:** The Farm Credit Administration Board (Board) adopts final regulations governing the lending operations of Farm Credit System (System) institutions. The regulations relate to the disclosure of interest rates and related information; practices related to applications for extensions of credit; forbearance policies; notices of equity retirement; access to stockholder lists; and the disclosure of loan documents. On May 8, 1986 (51 FR 17035), the Farm Credit Administration (FCA) published for comment proposed regulations implementing recently enacted provisions of the Farm Credit Amendments Act of 1985 (Pub. L. 99–205) (1985 Amendments) relating to matters concerning stockholder/borrower rights; mergers, consolidations and territory transfers; and conservatorships and receiverships. Because of the number and complexity of the issues raised by the commentators, the Board determined that in order to properly respond to the comments, the regulations should be divided into two groups and considered separately. The regulations relating to mergers, consolidations, territorial transfers, conservatorships, and receiverships were adopted as final regulations by the Board at its September 3, 1986 meeting (51 FR 32431). The second group of regulations is contained in this publication and relates to the rights of borrowers and stockholders of System institutions.

**EFFECTIVE DATE:** The regulations shall become effective November 28, 1986.

**FOR FURTHER INFORMATION CONTACT:** Gary L. Norton, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020.

**SUPPLEMENTARY INFORMATION:** In accordance with § 5.17(b)(1) of the Farm Credit Act of 1971 (Act) the proposed regulations were provided to Congress for a period of 30 days prior to their publication in the **Federal Register**. Following publication in the **Federal Register**, the public was given a period of 30 days to comment on the regulations. Comments were received from System borrowers, System associations, a System bank, the Farm Credit Corporation of America (FCCA) on behalf of the 37 banks of the System, a Congressman, and other non-System groups and organizations.

In connection with the adoption of final regulations, the FCA Board determined that in light of the pending adjournment of Congress and the urgent need for these regulations to become effective, it was necessary to invoke the emergency provision contained in § 5.17(b)(2) of the Act. By invoking this exception, the effective date of these regulations will not be delayed until the expiration of the 30 days during which either or both Houses of Congress are in session. This decision was made in recognition of the provisions of the 1985 Amendments that directed the FCA to implement the statutory amendments as soon as possible and because of pending litigation between System institutions and their borrowers relating to matters that are the subject of these regulations. Accordingly, the final regulations will become effective upon expiration of 30 calendar days after the date of publication in the **Federal Register.**

While the regulations will be effective 30 days after publication, the Board has determined that the public will have an additional 30 days to comment on the following aspects of the final regulations which involve considerable controversy or which were substantially changed from the regulations as proposed:

(1) Section 614.4366—The requirement that each borrower be provided with a disclosure of the borrower's effective interest rate.

(2) Sections 614.4440–614.4444—The requirement that banks for cooperatives comply with provisions of these sections.

(3) Sections 614.4440–614.4444 and 614.4513—The right of persons who seek forbearance and submit an application for the renewal, extension, deferral, etc., of the terms of an existing loan to seek review by the Credit Review Committee of a denial of such application.

(4) Sections 614.4440–614.4444 and 614.4513—Whether, and under what circumstances, loans owned or participated in by the Capital Corporation should be subject to or excluded from the procedures provided in these regulations.

The Board carefully analyzed and considered each comment and responds to the comments on the basis of a thorough consideration of the merits of the positions expressed therein.

**Section-by-Section Analysis and Response to Comments**

*Subpart K—Disclosure of Loan Information*

General

The regulations in this subpart require System institutions to: disclose the current and effective interest rates on loans; State whether the current interest rate is fixed or variable; describe the factors affecting a variable interest rate; and disclose changes in the current and effective interest rates during the life of the loan.

In a general comment, the FCCA stated that the regulations are at variance with the intent of Congress and the language of § 4.13 of the Act. The FCCA claims that the proposed interest rate disclosures could possibly mislead borrowers, cause litigation between institutions and their borrowers, and potentially involve the expenditure of millions of dollars of compliance costs.

The Board disagrees that the regulations are not consistent with § 4.13 of the Act and the intent of Congress. The legislative history to the 1985 Amendments is replete with references to Congress' concern with protecting and enhancing the rights of borrowers from System institutions. The regulations provide for meaningful and timely disclosure of interest rates and related information consistent with the legislative history and the language of § 4.13. (See discussion to §§ 614.4366 and 614.4367.) With respect to the FCCA's argument that the proposed effective interest rate disclosures may mislead a borrower and cause litigation, the FCCA's concern is unwarranted. The disclosure provided for by the regulations should not involve computations that are significantly different than those currently used by System institutions for evaluating their interest rates, capital requirements, and projected profits on loans. The Board understands that compliance with the regulations may involve an expenditure of additional funds by System institutions; however, these expenditures should be minimal, and primarily associated with the startup costs associated with the development of procedures and initial implementation. Moreover, these expenditures must be viewed as a statutory cost of doing business since the regulations merely implement the disclosure requirements mandated by the Congress.

*Section 614.4365 Applicability.* The regulation explains that this subpart applies only to System institution loans

not subject to the Truth in Lending Act (TILA). A Georgia farmers' organization and a System association expressed the opinion that all agricultural loans should be subject to the TILA.

In response to these comments the Board notes that Congress has mandated that System loans which are not subject to the TILA shall be governed by the disclosure requirements contained in the Act and FCA regulations. Accordingly, Congress would have to amend the Act to accommodate the concerns expressed by these parties.

*Section 614.4366 Definitions.* This section contains definitions of various terms used in the subpart. Comments were received with respect to the definition of "effective interest rate," which means the current interest rate adjusted for the amount of equity a borrower is required to hold in an institution.

In a general comment, a Georgia farmers' organization applauded the disclosure of the effective interest rate, and stated that it will assist farmers by informing them of the true cost of interest. They suggested that the definition of effective interest rate should also include the cost of discount points.

The FCCA commented that the definition of "effective interest rate" will provide borrowers with information that is at best of limited value and at worst, clearly misleading. The FCCA claims that the disclosure may be misleading because borrowers may assume that the effective interest rate initially disclosed will apply for the duration of the loan. The FCCA stated that since multiple factors enter into the calculation of an effective interest rate, an accurate computation of such rate would require the development and application of complex formulas to each individual loan which, in turn, would necessitate the institution's making arbitrary assumptions concerning many of the factors. In its view, the proposed regulation is also deficient because the calculation does not appear to take into account the various stock retirement programs operated by each institution. The FCCA maintains that any attempt to take into account such differences would be very burdensome and costly and could require assumptions that may not be accurate with respect to the actual loan terms. The FCCA recommended an alternative approach to the calculation of an effective interest rate which is described in the discussion of § 614.4367.

The Board disagrees with the recommendation of the Georgia farmers' organization that the calculation of the effective interest rate should include the cost of discount points. Section 4.13 was specifically designed to ensure that the System institution disclose the impact of the stock purchase requirement on the effective rate of interest. This provision is designed for a limited purpose and was not intended to include all of the factors which can affect interest rates, many of which are specifically included in statutes such as the TILA. Furthermore, including discount points in the calculation would serve to magnify the difference between the effective and current interest rates and distort the true cost of purchasing stock. As a result, borrowers would be misled with respect to the cost of stock—an outcome not intended by Congress or consistent with § 4.13.

The Board disagrees with the FCCA's belief that this regulation will be of limited value or clearly misleading. As discussed here, and below in response to the comments on § 614.4367, it must be emphasized that the regulation implements the express requirements of the Act. Section 4.13 directs the disclosure to each borrower of the effect of the purchase of stock on the effective rate of interest paid by the borrower. The proposed definition implements this provision by defining "effective interest rate" to mean the current interest rate taking into account the cost of purchasing any stock or participation certificates a borrower is required to hold in the institution in order to obtain the loan.

The Board does not agree that the regulation is deficient because it requires the institution to calculate the effective interest rate on the basis of a single point in time. Any interest rate disclosure must be calculated at a particular point in time. In that regard, there is no difference between disclosing the interest rate on a variable interest rate loan at a single point in time. The fact that a rate may change does not lessen the utility of the disclosure provided that the borrower is made aware that the rate is subject to change. 1

The FCCA's statement that the calculation of the effective interest rate does not include the type of stock retirement program the institution utilizes is incorrect. The definition requires that such calculation take into account the stock retirement program applicable to the loan at the time it is made and the cost of owning stock in an institution. The FCCA's observation that the effective interest rate may differ between two loans, one of which is subject to an automatic stock retirement program versus another operating with a nonautomatic stock retirement program, illustrates the need to explain to borrowers the exact type of program applicable to their loans at the time they are made. This is precisely the sort of information that § 4.13 contemplates providing borrowers. As provided for in the model disclosure form, borrowers will be advised that stock programs are subject to change. In addition, the institution will provide the borrower with an explanation of the assumptions used in calculating the effective interest rate.

The Board does not concur with the FCCA's concern that the application of complex formulas utilizing a number of factors, some of which may only be projected, would significantly impair the value and accuracy of the effective interest rate disclosure. As discussed in greater detail below in the responses to § 614.4367, it is not unusual for institutions to estimate various terms with respect to both internal and external projections for interest rates, cash flow, and expected profit. For example, in computing annual percentage rates for loans subject to the TILA, institutions often are required to estimate factors such as the term of the loan. As long as borrowers are informed that certain factors are estimates subject to change, the effective interest rate disclosure provides them with an effective means for evaluating the cost of holding stock in the institution. Neither the Act nor the regulation require that an institution be bound by estimates of factors which the institution is not in a position to control or predict with certainty. The regulation only requires that the effects be estimated and that borrowers be advised that the effective interest rate is subject to change based on changes in enumerated factors.

*Section 614.4367. Required disclosures.* Paragraph (a) requires each association to disclose to borrowers at or before the time of the execution of the loan, the interest rate on the loan, the effective interest rate with representative examples of the impact of the equity purchase requirement on the interest rate, and the identification of standard adjustment factors used to compute a change in a variable interest rate.

A Georgia farmers' organization supported the disclosure requirements, but added that borrowers should be provided with loan schedules and loan officers should be required to explain different loan terms and options. A group of attorneys general from a number of midwestern States (attorneys general) and a group representing a number of interested parties from the State of Iowa (Iowa group) commented

that the information disclosed under paragraph (a) should be provided to borrowers prior to execution of a loan. The Iowa group suggested providing this information at least 5 days before execution of the loan unless waived by the borrower. The attorneys general recommended providing the information at the time of the loan application and upon execution of the loan. The two commentators claim that providing this information at the time of execution of the loan would not give the borrower an adequate opportunity to review the information and seek or negotiate alternatives and, therefore, the disclosure is not "meaningful and timely" as required by the Act. The attorneys general also advocated disclosing the formula for computing the variable interest rate. In the alternative, they suggested that the regulation be amended to explain how the standard adjustment factors cause a change in the interest rate.

The FCCA objected to the requirement that institutions compute and disclose to borrowers the effective interest rate for each loan. In its opinion, the language of and the legislative history to § 4.13 of the Act indicate that Congress did not intend to require this type of disclosure. The FCCA argues that the proposed regulation effectively renders the "representative example" language in § 4.13 meaningless. Accordingly, the FCCA recommended that the regulation be amended to delete the requirement that borrowers be informed of their effective interest rate and substitute a requirement that borrowers be given an example that illustrates how the purchase of stock can affect the effective interest rate.

The FCCA also submitted several technical comments. The FCCA observed that the regulation does not specify to whom disclosure should be provided in the case of multiple borrowers on a single loan. It recommended the FCA adopt the approach contained in the TILA where disclosure to any one of the primary obligors on the loan is sufficient. The FCCA also sought a clarification of the applicability of the regulation to the Farm Credit System Capital Corporation (Capital Corporation) and the Farm Credit Corporation of Puerto Rico (FCCPR). In addition, the FCCA suggested that the term "loan agreement" be changed to "loan document" because System institutions utilize the term "loan agreement" to refer to a specific type of document not used in connection with every System loan.

The Board disagrees that the regulation should require disclosure of loan schedules and an explanation by loan officers of the different loan terms and options. This regulation implements a statutory provision requiring the disclosure of information that would not otherwise be present in the loan documents. The regulations cannot describe and mandate every aspect of communications between borrowers and System institutions. Clearly, there are many matters related to the negotiation of a loan and the execution of loan documents that are not the subject of the Act or FCA regulations. The issues raised by the Georgia commentators relating to loan options, payment schedules, and credit programs fall into that category. Borrowers should not execute documents unless they understand and agree to the terms of the documents and have exercised their business judgment to determine whether the financial package is appropriate for their purposes.

The Board disagrees with the suggestion that disclosures under this section be provided prior to the execution of the loan. The Board notes that the specific provisions of the loan often are not finalized until after an application has been processed and both parties agree to the terms of the loan. It is only at this later point in time, after the parties have agreed to the terms and conditions of the loan, that the institution is in a position to compute the disclosures required under these provisions. In this respect, the comments of the FCCA regarding the difficulties associated with computing these figures are relevant. While the disclosure can be made at the time of the loan closing, to require these computations before all the loan terms have been finalized would be unnecessarily burdensome to the institution and of limited value to borrowers.

The important principle contained in the Act and incorporated in these regulations is that borrowers be provided accurate and complete information before they become legally obligated on a loan contract. Any borrower who does not understand or agree to the terms of the contract should not execute the document. The attorneys general and Iowa group argue that without prior disclosure, borrowers do not have an adequate opportunity to evaluate the information and negotiate alternatives. As a matter of prudent business practice borrowers should have requested information relating to the interest rates charged by the institution prior to execution of the loan; for example, at the time of the loan application. The regulations cannot provide a comprehensive itemization of all contacts, discussions, and negotiations between lenders and borrowers.

The Board does not agree that institutions should be required to disclose the formula for computing changes in interest rates. Interest rates are established on the basis of the institution's cost of funds and its margin. The margin may be increased or decreased based on changes in operating expenses, loan loss requirements, casualty losses, and other factors. No formula can be devised that can illustrate when or by how much the margin must be adjusted to accommodate these factors. The position that § 4.13 does not require System institutions to disclose the actual effective interest rate on each borrower's loan is in error. Section 4.13 and the other "borrower rights" provisions in the 1985 Amendments are designed to ensure that borrowers from System institutions receive certain basic information relating to their dealings with System institutions. Section 4.13 requires the FCA to issue regulations pursuant to which System institutions will provide each borrower with meaningful and timely disclosure of the borrower's current rate of interest, adjustment factors relating to any loan which has a variable rate of interest, the effect of the institution's stock purchase requirement on the borrower's "effective" rate of interest, and any subsequent changes in the borrower's interest rate.

Section 4.13(a)(3) provides that the "effective" interest rate on each borrower's loan can be disclosed through a representative example. By permitting disclosure to be made through a representative example, Congress recognized that there are many variables that could change the "effective" rate of interest paid by a borrower during the life of a loan. Such factors include changes in the institution's stock purchase requirement, the institution's stock retirement policy, repayment schedules, and interest rates. Therefore, Congress only required that the initial disclosure should be based on an example which makes certain assumptions based on conditions existing at the time the loan is executed. FCA regulation § 614.4367 implementing § 4.13 of the Act takes the same approach. This section requires that at the time the borrower executes the loan contract, the institution shall have made an estimate of the borrower's effective interest rate based on certain

assumptions relating to the above-enumerated factors. As set forth in the regulation and the materials in the appendix to 12 CFR 614.4367, the institution must also disclose that all of those factors are subject to change during the life of the loan and that the effective interest rate paid by the borrower may similarly be subject to change.

The FCCA suggested that borrowers should not be provided with the actual effective interest rates on their loans but with a hypothetical example which may bear no relationship to each borrower's actual loan. It asserts that the disclosure requirement contained in the regulation will not provide meaningful information since the factors relied on are subject to change over the life of the loan. The FCCA arguments are mutually inconsistent and ignore the statutory requirements. The type of hypothetical disclosure sought by the FCCA would be based on factors which may not exist in a given borrower's situation. This type of disclosure would provide information that could be misleading and would be significantly less meaningful than the disclosure required by the regulation.

The regulation implements the express statutory requirement that borrowers be given meaningful disclosure of the interest rates charged by the institution. The type of disclosure required by the regulation is similar, in its reliance on assumptions, to disclosures made under the TILA. Each TILA disclosure involving variable rate loans requires that certain assumptions be made regarding repayment of that loan. Making those disclosures necessitates that the institution make certain assumptions, including that the loan will be carried to its full term, that no prepayment will be made, and that the interest rate over the term of the loan will continue without change. While it is necessary to make those assumptions in order to compute the interest rate, the documents make clear that if any of those assumptions change during the life of the loan, the APR on the loan will also change. The same principle is applied with respect to loans governed by § 4.13 of the Act and 12 CFR 614.4367.

The Board has no evidence to support the FCCA's assertion that these disclosure requirements would impose unnecessary and burdensome expenses for the institutions. It is doubtful that these results will occur since each institution will know all of the basic assumptions regarding a loan at the time the loan contract is executed. The regulation does not require System institutions to project into the future all the conceivable adjustments that may occur to the interest rate. It does require that the institution provide disclosure based on factors existing at the time the loan is made and using certain assumptions regarding the repayment on the loan. It is not plausible that those assumptions would not already have been made by the institution since otherwise it would not be in a position to determine its profit on the loan or evaluate the borrower's capacity to repay the loan.

The Board adopts the comments regarding the appropriate disclosure for loans involving multiple borrowers. Accordingly, the final regulation is amended to provide that, in the case of a loan which involves more than one borrower, the disclosure shall be made to at least one party who is a primary obligor on the loan.

With respect to the FCCA's inquiry regarding the status of the Capital Corporation, no change to the regulation is necessary. As indicated in the supplementary information to the proposed regulations, this regulation applies to loans made by any System institution. The FCA has been advised that the Capital Corporation will utilize the same loan purchase and servicing practices implemented by the predecessor Capital Corporation. Under this procedure, the Capital Corporation purchases an amount of the loan that excludes the portion of the loan used to purchase stock or participation certificates. The association that originated the loan remains responsible for servicing the loan. Thus, the required disclosures will continue to be made by the associations. In the event the Capital Corporation's lending or servicing arrangements change, this regulation can be reviewed and amended as appropriate. For the same reasons, the regulation does not require an amendment to accommodate the operations of the FCCPR. The FCCPR is a wholly owned subsidiary of the Farm Credit Banks of Baltimore. It was established to take advantage of provisions in the Federal tax laws which allow certain tax savings to investors in bonds, the proceeds of which are used in Puerto Rico. These tax savings translate into a lower interest rate paid on the bonds and, as a result, a lower rate on borrower loans. The only function of the FCCPR is as a vehicle to obtain lower cost funding for the FLBA and PCA in Puerto Rico. The Puerto Rican PCA and FLBA continue to make and service loans and, therefore, are subject to the disclosure requirements of the regulation.

In response to the comment of the FCCA, the Board has amended paragraph (a) to substitute the term "loan document" for the term "loan agreement."

Section 614.4367(b). Paragraph (b) provides that within 90 days of the effective date of the regulation, each association shall provide each borrower with the information specified in paragraph (a) with respect to each loan outstanding. The disclosure of the actual effective interest rate on an outstanding loan shall be as of the date of the disclosure.

The FCCA commented that the 1985 Amendments do not require retroactive disclosure and that such disclosure is without precedent in any other statute requiring the disclosure of interest rates by lending institutions. In its opinion, the legislative history does not support such disclosure. The FCCA stated, without supporting documentation, that it will cost millions of dollars to comply with this provision. It suggested that the requirement be deleted or limited to situations such as where a borrower intends to refinance his obligation, in which case disclosure would be limited to those PCA borrowers with loans made within the prior 2 years. Additionally, the FCCA claimed that it would be operationally impossible to comply with the regulations in the 90-day period allowed. The FCCA also reiterated its comments to paragraph (a) and suggested that the effective interest rate disclosures under this paragraph should also be in the form of representative examples, which it believes would be at least as beneficial as the effective rate disclosures proposed by the FCA.

The FCCA's contention that the 1985 Amendments do not require the disclosure of the information required in paragraph (a) with respect to each loan outstanding is incorrect. There is no indication from the legislative history that Congress intended to restrict the application of § 4.13 to new borrowers only. Rather, Congress wrote §§ 4.13 and 4.14 in the present tense, indicating that it intended the borrowers' rights provisions to apply to current borrowers.

With respect to the claim that the System cannot comply with the requirement in the time allowed, the Board notes that the regulation was published in proposed form in the Federal Register on May 6, 1986. Compliance with this provision will not be required until 120 days after publication of the final regulations. The System will have received the regulation

between 8 and 9 months before having to provide the required disclosures.

For the same reasons noted in the discussion to paragraph (a), the FCCA's comment that alternative disclosure be made in the form of representative examples is rejected.

*Section 614.4367(c).* Paragraph (c) provides that not later than 10 days prior to the effective date of a rate change on a variable rate loan, each association must disclose the new interest rate, the effective date of the change, and the factors taken into account in establishing the new rate.

The Iowa group and the attorneys general suggested that in order for the disclosure to be meaningful and timely, it should be provided 30 days before the change, which would enable a borrower to obtain substitute financing or take other appropriate action. The FCCA commented that the 10-day advance notice requirement should not apply to financing with a maturity of 1 year or less. It believes that borrowers with such short-term loans do not have any interest in or intention of refinancing their loans and, therefore, the 10-day requirement serves no purpose and is not meaningful.

The FCCA and the Iowa group stated that the advance notice requirement should only apply to a pending increase in interest rates.

Three System associations expressed concern over the cost of complying with the provision, and stated that it would reduce the flexibility of an association to respond to changes in interest rates. The commentators believe the cost of disclosure will outweigh the benefits to stockholders. A PCA commented that this disclosure can be done in a more cost-effective manner, but it did not offer any suggestions in this regard. Another System association recommended that the membership of an association should be able to vote on whether the association will provide the required disclosures and incur the expense necessary to provide such disclosures.

The FCCA requested that the FCA permit a 6-month phase-in of the 10-day notice requirement since it will require banks to significantly alter their operating procedures. In addition, the FCCA suggested that the term "standard factors" used in paragraph (c)(3) should be changed to "standard adjustment factors."

The Central Bank for Cooperatives (CBC) requested confirmation of its interpretation that paragraphs (a) through (d) of this section do not apply to the CBC or other banks. The CBC observed that it would not be able to comply with this paragraph because the interest rates it charges to international borrowers change on a daily basis.

The Board rejected the recommendation that the notice period should be increased from 10 to 30 days. In determining the appropriate notice period, the regulation must balance the cost to the associations and the benefits to borrowers. The Board believes that 10 days is an adequate time period for a borrower to evaluate the effect of the change in the interest rate on that person's operations and to take whatever action the borrower deems appropriate. If a borrower determines, as a result of a pending rate increase, that the loan should be refinanced by another lender, the refinancing can occur at any time before or after the new rate is effective with only a minimal negative impact on the borrower. A 30-day period would unreasonably restrict the flexibility of System associations to adjust their rates of interest to borrowers to reflect their cost of funds.

The Board does not accept the recommendation that the 10-day notice requirement should not apply to loans with a maturity of 1 year or less. Section 4.3 requires institutions to provide a meaningful and timely disclosure of any change in the interest rate applicable to a borrower's loan. The Act does not differentiate between short- and long-term loans and the Board is not aware of any reason why a borrower with a short-term loan would be less interested in knowing of interest rate changes than a borrower with a long-term loan.

The Board agrees with the suggestions that the advance notice requirement should only apply to increases and not decreases in interest rates. Accordingly, the final regulation provides that the notice of a decrease in a borrower's interest rate may be provided simultaneously with the effective date of a change in the rate.

With respect to the comments regarding the administrative and financial cost associated with compliance with the regulation, the regulation was carefully drafted to strike the appropriate balance between providing meaningful and timely notice of interest rates to borrowers while minimizing the burden on System institutions. The cost of complying with this procedure must be viewed as a statutorily mandated cost of doing business. To the extent the regulation imposes a delay in the implementation of an interest rate change, this delay need only occur once. Thereafter, the timing of each interest rate adjustment can be made to take into consideration the notice requirement. In addition, to the extent associations are concerned about their ability to coordinate the notice requirements with their end-of-the-month mailings, that matter can be addressed by district banks modifying their procedures to provide for quicker notification to associations of interest rate changes or by the associations delaying their end-of-the-month mailings.

The Board disagrees with the recommendation that the members of each association should be given an opportunity to vote on whether they wish to comply with this provision. This regulation implements a statutory requirement that must be complied with by each institution. Congress has determined that all borrowers are entitled to the protections afforded by this section. There is no statutory basis upon which a majority of borrowers can deny these rights to a minority.

The Board disagrees that there is a need for a 6-month phase-in of the 10-day notice requirement. While it was asserted that the regulation will require System institutions to significantly alter operating procedures, no evidence documenting the need for any additional time to comply with the notice requirement was offered. Moreover, the System was placed on notice of this provision on May 6, 1986, when the proposed regulation was published in the **Federal Register**. Since the regulation will not be effective until 30 days following publication of the regulation as final, the System will have had more than 6 months to plan for the implementation of this provision. This is more than adequate time for the System to develop operating procedures to implement this requirement.

The Board agrees to the proposal of the FCCA that the phrase "standard factors" used in paragraph (c)(3) should be changed to "standard adjustment factors."

In response to the question by the CBC relating to the application of paragraphs (a), (b), (c), and (d), the Board reiterates that "association" means PCA and FLBA and does not include System banks such as banks for cooperatives (BCs).

*Section 614.4367(d).* Paragraph (d) requires that each association taking any action which will result in a change in the effective interest rate, must, at least 10 days prior to the date of the change, notify borrowers of the new effective interest rate, the date the new rate will become effective, and provide a statement describing the cause of the change.

The Iowa group reiterated its comment to paragraph (c) that the notice period should be extended from 10 to 30

days. The Board rejected the suggestion for the same reasons discussed with respect to paragraph (c).

*Section 614.4367(e).* Paragraph (e) requires that each BC disclose to its borrowers the current interest rate, the projected effective interest rate, and, if a variable rate loan, the amount and frequency by which a rate can be changed and the standard adjustment factors used to compute a change.

The CBC commented that it cannot comply with the projected average effective interest rate disclosure requirement for international borrowers because its rates are computed on factors other than those enumerated in the regulation. Furthermore, the CBC believes such disclosure is futile and meaningless to its international borrowers. According to the FCCA, there is no statutory basis for the FCA to require effective interest rate disclosures by BCs. In its view, the proper approach, as authorized by § 4.13, is for BCs to disclose the effect of equity investments through the use of representative examples.

The FCCA states that the proposed regulations would not provide meaningful information to BC borrowers because: (1) Stock investments of borrowing cooperatives are not tied to individual loans, (2) projections of annual patronage distributions and numerous other factors would have to be taken into consideration to compute the average effective interest rate, and (3) the capital stock investment calculation would be imprecise due to the arbitrary nature of the assumptions to be made and ambiguities in the regulation, e.g., the distinction between (iii) and (iv) is unclear. Furthermore, the FCCA asserts that cooperative borrowers are generally quite sophisticated and employ many varied techniques for evaluating the effective interest rate on their BC loans and, therefore, such disclosure is of no value to borrowers. The FCCA also suggested that the FCA amend the regulation to exempt the credit operations of any System bank involved in direct international lending or which purchased a participation in an international loan made by the CBC. Finally, the FCCA requested that the FCA clarify the meaning of the phrase in paragraph (e), "each loan applicant, who is not a borrower."

The Board rejects the recommendation that the disclosure requirements should be inapplicable to international borrowers. Section 4.13 is applicable to all System institutions and sets forth disclosure requirements for the benefit of all borrowers. The statute does not distinguish between domestic and international borrowers of BCs. Furthermore, regardless of whether the borrower is an international or domestic entity, the disclosure of a projected effective interest rate would be equally useful. The CBC is correct in its observation that paragraph (e) does not incorporate factors unique to international lending. To the extent such factors are inapplicable to a transaction involving an international borrower or any other borrower, they would not be included in any disclosure to that borrower.

For the same reasons discussed with respect to paragraph (a), the Board rejects the contention that there is no statutory basis for the FCA to require BCs to disclose effective interest rates or, alternatively, that BCs should be allowed to disclose the effect of equity investments through the use of representative examples. It is true that stock investments of borrowing cooperatives are not tied to individual loans and that numerous other factors make a loan from a BC substantially different from loans made by PCAs or FLBAs. However, Congress did not incorporate any exceptions into § 4.13, but rather directed all System institutions to disclose the effective interest rate to borrowers. The fact that a BC would have to make certain estimates in order to compute an effective interest rate is not a fact unique to BCs and does not justify a regulatory exemption. While some cooperative borrowers may be quite sophisticated and employ numerous techniques for evaluating the interest cost of their BC loans, this is not true for all BC borrowers and the statute contains no provision for differentiating borrowers on such a basis. The statutory purpose of this and other disclosure requirements is to provide the information necessary for people to make informed decisions even though some may not need it and others may not want it.

In response to the request for a clarification of the difference between § 614.4367(e)(3) (iii) and (iv), the Board amended the regulation to clarify that the former refers to projected noncash distributions while the latter refers to projected cash distributions.

In response to the request for clarification as to what is meant in the subsection by the phrase "each loan applicant, who is not a borrower," the Board amended the regulation to clarify that it applies to a first-time borrower from a bank for cooperatives. The regulation does not apply to an existing borrower who is applying for a disbursement of new loan funds.

*Section 614.4367(f).* Paragraph (f) requires each BC to provide each borrower, within 90 days after the effective date of the regulation and thereafter within 30 days after the end of the fiscal year, notice of the average effective interest rate for each loan.

The CBC reiterated its comment made to paragraph (e) of this section that the disclosure of the average effective interest rate is meaningless to international borrowers.

The FCCA maintains there is no basis in the Act for requiring after-the-fact disclosure. In its opinion, such disclosure would only emphasize the discrepancy between projected and actual effective interest rates which, because of the variables involved, would likely never coincide and consequently would cause confusion and potential conflict between the BCs and their borrowers. The FCCA also stated that the 30-day period allowed for post yearend disclosure is an insufficient period of time to comply with the procedure. In addition, the FCCA suggested that the regulation should clarify what period of time is used for computing the initial disclosure of the average effective interest rate.

The Board again notes that there is no statutory basis for treating domestic and foreign borrowers differently. Moreover, the Board disagrees with the CBC's assertion that the disclosure provided for in the regulation would be meaningless to international borrowers. There is utility in informing borrowers, whether foreign or domestic, of the effective interest rate the entity paid on each loan from a BC. Even though many international borrowers are sophisticated, there is no way to gauge the relative sophistication of an international borrower just as there is no way to gauge the sophistication of a domestic borrower. In the absence of a statutory basis for distinguishing between such borrowers, the Board has no basis for amending the regulation.

In response to one comment, the Board amended the final regulation to clarify that the projected effective interest rate disclosure in paragraph (e) applies only to cooperatives that are not currently BC borrowers. Current borrowers receive a yearend notice of their actual effective interest rate paid.

The Board disagrees with the assertion that there is no statutory basis for requiring a yearend disclosure to BC borrowers. This regulation implements the statutory requirement for interest rate disclosures to all System borrowers while at the same time accommodating the unique aspects of BC lending. The regulation does not require BCs to

provide interest rate disclosures to each cooperative borrower each time a loan increase is applied for because such requirement would be burdensome and not useful to BC customers. Similarly, the regulation takes into account the fact that BC lending involves many variables that are difficult to predict. Accordingly, the regulation minimizes the use of interest rate projections and substitutes the requirement for a yearend disclosure of the actual effective interest rate paid. Interest rate projections are only required for new cooperatives which are not current borrowers of the BC.

In response to the comment that 30 days is an insufficient period to prepare and distribute the yearend disclosure statement, the Board reiterates the comments made regarding paragraph (c).

In response to the FCCA request for clarification of the period to be covered by the disclosures that are to be made within 90 days of the effective date of the regulation, paragraph (f) is amended to clarify that the disclosure shall be for the period of the fiscal year ending on the effective date of the regulation.

*Appendix to 12 CFR 614.4367.* The appendix provides model disclosure forms that can be used to comply with the requirements of Subpart K. The attorneys general recommended that model Form 1 should advise borrowers that they will be given 30 days' notice of any changes in the interest rate and 30 days' notice of any changes in the standard adjustment factors. They also recommended that the notice should advise borrowers to consult an attorney regarding questions concerning the loan.

For the same reasons discussed above to paragraph (c), the Board believes the 10-day notice period is sufficient. However, consistent with the change in the regulation, model Form 1 is revised to include a notice that borrowers will be provided 10 days' notice of an increase in the interest rate, or a notice simultaneously with a decrease in the interest rate.

The Board rejects the recommendation that a provision be added to the model disclosure form to provide a 30-day notice period prior to a change in the standard adjustment factors. Such a requirement is not contained in § 4.13, nor would it provide any meaningful information to the borrower. Changes in the factors do not mean the rate is changed. As with these provisions, if at any time the borrower believes that better financing terms are available elsewhere, the loan can always be refinanced with another lender. The borrower is not prejudiced by not having advance notice of these changes.

The Board does not accept the recommendation to include language advising borrowers to consult an attorney regarding questions concerning their loans. Such language is beyond the proper scope of this type of disclosure provision and may unnecessarily encourage conflict between the borrower and the lender. The Board is satisfied that System borrowers have the business acumen to know that if they do not receive satisfaction from a lending institution they can consult with legal counsel.

*Section 614.4440 Definitions.* The FCA received comments on the definitions of "applicant" and "System institutions." The proposed regulation defined "applicant" to exclude current borrowers seeking forbearance through requests for renewals, deferrals, reamortizations, etc. The "System institutions" subject to the requirements of this subpart included FLBAs and PCAs. All of the commentators were unanimous in their view that the proposed definition of "applicant" was unduly restrictive. However, there was significant disagreement over an alternate definition. Several System borrowers proposed that "applicant" should include all new and existing borrowers in an institution. A North Dakota farmers' organization suggested that Congress intended to provide for an appeals system similar to that used by the Farmers Home Administration, which would permit an appeal of any adverse credit decision. The group believes excluding forbearance actions is too restrictive and, as such, diminishes borrower protections, contrary to the intent of Congress. A Minnesota legal services group argued that the definition should include borrowers who seek to extend or renew an existing loan commitment. The group asserted the existence of provision in the legislative history of the 1985 Amendments indicating that current borrowers are intended to be beneficiaries of the notice and review provisions. The attorneys general believe that the 1985 Amendments support including loan reduction, acceleration, and denial of forbearance requests in the definition, but at a minimum, the definition should include loan extension requests of current borrowers.

The FCCA generally agreed with the definition as written, but suggested it be expanded to include individuals seeking loan renewals who are also making a request for additional funds. The FCCA also suggested that where multiple persons are applying for a loan the term should include any of the principal signatories on the application. In addition, the FCCA suggested that the definition be amended to exclude borrowers seeking loan servicing remedies. The FCCA also inquired as to why System banks were excluded from the regulation.

In response to the comments, the Board amended the final regulation to define the term "applicant" to include borrowers seeking forbearance, such as loan renewals, extensions, restructuring, and compromises of indebtedness. Through this amendment and comparable amendments to § 614.4513, borrowers who seek forbearance by applying for loan renewals, extensions, etc., will have access to the same credit review procedures as are applicable to borrowers seeking initial extensions of credit.

In adopting this amendment, the Board notes that in the past, the FCA has encouraged System institutions to adopt forbearance policies that would provide borrowers with essentially the same review procedures as were statutorily applicable to loan applicants requesting review of denials of new funds. However, each institution, through the adoption of a district policy, had the discretion to include this type of review procedure in its forbearance policy.

By the adoption of the 1985 Amendments, Congress altered the loan review process in an effort to make it more responsive. In addition, the 1985 Amendments also required the FCA to issue regulations governing forbearance policies. These provisions, together with the legislative history of the 1985 Amendments, evidence the intent of Congress that all borrowers, including those experiencing difficulties and facing possible foreclosure, be given a reasonable opportunity to present financing alternatives that can satisfy their needs as well as the requirements of the institution. For this reason, the Board believes that at this time, the forbearance policy in each district should include the same type of review mechanisms as are provided to loan applicants. In order to clarify the regulatory responsibility of System institutions, the credit application and the forbearance policy regulation have been amended to provide the same review procedures in both cases.

The Board also believes that the use of these procedures will be of benefit to institutions. Providing a right of review in the case of forbearance helps ensure that the institution gives careful consideration to the merits of an applicant's forbearance request before

making a final decision. This encourages the institution to fully evaluate which course of action will result in the institution realizing the greatest net return on its funds as well as considering the resources and needs of the borrower. In addition, where a legal dispute arises between the borrower and the institution over the propriety of a foreclosure action, the record of the credit review committee documenting such review could support the institution's foreclosure action.

Accordingly, the final regulation defines "applicant" to include current borrowers seeking forbearance. Similarly, the final forbearance regulation, § 614.4513, requires that the institution's forbearance policy shall specify that a denial of a request for forbearance involving a loan application is an adverse credit decision subject to review by the institution's credit review committee(s). In addition, the provisions of § 614.4512—Compromise of indebtedness, are incorporated in the forbearance regulation since the review standards are the same. (See discussion to § 614.4513.) The Board believes that the extensive comments received supporting the approach adopted in the final regulation evidences that the relevant issues clearly were a subject of the public comment process.

In response to a recommendation, the Board has amended § 614.4441 to provide that in the case of a multiple party loan, the institution is only required to provide notice to one of the primary obligors on the loan. However, as discussed with respect to § 614.4513, in the case of a forbearance notice that does not involve a loan application, all primary obligors on the loan must be provided notice of a pending collection action.

In response to the FCCA's question regarding the exclusion of System banks from the regulation, this is a result of the statutory structure of the System. While the statute refers to all institutions, some institutions do not extend credit to borrowers. The FLBs are not excluded from coverage under these regulations. Section 614.4442 requires FLBAs to establish credit review committees on the basis of guidelines from the FLB, including the required level of FLB membership on the review committee. The regulation accommodates the unique relationship between FLBs and FLBAs and establishes a process which will only require one level of review. The FICBs do not extend credit to borrowers other than PCAs and other financing institutions, and existing FCA regulations govern those lending relationships.

As noted by the FCCA, the proposed regulation was not applicable to BCs. During the comment process, the BCs advanced no arguments to support their exclusion from this provision. While it can be argued that the primary purpose of §§ 4.13 and 4.14 was not to protect agricultural cooperatives, there is no statutory language or legislative history to support that position. Therefore, consistent with other similar regulations, the Board amended the final regulation to include BCs within the provision of this subpart.

*Section 614.4441 Notice of action on loan application.* The regulation directs each System institution to act expeditiously on a loan application and to promptly notify the loan applicant of the institution's decision and reasons for same.

A PCA commented that application of this provision in the instance where the loan is approved is unnecessary since the applicant is usually notified of approval at the time of the loan application, at which time such loan is usually executed. In a general comment, a number of borrowers stated that the regulation should include notice of the reasons for an adverse decision, notice of an applicant's right of review, and a brief explanation of the review process.

In response to the PCA comment, the Board notes that § 4.13B of the Act specifically requires that an institution shall provide written notice of its decision to the applicant. However, written notice can be provided in different ways. In the event the loan documents are executed at the time of application, or if the borrower receives a copy of the loan application which has been marked "approved," the regulatory requirements would be satisfied. With respect to the borrowers' comments, the Board observes that the proposed regulation already incorporates their recommendations.

As discussed with respect to § 614.4440, the final regulation is amended to adopt the recommendation related to the notice requirements applicable to applications with multiple obligors.

*Section 614.4442 Credit review committees.* The regulation requires each FLBA and PCA to establish a credit review committee which includes at least one member of the institution's board of directors. The board may, upon a unanimous vote, delegate a board member's duties to another person. The proposed regulation also provides that the FLB shall establish guidelines under which the boards of directors of FLBAs establish and operate their credit review committees.

The Iowa group, the North Dakota farmers' organization, and the attorneys general believe that the intent of Congress was to require that a board member sit on the review committee and that no delegation of duties is permissible. The Minnesota legal services organization stated that the Act requires the board member on the committee to be a "farmer" member and that the regulation does not include that specific requirement.

The FCCA and a Congressman commented that the delegation provision is not authorized by the 1985 Amendments and is not in accord with the intent of Congress. Both stated that Congress amended an earlier draft of § 4.13 by deleting "member of the board of directors" and substituting "farmer board representation." They argued that this change was enacted to alleviate the potential burden that could face a director of a districtwide association who would have to simultaneously serve on the institution's board of directors and its credit review committee. They argue that this language permits an individual serving on a service center or advisory board to be appointed to a credit review committee in lieu of the appointment of a member of an association's board of directors.

The FCCA suggested that the regulation be amended to provide for the establishment of separate credit review committees by FLBs and FICBs to review adverse credit decisions made by bank personnel. The FCCA believes borrowers are entitled to reconsideration of an adverse credit decision by the institution rendering such decision and adds that it is totally unacceptable for a credit review committee of an association to reverse a credit decision made by the district bank.

The Board disagrees with these commentators' interpretations of section 4.14 of the Act. The express language of § 4.14 and the published legislative history of that provision do not support the interpretations advanced by these parties. Section 4.14 specifies that the credit review committee "shall include farmer board representation." The term "farmer board" is redundant in that the Act and regulations mandate that in order for a person to serve on the board of directors of an association, that person must be a farmer, rancher, or producer or harvester of aquatic products. To strictly interpret this language would result in only farmers, and not ranchers or producers or harvesters of aquatic products, serving on credit review committees. That result

would clearly be contrary to congressional intent.

Stripped of this redundancy, the section merely requires that the credit review committee include a representative of the board of directors. Neither the language of § 4.14 nor its legislative history precludes the delegation of the duties of the member of the board of directors sitting on the credit review committee. This language does not direct that such representative must be a member of the board of directors. Rather, the provision leaves the designation of the representative to the discretion of the board of directors. The authority of the board to delegate the board members' duties on the committee is necessary in light of the problem faced by a director of an association in a district with only one or a very small number of associations. For example, the director of a districtwide association, which can cover as many as five states, is likely to be seriously burdened were that person required to function both as a member of the credit review committee and the board of directors. There is a substantial risk that such burden may result in that board member's being unable to devote necessary time and attention to board matters, thereby impairing the efficient functioning of the association's board of directors and consequently that of the association. Considering that Congress passed the 1985 Amendments in order to strengthen the operation of the System, it is highly unlikely that Congress would include a provision that could seriously impair the operation of an institution.

The regulation balances the potentially conflicting goals of enhancing the operational efficiency of the System and protecting borrowers' rights. The regulation ensures that the board of directors may only delegate this function with the unanimous consent of the board. Since the shareholders elect the board of directors, the unanimous consent requirement will ensure that the interests of all shareholders are protected and that a delegation will not occur unless all of the directors believe that such delegation is in the best interests of shareholders and the association. Should shareholders object to the directors' action, they can effect their will through the election of directors who will not permit such delegation.

The comments of the Congressman and the FCCA support the FCA's interpretation that the board may delegate its representation on the committee. Both observed that an earlier version of the legislation expressly required that a member of the board of directors of the association must sit on the committee. They stated that in recognition of the burden that would fall on directors of districtwide associations, this language was subsequently changed to the present version. They agree that this language permits the association's board to designate persons other than board members to serve on the credit review committee. However, they go on to argue that the board's designee must be a member of a service center advisory board. They argue that Congress used the term "farmer board" to restrict the designee of the board to members of advisory boards. There is, however, no authoritative legislative history supporting this position.

Section 4.14 uses the term "board." There is only one board of directors for each institution. The institution's board of directors is a statutorily created entity possessing certain authorities, rights, duties, and responsibilities with respect to the institution. Advisory boards only provide advice, and have no legal authority with respect to the activities of the institution. Advisory board members are not directors, officers, or employees of the institution. The legal relationship of advisory board members to the institution is the same as that of ordinary stockholders to the institution. Just as it would be improper for an institution to allow a stockholder to commit association funds to a borrower, it would also be inappropriate for an association to permit an advisory board member to undertake similar actions. As such, the language of § 4.14 may not reasonably be construed to provide that "board" also means advisory boards. Accordingly, the Board rejects the commentators' request that the FCA amend the regulation to provide for the delegation of board representation to members of advisory boards.

The Board disagrees with the FCCA's comments concerning the right of FLBs and FICBs to review the credit decisions made by associations and bank personnel. The 1985 Amendments changed the process by which the appeal of an adverse credit decision is conducted. The purpose of this amendment was to provide for an objective review of adverse credit decisions through a process that would be made more responsive to borrowers. The statutory framework within which the FLBs/FLBAs and FICBs/ PCAs operate has not been changed by § 4.14. All loans to borrowers by or through associations must continue to meet the separate standards and criteria established by the banks. Section 4.14 does not authorize an association to approve a loan application that does not meet the standards of FLBs, who make loans through FLBAs, or FICBs, who lend the funds for PCA loans. Thus, the FCCA's concern is unfounded and no change is made to the regulation.

As discussed above with respect to § 614.4440, the regulation is amended to include BCs.

*Section 614.4443 Review process.* The regulation provides that an adverse credit decision is subject to review by the institution's credit review committee. An applicant may submit to such committee information that person believes will demonstrate that the loan satisfies the credit standards of the institution. Thereafter, the committee is required to notify the applicant, in writing, of its decision and the reasons therefore.

The FCCA objected to the regulation because it would permit an applicant to submit new material to the committee that was not available to the institution at the time of the applicant's loan application. The FCCA stated there is no statutory or logical basis for permitting such action and added that it can imagine nothing doing more damage to the System's regular lending operations. It believes that a credit review committee should review the basis upon which the loan was denied and not take into account information previously unavailable to the loan officer. An applicant should submit any new information as part of an amended or new loan application. The FCCA also suggested that the proposed regulation be amended to provide that the lender rather than the committee shall notify the borrower. Separately, the Iowa group requested the FCA clarify whether a credit review committee is the final decisionmaker on an application.

The Board agrees with the FCCA's concerns regarding the interrelationship between the activities of the committees and the regular decisionmaking process of the institutions. The purpose for providing for the review of an adverse credit decision is to enable the applicant to demonstrate, on the basis of the loan application and any further documentation submitted to support the contents of the application, that the loan request satisfies the credit standards of the institution. The regulation does not change the existing review practice of System institutions, which is not to accept any information in a review that is not included or otherwise reflected in an application. The FCCA is correct in its observation that § 4.14 does not allow an applicant to submit information not included in an

application, such as materials relating to an additional source of income, which that person did not mention in the application and of which the institution therefore had no knowledge. If the applicant submits new material, such as additional collateral or income, the appropriate action by the committee would be to direct that a new application be prepared and submitted through the normal loan approval process. In order to address the FCCA's concern, the final regulation has been amended to clarify that evidence or documentation submitted must relate to information contained in an applicant's loan application.

The Board agrees with the recommendation that the institution should have the responsibility for notifying the borrower of the credit review committee's decision. The regulation, consistent with § 4.14, provides that the decision of the credit review committee is the final decision of the institution. However, in making its decision, the credit review committee is acting on behalf of the institution, not on its own behalf. Therefore, all communications should be between the institution and the borrower. The Board amended the final regulation to clarify this point.

*Section 614.4444 Records.* The regulation requires System institutions to maintain a file of all decisions by the credit review committee.

The FCCA expressed a concern that the language in the provision suggests that such files will be available to the public or to member/borrowers of an association. It believes there is no basis for such disclosure and requests that the FCA clarify this point.

The Board does not share the concern expressed over the disclosure of credit review committee decisions. Access to these records and other records of System institutions is governed by existing FCA regulations. This provision is merely designed to ensure that the institutions maintain sufficient documentation of decisions to enable FCA examiners to determine whether System institutions are complying with § 4.14 and the regulations.

*Subpart N—Loan Servicing Requirements*

*Section 614.4510 General.* No comments were received on the proposed regulation.

*Section 614.4513 Forbearance.* The regulation directs each district board and the Capital Corporation to develop a written policy regarding the exercise of forbearance and provides guidance to System institutions with respect to the content of such forbearance policies. The regulation does not require associations to develop separate forbearance policies but rather directs that their forbearance-related operating procedures shall be approved by the district bank. Each System institution is required to provide a copy of its forbearance policy to a borrower at least 10 days prior to the commencement of any collection action and, in addition, shall make available at its office a copy of such policy.

The CBC stated that its forbearance policy should not be applicable to international borrowers. It argued that: (1) International borrowers are not BC stockholders; (2) forbearance policies are designed to assist American agricultural borrowers, not foreign entities; and (3) a decision to seek collection remedies with respect to a foreign debtor involves considerations beyond the scope of the forbearance policy. The FCCA concurred with the CBC's comments and also urged the FCA to exclude any bank purchasing a participation in international loans made by the CBC and the international operations of any district bank involved in direct international credit.

The remaining commentators, except the FCCA, believe the forbearance regulation is too narrow in scope. The FCCA generally supported the approach in the proposed regulation and agreed that when an institution makes a forbearance decision it should take into account the interests of stockholders, investors, and borrowers.

The Iowa group and the attorneys general commented that the proposed regulation should be changed to require System institutions to consider forbearance options. More specifically, the attorneys general stated that the regulation should actively encourage institutions to take forbearance actions. In support of their position, the attorneys general stated that Congress has encouraged increased forbearance by System institutions in a recent resolution passed by the House of Representatives.

A North Dakota farmers' organization and the Iowa group advocated requiring an institution to forbear when it is less costly to an association to provide forbearance than to liquidate the loan. The North Dakota organization also recommended that the regulation should be expanded to itemize the full range of considerations that should be taken into account when an institution is considering a forbearance request. In addition, the organization stated that forbearance decisions should be based on both the long- and short-term costs and benefits. The Iowa group recommended that the regulation be amended to require institutions to focus on the likelihood of the borrower being able to repay the debt, rather than the financial impact of the forbearance decision on the institution.

A number of the commentators stated that forbearance options should include reductions in the rate of interest or principal on a loan. These commentators argued that the definition of forbearance is unreasonably restrictive and shortsighted and reduces the flexibility of a System institution to consider reasonable actions which may increase the likelihood of the repayment of the debt to the benefit of all parties. These commentators stated that, since the purpose of forbearance is to keep farmers on the land, it is not unreasonable to have the other borrower/stockholders of an institution pay a little more interest to assist their less fortunate brethren.

A Georgia farmers' association commented that while it agrees generally with the proposed forbearance regulation, it believes the regulation should require institutions to practice forbearance actions, such as restructuring loans using the two-tier program or simple interest loan schedule. Another commentator opined that the proposed forbearance regulations were too vague and suggested they be made more specific.

A Minnesota legal services organization argued that the regulation is inconsistent with the Act since it does not require associations to have policies on forbearance. Similarly, the Iowa group recommended the deletion of paragraph (e) which requires bank approval of association forbearance procedures. It noted that the Act only requires that the policies shall be consistent with FCA regulations and does not grant banks the power to approve association forbearance policies.

There were a number of comments regarding the requirement that each institution provide borrowers a copy of the forbearance policy at least 10 days prior to the commencement of any collection action. The FCCA supported this requirement as a general rule, but argued that the 10-day rule should not apply where there exist reasonable grounds to believe that a borrower may take action to dissipate or divert collateral or the collateral is in danger of deterioration. It also suggested that an institution should be deemed to have complied with this regulation if it sends a copy of the policy by first class mail to the borrower at that person's last known address at least 10 days prior to the commencement of collection action. In

order to avoid any controversy, the FCCA recommended that the final regulation should apply only to collection actions commenced after the effective date of the regulation. The FCCA also proposed that, in the case of multiple borrowers, the notice requirement should be satisfied if the institution furnishes a copy of the policy to any of the principal obligors on the loan.

A number of the other commentators suggested alternatives to either the 10-day requirement or the time at which the forbearance policy is provided to borrowers. The attorneys general recommended that the FCA follow the decision in *Curry v. Block*, which held that the Farmers Home Administration must provide notice of its forbearance policy at the outset of the loan term, at the beginning of each production season, when the borrower is notified that he or she is delinquent on the loan, and when the borrower is given an acceleration notice. The Iowa group recommended that the forbearance policy be provided at the time of the execution of the loan agreement and at least 30 days prior to the commencement of collection action unless a court determines after notice and a hearing that the 30-day period would cause the institution to suffer irreparable harm. The North Dakota farmers' organization countered that the proposed regulation should provide for at least a 20-day notice period prior to the start of any collection action. These commentators believe that the timing of disclosure and the 10-day provision are inadequate in that a borrower does not have sufficient time to fully appreciate the extent of his or her rights and propose an alternative to the collection action.

In contrast, the Minnesota legal services organization agreed that a 10-day notice is sufficient, but added that the proposed regulation should be amended to provide that a policy may not be mailed any more than 30 days prior to the commencement of any collection activity. They argued that without this limitation, a System institution can provide this policy at any time, even though most borrowers may not appreciate the rights afforded by such policy until they are experiencing financial difficulties.

Although no change was proposed to the existing regulation regarding compromise of indebtedness, § 614.4512, a number of borrowers commented on its contents. They suggested that such regulation should correspond to the forbearance regulation, allow forgiveness of interest and principal, and consider the production value of the farm and the propriety of the initial loan.

The Board rejected the suggestion that the regulation be amended to exclude international borrowers from the forbearance provisions. As discussed with respect to § 614.4367, neither the language of § 4.13 nor its legislative history authorizes differential treatment between international and domestic borrowers. With respect to the concern expressed over the issue raised in applying forbearance to an international borrower, the Board notes the regulation does not prohibit a BC from tailoring its forbearance policy to meet the unique needs of its international lending operations.

The Board does not agree with the comment that the regulation should be amended to impose additional requirements on System institutions to consider forbearance. It has been the consistent position of the FCA that the determination of whether or not to forbear on a loan is a business decision which rests with the institution in furtherance of the objective of maximizing the institution's recovery of the loan, taking into account the interest of stockholders, borrowers, and investors. When a borrower is suffering financial difficulties, it is incumbent on the institution to consider forbearance options as a means of increasing the likelihood of collection of the loan. However, the precise determination of whether and when forbearance should be granted is a determination to be made by the institution in the context of its forbearance policy and that determination rests solely within the institution's discretion. Section 4.13(b) of the Act specifically requires System institutions to address the issue of forbearance and delineate policies that would provide for the active consideration and consistent application of such policies by the institutions. Section 4.13(b) is not intended as a vehicle for the FCA or any other party to interfere with or second guess the exercise of the discretion by a System institution in making their decisions regarding forbearance.

Similarly the Board does not agree that the regulation should be amended to *require* institutions to provide forbearance when it is less costly to an institution than liquidation. This type of requirement would only lead to endless litigation since the types of cost determinations are not easily proved. Since a decision to forbear involves myriad factors, such as the likelihood of repayment, the economic health of the institution, and the cost to the institution, the decision to forbear must be left to the discretion of the institution. While cost is a factor in forbearance, it need not be controlling. The ultimate decision rests with the institution based on its analysis of all of the factors involved in accordance with a methodology which it chooses to adopt and follow. It is the FCA's responsibility to ensure that the institution has developed a forbearance policy in accordance with the regulation and applies such policy on a consistent basis. The exact factors that the institution should consider in determining whether or not to forbear are matters that are determined at the discretion of the institution. When stockholders are concerned about specific aspects of a forbearance policy, those concerns can be voiced to their elected board of directors consistent with the process by which the boards of directors of corporations and cooperatives provide for consideration of the views of their stockholders and members.

The Board disagrees with the recommendation that the regulation be amended to require institutions to make forbearance decisions based on the likelihood of the borrower being able to repay the debt rather than the effect on the institution. The regulation contemplates that forbearance policies will provide for consideration of all relevant matters, including the interests of a borrower and his or her likelihood of being able to repay the debt. However, this is only one of a number of factors and cannot be the sole criterion by which forbearance is to be determined. The foremost consideration in developing the forbearance policy must be consideration of all the factors which enable the institution to maximize the collection of the debt and thereby protect the interest of investors and other stockholder-borrowers who are repaying their loans in a timely fashion.

A number of commentators objected to the exclusion of compromises of indebtedness from the forbearance policy regulation. In the past the FCA has addressed compromises of indebtedness separately from regulations governing forbearance policies. However, as discussed with respect to § 614.4440, the Board has amended the final regulations to consolidate all forbearance and compromise of indebtedness provisions. In addition, for the reasons mentioned in § 614.4440 and in view of the comments therein, the final regulation provides that requests for forbearance which involve applications for credit are subject to review by the institution's

credit review committee in accordance with §§ 614.4440–614.4444.

With respect to the commentators' request that the regulation require banks to practice specific types of forbearance actions, such as the two-tier program or simple interest loan schedule, the Board reiterates its position that those determinations rest solely within the discretion of the individual institutions. This fact was emphasized in the 1985 Amendments when Congress directed the institutions, not the FCA, to develop forbearance policies. Congress has expressed its concern on this matter through the passage of House and Senate Concurrent Resolutions 310 and 138. These resolutions reinforce the position taken by the FCA. Among other things, both resolutions suggest the System grant forbearance where appropriate, i.e., it is more cost effective for the institutions to forbear than foreclose. Like the regulations, the resolutions place the responsibility for drafting forbearance policies on the System institution. Consistent with the intent of the resolutions, the FCA encourages System institutions to consider all reasonable loan servicing options in developing their forbearance policies.

The Board disagrees with the suggestion that the regulation should require associations to develop separate forbearance policies and should not authorize banks to approve association forbearance procedures. These provisions are consistent with the Act and present operating practice of this System. At the outset, it must be noted that in the FLB/FLBA system, the FLB is the lender. The FLBA does not extend credit, but rather originates and processes applications and services loans in accordance with the policies and procedures of the FLB. Any forbearance decision, like any other credit decision, is ultimately made by the FLB. While certain authorities may be delegated to FLBAs, the responsibility still rests with the FLB. In the PCA/FICB system, the PCA does extend credit to borrowers, but only in accordance with statutory, regulatory, and contractual controls exercised by the FICB. Sections 2.1 and 2.12 of the Act, 12 CFR 614.4510, and the PCA/FICB General Financing Agreement authorize the FICBs to approve loan servicing policies and loan servicing actions of the PCAs. Since forbearance is a part of the loan servicing activities of an association, the district bank is also responsible for the association's forbearance policy. FICB approval of association forbearance actions is required since the FICB is underwriting the loans extended by the PCAs. This regulation does not create any new FICB power or limit PCA decisionmaking authority. It merely recognizes the longstanding financial interrelationship between FICBs and PCAs and sets forth a policy development process that accommodates those relationships. If a PCA had a forbearance policy that was not approved by the FICB, then the FICB would have to constantly monitor and scrutinize every forbearance decision to determine if it agrees to extend credit to the PCA on the new loan agreement or accept the security offered as collateral for the FICB's loan to the PCA.

In response to the commentators who believe that 10 days is an insufficient period of time for a borrower to fully appreciate his/her rights and propose an alternative to collection action, the Board has made two changes to the final regulation. First, as discussed above, borrowers who request forbearance and submit a new loan application will be able to seek review of that decision through the review committee in accordance with §§ 614.4440–614.4443. As provided for in those regulations, a formal loan application must be in writing. The borrower will have a minimum of 30 days to complete the review process if the application is denied. For borrowers seeking forbearance who do not submit a loan application, the final regulation has been amended to provide a 14-day notice period. While making these changes the Board recognizes that the purpose of providing a copy of the forbearance policy is to apprise the borrower of his/her rights under the institution's forbearance policy. In most instances, the institution and the borrower have been aware of and have attempted to work out the borrower's financial condition for a long period of time. In the course of those discussions, most alternative options will have been explored. If a borrower is not aware of his/her financial difficulties until a copy of the forbearance policy is received, the borrower will have 14 days to contact the institution and attempt to resolve the matter. If during that time the borrower submits a loan application that incorporates a restructuring plan, the provisions of §§ 614.4440–614.4443 will apply.

The Board agrees with the recommendation that forbearance procedures should not be sent to the borrower more than 30 days prior to the commencement of a collection action. By requiring an institution to provide the forbearance policy not more than 30 days before the commencement of collection action the regulation ensures that the borrower will receive timely notice of forbearance and also precludes an institution from satisfying this requirement by providing a policy at any time during the loan rather than when it may be most useful to a borrower. The Board also agrees with the recommendation that the regulation be amended to provide for the mailing of forbearance policies. Accordingly, the final regulation is amended to authorize the mailing of materials by first class mail and the addition of 3 days to the time periods specified to allow for delivery.

The Board rejects the attorneys general comment that the FCA should amend the regulation to follow the decision in *Curry v. Block*. The Board believes it is unnecessary to provide a copy of the forbearance policy on four separate occasions and is concerned that such a requirement could give a borrower the false impression that he/she is not expected to repay the loan in a timely fashion. The Board believes the final regulation strikes an appropriate balance by providing borrowers with adequate notice of their rights without placing unreasonable burdens on the institution.

In response to another comment, the final regulation permits an institution to waive the 10-day rule when it can demonstrate that reasonable grounds exist to believe a borrower may take action to dissipate or divert collateral or the collateral is in imminent danger of deterioration. The Board agrees that this type of exception is necessary to protect the interest of the institutions and the stockholders of those institutions who would ultimately bear the costs associated with such losses. The Board disagrees with the FCCA's suggestion that the institution should be able to satisfy the regulatory requirements by furnishing a forbearance policy to any one of the primary obligors on the loan. The Board believes it is very important to inform borrowers of any types of forbearance available from the institution. Since a collection action on a multiple party loan can affect all primary obligors, the Board believes all such parties should be made aware of the options that are available to them.

In response to a request for a clarification of the effective date of this requirement, the requirements contained in all of these regulations will not apply until the regulations are effective and therefore will not apply to collection actions that are commenced before the effective date.

*Section 615.5255 Notice of Retirement of Capital Stock.* The regulation provided that an association may not

retire the stock of a borrower in default unless that person is provided with written notice of retirement at least 10 days prior to the effective date of such retirement.

A Minnesota legal services organization and a North Dakota farmers' organization stated that the 10-day notice period does not give a borrower sufficient time to explore other options. The Minnesota commentator suggested that the notice period should be increased to 30 days, while the North Dakota commentator proposed 20 days. In contrast, the FCCA believes the 10-day notice requirement is unnecessary and not required by the 1985 Amendments. The FCCA stated that it is aware of no reason why advance notice would be useful to a borrower. The FCCA stated that if a notice period is retained, the 10-day period contained in the regulation is sufficient.

The FCCA suggested that the regulation be expanded to include notice to holders of participation certificates. The FCCA also reiterated a recommendation made with respect to the proposed forbearance regulation which would allow the institution to satisfy the notice requirement if it can certify that a copy of the policy was mailed by first class mail to the borrower at that person's last known address at least 10 days prior to the stock retirement. With respect to the contents of the notice, the FCCA believes that it is unnecessarily broad and potentially confusing. The FCCA stated that the notice should be required to contain a statement (1) that the association records show the addressee to be a current stockholder of the association, (2) that the association has the right to cancel the stock, (3) the amount of stock the association will retire, and (4) the date or event that will trigger retirement.

The Board does not agree with the recommendations to expand the notice period to either 20 or 30 days. At the outset, it should be noted that a borrower is not injured by reason of a stock retirement. Rather, this action is taken for the sole purpose of reducing the borrower's indebtedness to the institution. At the time notice is given, the borrower should be well aware that he/she has failed to fulfill the terms of the loan contract and that he/she should also have been studying alternatives to repaying his/her loan in a timely fashion. This 10-day period provides ample time for the borrower to contact the institution to determine his/her options with respect to preventing the retirement of stock or seek other funds to correct any delinquent payments and thereby prevent retirement of the stock.

The Board disagrees with the assertion that the 10-day prior notice provided for in the regulation is not authorized by the 1985 Amendments. The Act requires institutions to provide notice to stockholders prior to the retirement of capital stock. This regulation implements that statutory requirement by providing a reasonable period for such notice. The Board disagrees with the FCCA's assertion that the information contained in the notice is unnecessarily broad and potentially confusing. The regulation only requires borrowers to be provided with the information necessary to be aware of the proposed action and its effects on the borrowers. The regulatory requirement is not substantially different from the recommendation of the FCCA except for the requirement that the stockholder be advised that the loan is in default and informed of the consequences of the pending stock retirement. The Board believes it is necessary for stockholders to be apprised of these matters in order to determine what corrective steps they should take.

In response to FCCA suggestions, the Board amended the final regulation to include coverage for holders of participation certificates and to provide that the regulatory requirement is satisfied by mailing the notice to the borrower's last known address at least 13 days prior to the projected date of stock retirement.

*Section 618.8310 Lists of Borrowers and Stockholders.* The regulation provides for the release of lists of stockholders and borrowers under certain circumstances. The regulation restates the prior regulatory authority for institutions to disclose lists of borrowers to persons who deal in agricultural products for the purpose of informing such persons of the existence of security interests. In addition, the regulation contains a new provision which authorizes lists of stockholders to be provided to a stockholder seeking to communicate with other stockholders regarding the business operations of the institution. In lieu of disclosure of the stockholder list the institution may, with the agreement of the requesting stockholder, mail a communication furnished by the requester to other stockholders.

The Iowa group claims that paragraph (a) conflicts with an Iowa law adopted in response to certain provisions contained in the Food Security Act of 1985 (1985 Farm Bill). In relevant part, the 1985 Farm Bill was intended to remedy deficiencies in existing State laws regarding the protection of buyers and holders of security interests in agricultural products. The 1985 Farm Bill preempts State law but provides States with the option of giving notice to purchasers of agricultural products of any attached security interest through either the adoption of a notification system or a centralized filing system. Iowa has adopted a notification system that prohibits holders of security interests from indiscriminately distributing to buyers lists containing the names of borrowers and their property on which the holder possesses a security interest. The Iowa commentator believes that paragraph (a) of the proposed regulation allows a blanket notification that violates the relevant provisions of Iowa law enacted in response to the 1985 Farm Bill. Accordingly, the Iowa group requested that paragraph (a) be made consistent with the 1985 Farm Bill or deleted.

An association objected to the regulation on the grounds that a release of a stockholder list would violate the privacy rights of the stockholders. An FLBA and an attorney stated that in all situations where a stockholder wants to communicate with other stockholders, the association should be responsible for mailing the correspondence. The attorney observed that it has been his experience that borrower/stockholders wish their names to be kept private and that the regulation does not adequately protect this privacy interest because there are no sanctions against a stockholder's using a list for an impermissible purpose.

In a similar vein, the FCCA suggested that the FCA follow the practice of the Securities and Exchange Commission (SEC) and the Comptroller of the Currency in connection with proxy solicitations and designate as the ordinary means of communication that the institution shall mail or otherwise furnish a communication to stockholders on behalf of a requesting stockholder. In the alternative, the FCCA recommended that the institution should have the authority to determine whether it wishes to either undertake a mailing or provide a stockholder list to a stockholder, but in any event, the institution should be able to prohibit that stockholder from making photocopies of the list. In addition, the FCCA proposed that the 10-day period provided in the proposed regulation for furnishing a list of stockholders should not begin until the requesting stockholder has agreed, in writing, to the conditions of disclosure. As a final point, the FCCA suggested that the institution should have the

responsibility and accompanying liability to determine whether a stockholder's purpose for requesting a list is permissible.

Several commenting borrowers endorsed all provisions that would encourage communication between member/borrowers. They stated that the general principles of corporate law that apply to the disclosure of stockholder lists should also apply to System institutions. The Minnesota legal services organization commented that the FCA should clarify whether a stockholder has the option of obtaining a list or having the communication mailed by the institution. It believes that it is the intent of Congress that borrowers have this option.

The Board notes that the only substantive difference between paragraph (a) of the proposed regulation and existing regulation § 618.8310 is the inclusion of all System institutions rather than only FICBs and PCAs. Section 618.8310 authorizes the disclosure of lists of names of borrowers with which the institution has a security agreement to various interested parties as a means by which the institution could further protect its security interest and avoid needless litigation. In the absence of this express authority, such disclosures would be prohibited by other FCA regulations. The proposed regulation does not effect the creation and perfection of a security interest. To possess a valid security interest, the institution would have to comply with applicable state law. As such, the proposed regulation does not preempt nor is it intended to preempt state law adopted in response to section 1324 of the 1985 Farm Bill regarding security interests in farm products. In response to the Iowa group's comment, the Board amended the final regulation to clarify that the disclosures authorized in paragraph (a) are subject to restrictions contained in state laws which were adopted in accordance with section 1324 of the 1985 Farm Bill.

In response to the comments regarding the privacy interest of stockholders, the Board notes that the regulation recognizes that stockholders have a privacy interest which must be protected and that a stockholder list is a valuable asset of the institution. However, those interests must be weighed against the right of a stockholder to communicate with other stockholders. The regulation protects the interest of the stockholders and the institution by requiring a stockholder to agree and certify in writing that he/she will utilize the list only for authorized purposes and not disclose the list without the written permission of the institution. While the regulation does not provide for specific sanctions, failure of a stockholder to comply with these conditions would be grounds for an action by the institution to enforce such an agreement.

The Board agrees that the regulation should be amended to clarify that the decision to provide a list or mail correspondence rests with the requester rather than the institution. The approach adopted in the final regulation is analogous to the rights of stockholders or members under corporate statutes, rather than under securities statutes and regulations. Stockholders need this discretion in order to use the method of communication which will most effectively and efficiently allow them to communicate with other stockholders. For example, should a stockholder who is interested in running for a director position desire to communicate his/her candidacy telephonically, that person would need access to a list of stockholders. Were the discretion of the means of communication left with the institution, its refusal to allow such access would unreasonably frustrate the stockholder. In order to prevent such decisions and to protect the rights of stockholders, the regulation is amended to clarify that stockholders have the right to choose the means of communication.

The Board disagrees with the suggestion offered by the FCCA that the 10-day notice shall not begin until the requesting stockholder has agreed, in writing, to the conditions of disclosure. Such a provision would give the institution no incentive to expedite the process of communicating with and responding to the requester. If within the 10-day period, the requester has failed to agree to the conditions of the release, the institution will not have violated the regulation since it would have taken every step within its power to comply. Once the requester agrees to the conditions, it should take no more than a matter of hours for the institution to produce a list of its stockholders.

*Section 618.8325 Disclosure of loan documents.* The regulation requires each System bank and association to provide borrowers with copies of any documents they sign at the execution of a loan, as well as any documents related to subsequent modifications of a contract. In addition, an institution must provide such documents at any time upon request of a borrower.

A PCA commented that furnishing such documents to borrowers at a loan closing is too costly and unjustified. It believes that providing these documents upon request to a borrower is sufficient. In contrast, the North Dakota farmers' organization commented that the regulation is too narrow in that borrowers should be provided full access to their loan files, including any financial records, loan officer recommendations, or notes that are placed into a borrower's file that may or have been used by a loan officer in making a decision relating to the borrower's loan. The organization also requested that the FCA clarify that institutions are required to provide copies of articles of incorporation and bylaws at no cost to the borrower.

The Board does not agree that furnishing copies of loan documents is unjustified and too costly. The regulation implements section 4.13A of the Act, which specifically directs that copies of all documents signed or delivered by the borrower shall be provided to such person at any time on request. Congress has determined that such documents shall be provided irrespective of the costs involved. The provisions of this regulation are consistent with the Act and general business practices. The North Dakota commentator's request that borrowers should be provided full access to their loan files is overbroad and infringes on the rights of the institution. Section 4.13A was intended to resolve a complaint of borrowers that certain System institutions were reluctant to provide copies of information which, as a matter of general business practice, borrowers have a right to obtain. As such, section 4.13A is very specific. The recommendation, analysis, and other information in the loan file does not have to be provided to a borrower since it is the property of the institution and contains confidential materials that are not disclosed without the agreement of the institution. With respect to the commentator's request concerning providing copies of documents at no cost to the borrower, such decision is up to the institution and not the regulator. Accordingly, no change is made to the regulation.

**Miscellaneous**

Section 307 of the 1985 Amendments directs System institutions to review each loan placed in nonaccrual status to determine if, due to the enactment of the 1985 Amendments, such loan can be restructured, and to notify each such borrower of the provisions of this section. A Minnesota legal services organization commented that, to its knowledge, the FCA has failed to take any action to instruct System institutions regarding their responsibility

under this section. The organization requested the FCA issue regulations to implement this section.

The Board notes that section 307 of the 1985 Amendments did not require the FCA to issue implementing regulations and the Board has determined that regulations are not required. The statutory provision is clear and does not require implementing regulations. However, the FCA has sent a communication to all System institutions directing their attention to section 307 and informing them of their obligation to comply with that provision.

**List of Subjects in 12 CFR Parts 614, 615, and 618**

Accounting, Agriculture, Archives and records, Banks, Banking, Credit, Government securities, Investments, Rural areas.

As stated in the preamble, it is proposed that Parts 614, 615, and 618 of Chapter VI, Title 12, of the Code of Federal Regulations be amended as follows:

## PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for Part 614 is revised to read as follows:

**Authority:** Secs. 4.12, 4.13, 4.13A, 4.13B, 4.14, 5.9, 5.10, and 5.17, Pub. L. 99–205, 99 Stat. 1678, 12 U.S.C. 2251(a)(10).

2. Part 614 is revised by adding a new Subpart K, Disclosure of Loan Information, with the table of contents to read as follows:

**Subpart K—Disclosure of Loan Information**

Sec.
614.4365 Applicability.
614.4366 Definitions.
614.4367 Required disclosures.

### Subpart K—Disclosure of Loan Information

**§ 614.4365 Applicability.**

This subpart applies only to System institution loans that are not subject to the Truth in Lending Act.

**§ 614.4366 Definitions.**

For purposes of this subpart, the following definitions shall apply:

(a) "Adjustable rate loan" means a loan on which the interest rate payable over the term of the loan may be changed by a System institution. The term includes loans which are titled "adjustable rate" or "variable rate" or any other similar designation.

(b) "Effective interest rate" means the interest rate applicable to the loan at a point in time adjusted to take into consideration the amount of any stock or participation certificates as a percentage of the initial net proceeds of the loan which the borrower is required to hold in order to obtain the loan.

(c) "Fixed rate loan" means any loan on which the interest rate is not subject to adjustment or variation over the term of the loan, even though the effective interest rate on the loan may be so subject.

(d) "Interest rate" means the stated rate of interest applicable to the loan at a point in time, excluding any fees payable by the borrower in obtaining the loan.

(e) "Standard adjustment factors" means those financial elements, including, but not limited to, an institution's costs of funds, operating expenses, and provision for loan losses, which are typically taken into consideration by an institution in adjusting the interest rate on loans.

**§ 614.4367 Required disclosures.**

(a) Each association shall furnish the following information in writing to a prospective borrower at or before the time the person executes the loan documents:

(1) The current interest rate on the loan; and

(2) In the case of an adjustable rate loan:

(i) The amount and frequency by which the interest rate can be adjusted during the term of the loan or, if there are no limitations on the amount or frequency of such adjustments, a statement to that effect; and

(ii) An identification of the specific standard adjustment factors that are taken into account in making adjustments to the interest rate on the loan; and

(3) The current effective interest rate on the loan with one or more representative examples of the impact of stock or participation certificate ownership requirements on the current interest rate computed on an annualized basis.

(b) Not later than 90 days after the effective date of these regulations, each association shall furnish in writing to each of its borrowers the information specified in paragraph (a) of this section with respect to each loan outstanding as of the date the information is furnished.

(c) Each association that adjusts the interest rate on an outstanding loan shall furnish the following information in writing to the borrower:

(1) The new interest rate on the loan;

(2) The date on which the new rate is effective; and

(3) A statement of any factors other than standard adjustment factors which were taken into account in establishing the new interest rate. The notice required by this paragraph shall be made not later than the effective date of a decrease in the interest rate and not later than 10 days before the effective date of an increase in the interest rate.

(d) Each association that takes any action that changes the amount of stock or participation certificates that borrowers are required to own and that modifies the effective interest rate on a loan shall furnish the following information in writing to the borrower at least 10 days before the date on which such action takes effect:

(1) The new effective interest rate;

(2) The date on which the new rate is effective; and

(3) A statement of the action(s) taken by the institution that have resulted in the new effective interest rate.

(e) Each bank for cooperatives shall provide to each loan applicant, who is not a current borrower of the bank, on or before the date of the loan closing, the following information:

(1) The current interest rate; or

(2) In the case of an adjustable rate loan:

(i) The amount and frequency by which the interest rate can be adjusted during the terms of the loan, or if there are no limitations on the amount or frequency of such adjustments, a statement to that effect; and

(ii) An identification of the specific standard adjustment factors that are taken into account in making adjustments to the interest rate on the loan; and

(3) The projected average effective interest rate on the loan for the next 12-month period, taking into consideration:

(i) The current interest rate;

(ii) Current stock requirements;

(iii) Projected noncash allocated patronage distributions; and

(iv) Projected cash distributions of annual patronage.

(f) Each bank for cooperatives shall provide each borrower:

(1) Within 90 days after the effective date of this regulation, a statement of such borrower's average effective interest rate for the period of the current fiscal year ending on the effective date of the regulation, taking into consideration the criteria specified in paragraph (e)(3) of this section; and

(2) Within 30 days after the end of each fiscal year thereafter, a statement of such borrower's average effective interest rate for such fiscal year, taking into consideration the criteria specified in paragraph (e)(3) of this section.

**Appendix to 12 CFR 614.4367—Required Disclosure**

*Model Disclosure Forms*

General

The following are model disclosure forms which System institutions may use to satisfy the notification requirements of section 4.13(a) of the Act and of 12 CFR 614.4367. The forms have been developed in order to give System institutions an idea of the type and extent of information that should be contained therein. System institutions are not required to follow the format of the sample forms. System institutions may develop and use other forms provided the statements contain comparable disclosures in clear, understandable English and otherwise meet the requirements of the Act and regulations.

Form 1

This loan is *NOT* subject to the Truth in Lending Act, 15 U.S.C. 1601, *et seq.* The following disclosure is made in accordance with section 4.13(a) of the Farm Credit Act of 1971, as amended, 12 U.S.C. 2199.

*Interest Rate Disclosure*

Date: _____

Lender: (Name)

_____

*Stated Interest Rate*

The rate of interest currently applicable to your loan.

(Percentage)

_____

Borrower: (Name)

_____

*Effective Interest Rate* *

The stated rate of interest adjusted to take into account the purchase of stock

(Percentage)

_____

Check Applicable Box

☐ This is a Fixed Rate Loan—the stated rate of interest is not subject to change during the life of the loan.

☐ This is an Adjustable Rate Loan—the stated rate of interest is subject to change during the life of the loan.

If an Adjustable Rate Loan—

The interest rate on the loan may be changed *(Period)*.

The interest rate may be changed a maximum ± (*Percentage*)

* This is a projection subject to change should particular loan provisions be modified during the term of the loan, such as the amount of stock or participation certificates held or the timing of repayment.

You will be notified 10 days prior to any increase in the effective rate or simultaneously with any decrease in the effective rate.

The Standard Adjustment Factor(s) which the institution takes into account in making adjustments to the interest rate is (are) (*list the factors*).

The Standard Adjustment Factors may ☐ or may not ☐ be changed during the life of the loan.

See your contract documents for further information on loan terms and conditions.

Should you have any questions concerning the information contained in this form please contact us at (*Telephone Number*).

Form 2

This loan is not subject to the Truth in Lending Act, 15 U.S.C. 1601, *et seq.* The following disclosure is made in accordance with section 4.13(a) of the Farm Credit Act of 1971, as amended, 12 U.S.C. 2199.

*Disclosure of a Change in The Effective Interest Rate*

Date: _____

Lender: (Name)

_____

Borrower: (Name)

_____

This is to inform you that on (*loan and loan number*),

☐ The effective rate of interest will be adjusted effective (*Date*).

The effective rate of interest on your loan is changed to (*Percentage*) from (*Percentage*).

This change resulted from a:

☐ 1. Change in the amount of stock borrowers are required to hold in the lender to (*Percentage*) from (*Percentage*).

☐ 2. Change in the stated rate of interest on your loan effective (*Date*).

The stated rate of interest on your loan changed to (*Percentage*) from (*Percentage*).

The change was computed based on the:

☐ Standard adjustment factors—factors mentioned on the initial interest rate disclosure.

☐ Other—describe.

☐ 3. Change for other reasons—describe.

Should you have any questions concerning the information contained herein, please contact us at (*Telephone Number*).

Form 3

This loan is not subject to the Truth in Lending Act, 15 U.S.C. 1601, *et seq.* The following disclosure is made in accordance with section 4.13(a) of the Farm Credit Act of 1971, as amended, 12 U.S.C. 2199.

*Interest Rate Disclosures—Cooperatives*

Date: _____

Lender: (Name)

_____

*Current Interest Rate*

(Percentage)

_____

Borrower: (Name)

_____

*Effective Interest Rate** 

(Percentage)

_____

Check applicable box

☐ This is a Fixed Rate Loan

☐ This is an Adjustable Rate Loan

If an Adjustable Rate Loan—

The interest rate on the loan may be changed (*state frequency of changes*).

The interest rate on the loan may be adjusted a maximum of (limitation).

The Standard Adjustment Factor(s) which the institution takes into account in making adjustments to the interest rate on the loan is (are) (*list the factors*).

The Standard Adjustment Factors may ☐ may not ☐ be changed during the life of the loan.

*This is a projection of the average effective interest rate for the 12-month period following the execution of the loan.

Should you have any questions concerning the information contained in this form please contact us at (*Telephone Number*).

Form 4

This loan is not subject to the Truth in Lending Act, 15 U.S.C. 1601, *et seq.* The following disclosure is made in accordance with section 4.13(a) of the Farm Credit Act of 1971, as amended, 12 U.S.C. 2199.

*Annual Effective Interest Rate Disclosure-Cooperatives*

Date: _____

Lender: (Name)

_____

Borrower: (Name)

_____

This is to inform you that the effective rate of interest for your outstanding loans for the year ended (*Date*) is as follows:

| Loan type | Loan No. | Effective interest rate |
|---|---|---|

Should you have any questions concerning the information contained in this form please contact us at (*Telephone Number*).

**Subpart L—Notice of Action and Review**

3. The title of Subpart L is revised to read as follows:

## Subpart L—Notice of Action and Review

4. Section 614.4440 is revised to read as follows:

**§ 614.4440 Definitions.**

For purposes of this subpart, the following definitions shall apply:

(a) "Adverse credit decision" means a decision on a formal application to deny the credit applied for, or approve an extension of credit in an amount less than the amount applied for.

(b) "Applicant" means any person who completes and executes a formal application for an extension of credit from a System bank or association. "Applicant" includes a person seeking forbearance through formal application for credit which involves a request for the deferral or rescheduling of the payment of principal or interest, the renewal or extension of the terms of a loan, a reduction of the principal or interest due on a loan, or any other similar action.

(c) "System institution" means: (1) Banks for cooperatives; (2) Federal land bank associations; and (3) production credit associations.

5. Section 614.4441 is revised to read as follows:

**§ 614.4441 Notice of action on loan application.**

Each System institution shall render its decision on a loan application in as expeditious a manner as is practicable. Upon reaching a decision on a loan application, the institution shall provide prompt written notice of its decision to the applicant. In the case of a loan application involving more than one primary obligor, the notice may be provided to any one of such parties. Where the institution makes an adverse credit decision, the notice shall include:

(a) The reasons for the institution's action;

(b) Notification that the applicant can request a review of the decision;

(c) Notification that any request for review must be made in writing within 30 days after the applicant's receipt of the institution's notice; and

(d) A brief explanation of the process for seeking review of the decision, including the right to appear before the credit review committee.

6. Section 614.4442 is revised to read as follows:

**§ 614.4442 Credit review committees.**

(a) Each Federal land bank is the primary lender for loans that originate in the Federal land bank associations in its district. As primary lenders, each Federal land bank shall establish guidelines under which the board of directors of each Federal land bank association establishes one or more credit review committees. Such guidelines shall include, among other things, the required level of Federal land bank representation on each credit review committee. The membership of each committee shall include at least one member of the association board, and a majority of each committee shall be composed of persons who were not involved in making the adverse credit decision under review. The duties of the members of the review committees may not be delegated to any other person, except that the duties of the association board member on the committees may be delegated upon the unanimous vote of the association board.

(b) The board of directors of each production credit association and bank for cooperatives shall establish one or more credit review committees. The membership of each committee shall include at least one member of the institution's board, and a majority of each committee shall be composed of persons who were not involved in making the adverse credit decision under review. The duties of the members of the review committees may not be delegated to any other person, except that the duties of the board member on the committees may be delegated upon the unanimous vote of the board.

7. A new § 614.4443 is added to read as follows:

**§ 614.4443 Review process.**

Each applicant who has received an adverse credit decision can request that such decision be reviewed by the institution's credit review committee. The applicant may submit any documents or other evidence to support the information contained in the loan application which the applicant believes will demonstrate that the loan applied for is an eligible loan that satisfies the credit standards of the institution. The applicant may also appear in person before the committee. The credit review committee shall reach a decision on the application in its sole discretion and such decision shall be the final decision of the institution. The credit review committee shall make every reasonable effort to conduct reviews and render decisions in as expeditious a manner as possible. The institution shall notify the applicant in writing of the institution's decision and the reasons therefor.

8. A new § 614.4444 is added to read as follows:

**§ 614.4444 Records.**

System institutions shall maintain a complete file of all requests for reviews, including the disposition of the review by the credit review committee, and other written inquiries concerning adverse credit actions. Such file shall not include confidential documents prepared by the institution for the purpose of evaluating the loans.

**Subpart N—Loan Servicing Requirements**

9. Section 614.4510 is amended by revising paragraphs (d), the introductory text, (d)(1), (d)(2), (d)(2)(i), (ii), and (iii) to read as follows:

**§ 614.4510 General.**

* * * * *

(d) In the development of bank and association loan servicing policies and procedures, the following criteria shall be included:

(1) *Term loans.* The objective shall be to provide borrowers with prompt and efficient service with respect to actions in such areas as personal liability, partial release of security, insurance requirements or adjustments, loan divisions or transfers, or conditional payments. Procedures shall provide for adequate inspections, reanalyses, reappraisals, controls on payment of insurance and taxes (and for payment when necessary), and prompt exercise of legal options to preserve the lender's collateral position or guard against loss. Loan servicing policies for rural home loans shall recognize the inherent differences between agricultural and rural home lending.

(2) *Operating loans.* The objective shall be to service such loans to assure disbursement in accordance with the basis of approval, repayment from the sources obligated or pledged, and to minimize risk exposure to the lender. Procedures shall require:

(i) The procurement of periodic operating data essential for maintaining control, for the proper analysis of such data, and prompt action as needed;

(ii) Inspections, reappraisals, and borrower visits appropriate to the nature and quality of the loan; and

(iii) Controls on insurance, margin requirements, warehousing, and the prompt exercise of legal options to preserve the lender's collateral position and guard against loss.

* * * * *

**§ 614.4512 [Removed]**

10. Section 614.4512 is removed.

11. A new § 614.4513 is added to read as follows:

**§ 614.4513 Forbearance.**

(a) Each System institution has an obligation to its borrowers, stockholders, and investors in System debt obligations to collect all debts owed to the institution. In pursuit of that obligation, when a borrower is encountering financial difficulties the institution should consider alternative actions that will increase the likelihood of the borrower's being able to repay the debt in an orderly fashion or that will improve the ability of the institution to collect the indebtedness.

(b) For purposes of this section, the term "forbearance" means a voluntary refraining by a System institution from the enforcement of the terms of any loan document relating to a borrower's obligation to make any payment of principal or interest or comply with any other provision of such document, or the exercise by the institution of its rights under those documents or applicable law with respect to the loan. The types of forbearance actions available to an institution include the deferral or rescheduling of the payment of principal or interest, the renewal or extension of the terms of a loan, a reduction in the amount or rate of principal or interest due on a loan and other similar actions.

(c) Each district board and the Farm Credit System Capital Corporation board shall develop a written policy regarding the exercise of forbearance.

The policy shall address, at a minimum, the following areas:

(1) The general circumstances under which the institutions will consider forbearance;

(2) The general criteria which the institutions will use in deciding whether to engage in forbearance;

(3) The person(s) responsible for making forbearance decisions;

(4) The nature and timing of communications which the institution will provide to a borrower concerning its consideration of a request for forbearance, its decision on whether to forbear, the nature and duration of any forbearance action which it proposes to take, and any change in its decision as to whether to forbear; and

(5) The procedures available to the borrower to seek review by the credit review committee, in accordance with §§ 614.4440–614.4443 of this part, of a denial of a request for forbearance.

(d) A borrower who is seeking forbearance by making a formal application for an extension of credit in accordance with §§ 614.4440–614.4443 of this part, shall be provided a copy of the institution's forbearance policy at the time of such application.

(e)(1) Each institution shall make a copy of the policy available at its offices to any party upon request. Except as provided in paragraphs (d) and (e)(2) of this section, each institution shall provide a copy of the applicable policy to a borrower at least 14 days, but not more than 30 days, prior to the commencement of any collection action.

(2) An institution is not required to provide a borrower with a copy of the forbearance policy prior to the commencement of a collection action if the institution has reasonable grounds to believe the borrower may dissipate assets or divert collateral or that the collateral is in imminent danger of deterioration.

(3) In the event the forbearance policy is provided to the borrower through the mail, the materials shall be mailed by first class mail to the borrower's last known address and the institution shall allow 3 days for delivery in addition to the time periods specified in § 614.4513 of this part.

(4) Each institution that is required to provide its forbearance policy to a borrower in accordance with this section shall provide a copy of such policy to each primary obligor on the loan.

(f) All Federal land bank association and production credit association procedures concerning forbearance shall be approved by the bank for which the association serves as agent or which is the principal creditor of that association.

(g) Each System institution shall conduct its operations in a manner which is consistent with the applicable forbearance policy. No institution is authorized to take any forbearance action unless it determines, taking into consideration all relevant facts and legal options, including the effect of such action on the liability of cosigners or guarantors, that such action will result in the greatest net return to the institution for the ultimate benefit of its borrowers, stockholders, and investors.

## PART 615—FUNDING AND FISCAL AFFAIRS

12. The authority citation for Part 615 continues to read as follows:

**Authority:** Secs. 4.3, 5.9, 5.17, Pub. L. 99–205, 99 Stat. 1678, 12 U.S.C. 2154, 2243, 2252.

### Subpart J—Prescription, Subscription, and Retirement of Stock

13. A new § 615.5255 is added to read as follows:

**§ 615.5255 Notice of retirement of capital stock and participation certificates.**

(a) Where the debt of a holder of capital stock or participation certificates issued by a production credit association or Federal land bank association is in default, the association may, but shall not be required to, retire at book value, not exceeding par or face value, all or part of the equity owned by such borrower on which the association has a lien as collateral for the debt, in total or partial liquidation of the debt.

(b) Any retirements made by a production credit association or Federal land bank association under this section shall be made only upon the specific approval of or in accordance with approval procedures issued by the district Federal intermediate credit bank or Federal land bank, respectively.

(c) Prior to making any retirement pursuant to this section, the association shall provide the stockholder with written notice of the following matters:

(1) A statement that the association has declared the borrower's loan to be in default;

(2) A statement that the association will retire all or part of the equities of the borrower in total or partial liquidation of his or her loan;

(3) A description of the effect of the retirement on the relationship of the borrower to the association;

(4) A statement of the amount of the outstanding debt that will be owed to the association after the retirement of the borrower's equities; and

(5) The date on which the association will retire the equities of the borrower.

(d) The notice required by this section shall be provided in person at least 10 days prior to the retirement of any equities of a holder, or by mailing a copy of the notice by first class mail to the last known address of the equity holder at least 13 days prior to the retirement of such person's equities.

## PART 618—GENERAL PROVISIONS

14. The authority citation for Part 618 is revised to read as follows:

**Authority:** Secs. 4.12A, 5.9, 5.10, and 5.17, Pub. L. 99–205, 99 Stat. 1678.

### Subpart A—Technical Assistance and Financially Related Services

**§§ 618.8010 and 618.8020 [Removed]**

15. Subpart A is amended by removing §§ 618.8010 and 618.8020.

### Subpart G—Releasing Information

16. Section 618.8310 is revised to read as follows:

**§ 618.8310 Lists of borrowers and stockholders.**

(a) Any System institution, for the purpose of protecting the security position of the institution, may provide lists of borrowers to buyers, warehousemen, and others who deal in produce or livestock of the kind that secures such loans, except to the extent such actions are prohibited by State laws adopted in accordance with the Food Security Act of 1985, Pub. L. 99–198, 99 Stat. 1354. Lists of borrowers or stockholders shall not otherwise be released by any bank or association except in accordance with paragraph (b) of this section.

(b)(1) Each bank for cooperatives, Federal land bank association, and production credit association shall provide a copy of a current list of its stockholders within 10 days of the receipt of a written request by a stockholder. As a condition to providing the list, the bank or association may require that the stockholder agree and certify in writing that he or she will:

(i) Utilize the list exclusively for communicating with stockholders for pemissible purposes; and

(ii) Not make the list available to any person, other than the stockholder's attorney or accountant, without first obtaining the written consent of the institution.

(2) As an alternative to receiving a list of stockholders, a stockholder may request the institution to mail or otherwise furnish to each stockholder a communication for a permissible purpose on behalf of the requesting

stockholder. This alternative may be used at the discretion of the requesting stockholder, provided that the requester agrees to defray the reasonable costs of the communication. In the event the requester decides to exercise this option, the institution shall provide the requester with a written estimate of the costs of handling and mailing the communication as soon as practicable after receipt of the stockholder's request to furnish a communication.

(3) For purposes of paragraph (b) of this section "permissible purpose" is defined to mean matters relating to the business operations of the bank or association. This shall include matters relating to the effectiveness of management, the use of corporate assets, and the performance of directors and officers. This shall not include communications involving commercial, social, political, or charitable causes, communications relating to the enforcement of a personal claim or the redress of a personal grievance, or proposals advocating that the bank or association violate any Federal, State, or local law or regulation.

17. A new § 618.8325 is added to read as follows:

**§ 618.8325 Disclosure of loan documents.**

(a) For purposes of this section, the following definitions shall apply:

(1) "Borrower" means any signatory to a loan contract who is either primarily or secondarily liable on such contract, including guarantors, endorsers, cosigners or the like.

(2) "Execution of the loan" means the time at which the borrower and the System bank or association have entered into a legal, binding, and enforceable loan contract and any subsequent amendment or modification of such contract.

(3) "Loan contract" means any written agreement under which a System bank or association loans or agrees to loan funds to a borrower in consideration for, among other things, the borrower's promise to repay the loaned funds at an agreed-upon rate of interest.

(4) "Loan document" means any form, application, agreement, contract, instrument, or other writing to which a borrower affixes his or her signature or seal and which the lending bank or association intends to retain in its files as evidence relating to the loan contract entered into between it and the borrower, but shall not include any document related to a loan which the borrower has not signed.

(b) Each System bank and association shall provide copies of all loan documents to the borrower or the borrower's legal representative at the execution of the loan. Subsequently, upon written request of a borrower or a borrower's legal representative, a bank or association shall provide, as soon as practicable, copies of any loan documents signed by the borrower or other documents delivered by such borrower to that bank or association.

(c) Each System bank and association shall have available in its offices, copies of the institution's articles of incorporation or charter, and bylaws for inspection, and shall furnish a copy of such documents to any owner of stock or participation certificates upon request.

(d) The Farm Credit System Capital Corporation shall, upon written request of a borrower or a borrower's legal representative, provide copies of any loan document signed by the borrower or other documents delivered by such borrower to the Capital Corporation.

Frank W. Naylor,

*Chairman, Farm Credit Administration.*

[FR Doc. 86-24355 Filed 10-27-86; 8:45 am]

BILLING CODE 6705-01-M

# Reader Aids

Federal Register

Vol. 51, No. 208

Tuesday, October 28, 1986

## INFORMATION AND ASSISTANCE

### SUBSCRIPTIONS AND ORDERS

| | |
|---|---|
| Subscriptions (public) | 202-783-3238 |
| Problems with subscriptions | 275-3054 |
| Subscriptions (Federal agencies) | 523-5240 |
| Single copies, back copies of FR | 783-3238 |
| Magnetic tapes of FR, CFR volumes | 275-1184 |
| Public laws (Slip laws) | 275-3030 |

### PUBLICATIONS AND SERVICES

**Daily Federal Register**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Public inspection desk | 523-5215 |
| Corrections | 523-5237 |
| Document drafting information | 523-5237 |
| Legal staff | 523-4534 |
| Machine readable documents, specifications | 523-3408 |

**Code of Federal Regulations**

| | |
|---|---|
| General information, index, and finding aids | 523-5227 |
| Printing schedules and pricing information | 523-3419 |

**Laws** 523-5230

**Presidential Documents**

| | |
|---|---|
| Executive orders and proclamations | 523-5230 |
| Public Papers of the President | 523-5230 |
| Weekly Compilation of Presidential Documents | 523-5230 |

**United States Government Manual** 523-5230

**Other Services**

| | |
|---|---|
| Library | 523-4986 |
| Privacy Act Compilation | 523-4534 |
| TDD for the deaf | 523-5229 |

## FEDERAL REGISTER PAGES AND DATES, OCTOBER

34945-35200.....1
35201-35344.....2
35345-35494.....3
35495-35624.....6
35625-35990.....7
35991-36200.....8
36201-36372.....9
36373-36530.....10
36531-36672.....14
36673-36794.....15
36795-36990.....16
36991-37170.....17
37171-37262.....20
37263-37378.....21
37379-37548.....22
37549-37700.....23
37701-37884.....24
37885-39354.....27
39355-39504.....28

## CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

### 1 CFR

**Proposed Rules:**
Ch. III.....39378

### 3 CFR

**Proclamations:**
5535.....35201
5536.....35625
5537.....35991
5538.....36373
5539.....36375
5540.....36377
5541.....36379
5542.....36531
5543.....36533
5544.....36535
5545.....36537
5546.....36539
5547.....36541
5548.....36673
5549.....36675
5550.....36677
5551.....36679
5552.....36991
5553.....36993
5554.....37263
5555.....37379
5556.....37381
5557.....37701
5558.....37885
5559.....37887
5560.....39357
5561.....39359

**Executive Orders:**
11021 (Superseded by EO 12569).....37171
11269 (Amended by EO 12567).....35495
12567.....35495
12568.....35497
12569.....37171
12570.....39355

**Administrative Orders:**
Memorandums:
September 30, 1986.....35492
October 6, 1986.....35993, 35995

### 5 CFR

110.....36174
294.....37889
540.....36795
870.....36795, 39361
871.....39361
872.....39361
873.....36795, 39361
874.....39361
950.....36174

**Proposed Rules:**
540.....35651
890.....36810

### 7 CFR

2.....34945, 35203
51.....36681
68.....36995
301.....36682
319.....35627
400.....37890
412.....35204
418.....36682
419.....36682
421.....37890
424.....37891
427.....36682
429.....36682
441.....37891
447.....37897
713.....36782, 36902, 39480
770.....36902
795.....36902
796.....36902
907.....37901
910.....35347, 36381, 36996, 37703
916.....36997
917.....36997
919.....36997
920.....36997
926.....36997
928.....35342
930.....36381, 36997
932.....36997
948.....36997
958.....36997
981.....36382, 36997
993.....36997
1137.....34946
1205.....37703
1230.....36383
1260.....35196
1421.....36902
1425.....36902
1427.....36902
1434.....36902
1474.....36902
2003.....34947

**Proposed Rules:**
29.....34994
51.....37914
58.....39381
251.....37036
272.....35152
273.....35152
276.....35152
277.....35152
402.....37916
403.....37916
405.....37916
409.....37916
410.....37916
411.....37916
413.....37916
414.....37916

415.....37916
416.....37916
417.....37916
418.....37916
419.....37916
420.....37916
421.....37916
422.....37916
423.....37916
424.....37916
425.....37916
427.....37916
428.....37916
429.....37916
430.....37916
431.....37916
432.....37916
433.....37916
435.....37916
436.....37186, 37916
437.....37916
438.....37916
439.....37916
440.....37916
441.....37916
442.....37916
443.....37916
444.....37916
445.....37916
446.....37916
447.....37916
448.....37916
449.....37916
450.....37916
451.....37916
810.....35224
905.....37191
907.....35517
911.....37192
918.....36701
966.....35358
994.....37578, 37822
1033.....36037
1036.....34997, 37037
1040.....37037
1097.....37733
1942.....35359

**8 CFR**

238.....35205, 35499
332c.....35628
341.....35628
343a.....35628

**Proposed Rules:**

109.....39385
214.....36701

**9 CFR**

77.....36383
78.....35205
91.....37175
114.....37383
161.....37175
162.....37175
301.....37705
312.....37705
318.....35630, 37902
327.....37705
381.....37705

**Proposed Rules:**

92.....35368
94.....37193
318.....35239

**10 CFR**

0.....35997
1.....35997
9.....35997
10.....35997
11.....35206
14.....35997
20.....35499
21.....35499
25.....35206
30.....35999, 36932
31.....36932
32.....36932
35.....36932
40.....35999, 36932
51.....35997
70.....35999
73.....35499
110.....35997
600.....39365

**Proposed Rules:**

2.....36811
30.....37195
31.....37195
32.....37195
33.....37195
50.....35518, 36812, 39390–39394
70.....37578
71.....36816
73.....36812
74.....37578
430.....35736
862.....35518

**12 CFR**

225.....36201
304.....36683
524.....34950
526.....34950
532.....34950
545.....34950
556.....34950
569a.....35500
571.....34950, 36528
584.....34950
611.....37549
614.....39486
615.....39486
618.....39486
740.....37549
741.....37549
745.....37549

**Proposed Rules:**

202.....35521
205.....36406
227.....37734
614.....36824
615.....36824

**13 CFR**

101.....35501
124.....36132
309.....37175

**Proposed Rules:**

129.....37580

**14 CFR**

21.....36998, 37711
23.....36998, 37711
39.....34952, 35208, 35502, 35503, 35631, 36002–36005, 36543–36545, 36796, 36797, 37000, 37384–37390, 37712
71.....35209, 35504, 35505, 36798, 37001, 37256, 37391, 37713–37716, 37904
73.....36798
75.....37716, 37717, 37905
95.....37392
97.....36799, 37905

**Proposed Rules:**

Ch. I.....35652, 37736
21.....35523
39.....34997–34999, 35001, 36015–36018, 36229, 36230, 37039, 37041, 37413, 37414 37737, 37739
71.....35140, 35527, 35528, 36020, 36562, 36563, 36827, 37042, 37415, 37416
73.....36827
75.....35528, 37196, 37416
99.....37882

**15 CFR**

Ch. III.....36702, 37265
379.....36212
399.....36212, 36217, 37907
917.....35209

**Proposed Rules:**

970.....37043
971.....37043

**16 CFR**

4.....36801
13.....35211, 36802, 36803, 37001, 37718

**Proposed Rules:**

13.....36406, 37741
703.....35370

**17 CFR**

2.....37177
12.....35506
230.....36385
239.....36385
240.....36547, 37291
249.....37291

**Proposed Rules:**

1.....37196
201.....35653
211.....36006
240.....35002, 37291
249.....35655, 37291

**18 CFR**

2.....36217
37.....37265
357.....35507
381.....35347

**19 CFR**

24.....34954
101.....35352
111.....36221, 37002
113.....34954
171.....36221
175.....39368
178.....36221

**Proposed Rules:**

127.....37043
175.....35240, 36703, 39395
353.....35529, 37043
355.....35529

**20 CFR**

404.....37719
416.....36221

**Proposed Rules:**

404.....36510, 39397
416.....36510
615.....37741

**21 CFR**

74.....35509, 37908, 39370
81.....35509, 35511
82.....35509
172.....37909
178.....35511, 39371
182.....39372
186.....39372
189.....37909
341.....35326
369.....35326
436.....37720
442.....36687
448.....35211
452.....35213, 35214, 37720
520.....34959, 34960
522.....35632
558.....34961, 36221, 36392, 37271
1308.....36552

**Proposed Rules:**

331.....35002
334.....35136
358.....35003
660.....36563
812.....35531

**24 CFR**

44.....37567
111.....37567
115.....36222
201.....34961
203.....34961, 37567
207.....37567
234.....34961
236.....37567
290.....37567
511.....37567
570.....37567
571.....37567
850.....37567
880.....37567
881.....37567
882.....37567
883.....37567
884.....37567
886.....37567
888.....36689
892.....37567
941.....37567
968.....37567
970.....37567
990.....37567
3282.....37567

**Proposed Rules:**

207.....36021
255.....36021

**25 CFR**

**Proposed Rules:**

120.....35533

**26 CFR**

46.....36392
602.....36392

**Proposed Rules:**

1.....35659, 36409

**27 CFR**

5.....36392
9.....36396, 36398
19.....36392, 37271
270.....35353

**Proposed Rules:**

5.....37605

9 ..... 37755
19 ..... 37605

**28 CFR**

16 ..... 39373

**29 CFR**

102 ..... 36223
1910 ..... 37002
1926 ..... 37002
2603 ..... 35354
2619 ..... 36690
2676 ..... 36691
**Proposed Rules:**
530 ..... 37045, 37298
1910 ..... 35003, 35241

**30 CFR**

16 ..... 37007
17 ..... 37007
56 ..... 36192, 36804
57 ..... 36192, 36804
256 ..... 37177
705 ..... 37118
915 ..... 35632
934 ..... 37271
**Proposed Rules:**
75 ..... 37376
250 ..... 37200
906 ..... 36231
914 ..... 37298
917 ..... 35532
934 ..... 35534
936 ..... 36704
938 ..... 35370
944 ..... 35666

**31 CFR**

535 ..... 37568

**32 CFR**

73 ..... 35512
199 ..... 36008
358 ..... 37571
706 ..... 35633, 36400
1285 ..... 35634, 37396
**Proposed Rules:**
43 ..... 35535
220 ..... 36023

**33 CFR**

3 ..... 37178
100 ..... 35216, 35218, 37179
117 ..... 35218, 36224
162 ..... 37274
165 ..... 36009, 37179, 37181
181 ..... 37572
183 ..... 37572, 37577
**Proposed Rules:**
117 ..... 35535, 37606
151 ..... 36233, 37607, 37608
158 ..... 36233, 37607, 37608

**34 CFR**

30 ..... 35645
76 ..... 35582
653 ..... 35582
**Proposed Rules:**
600 ..... 37366
614 ..... 37366
668 ..... 37132

**35 CFR**

105 ..... 36010
253 ..... 37181

**36 CFR**

1 ..... 37008
7 ..... 35647, 37008
13 ..... 36011
50 ..... 37008
1155 ..... 36804
**Proposed Rules:**
7 ..... 35009, 36409, 37201

**37 CFR**

**Proposed Rules:**
201 ..... 35244, 36705
202 ..... 36410

**38 CFR**

19 ..... 35648
26 ..... 37182
**Proposed Rules:**
3 ..... 35667

**39 CFR**

10 ..... 39374
3001 ..... 37019

**40 CFR**

52 ..... 36011, 39375
60 ..... 37910
61 ..... 35354, 37910
62 ..... 37274
65 ..... 36691
81 ..... 35648
157 ..... 36692
162 ..... 36692
180 ..... 34973, 36012
261 ..... 35355, 37019, 37723, 37725
262 ..... 35190
271 ..... 36013, 36804, 37725, 37729
403 ..... 36368, 36806
600 ..... 37844
716 ..... 36013
**Proposed Rules:**
51 ..... 37418
52 ..... 37418, 37758
62 ..... 39400
86 ..... 35372
124 ..... 37608
141 ..... 37608
143 ..... 37608
261 ..... 35372, 36024, 36233–36241, 36707, 36974, 37140, 37299, 37420, 37760, 37767
262 ..... 36342
264 ..... 37608, 37854
265 ..... 36342, 37608
270 ..... 37608, 37854
271 ..... 36342, 37854
704 ..... 35762
766 ..... 37612

**41 CFR**

51–3 ..... 36560
**Proposed Rules:**
105–56 ..... 35245

**42 CFR**

Ch. V ..... 37577
53 ..... 39376
405 ..... 34975, 34980, 37911
412 ..... 34980
413 ..... 37398
417 ..... 37398
430 ..... 36225
433 ..... 36225
**Proposed Rules:**
36 ..... 36412
57 ..... 35668, 36412, 39460
60 ..... 39464

**43 CFR**

4 ..... 35218, 35219
36 ..... 36011
1820 ..... 34981
**Proposed Rules:**
4 ..... 35248, 36414
1600 ..... 35378
3100 ..... 37202
3190 ..... 36565
3400 ..... 37202
3450 ..... 37202
3470 ..... 37202
**Public Land Orders:**
6625 ..... 36808

**44 CFR**

64 ..... 36693, 36698
65 ..... 37276, 37277
67 ..... 37278, 37280
**Proposed Rules:**
67 ..... 37311, 37438

**45 CFR**

201 ..... 36225
301 ..... 37730
302 ..... 37730
303 ..... 37730
304 ..... 37730
305 ..... 37730
306 ..... 37730
307 ..... 37730
2001 ..... 36786

**46 CFR**

97 ..... 35515
159 ..... 35220
170 ..... 35515
172 ..... 35515
**Proposed Rules:**
202 ..... 36253
502 ..... 36731, 37917
568 ..... 36034

**47 CFR**

0 ..... 34981
2 ..... 37398
15 ..... 37398
19 ..... 37022
22 ..... 35649, 37022, 37398
25 ..... 37398
43 ..... 37023
64 ..... 34983
73 ..... 35515, 35516, 36401, 37024–37026, 37289, 37405
80 ..... 34983
87 ..... 34984, 37911
90 ..... 36013, 37398, 37405
97 ..... 37026
**Proposed Rules:**
Ch. I ..... 36415
1 ..... 35536, 35537
43 ..... 35537
67 ..... 36731, 37045
69 ..... 36731
73 ..... 36416, 36417, 36731, 37920, 37921
80 ..... 37922

**48 CFR**

1 ..... 36970
6 ..... 36970
8 ..... 36970
13 ..... 36970
15 ..... 36970
31 ..... 36970
33 ..... 36970
36 ..... 36970
44 ..... 36970
52 ..... 36970
53 ..... 36970
513 ..... 36700
546 ..... 35220
553 ..... 36700
725 ..... 34984
737 ..... 34984
752 ..... 34984
846 ..... 37027
5315 ..... 37451
**Proposed Rules:**
7 ..... 39456
15 ..... 36777
17 ..... 39456
52 ..... 39456
201 ..... 37205
208 ..... 37207
225 ..... 37205
245 ..... 37205
503 ..... 39404
5242 ..... 36828
5252 ..... 36828

**49 CFR**

106 ..... 34985
107 ..... 34985
171 ..... 34985
172 ..... 34985
173 ..... 34985
174 ..... 34985
175 ..... 34985
178 ..... 34985
192 ..... 34987
531 ..... 35594
571 ..... 35222, 35357, 37028
585 ..... 37028
635 ..... 36401
1008 ..... 34989
1011 ..... 34989, 35222, 36403
1057 ..... 37034, 37406
1130 ..... 34989
1135 ..... 37034
1152 ..... 35222
1312 ..... 37034
**Proposed Rules:**
390 ..... 36830
391 ..... 35538, 36830
392 ..... 36830
393 ..... 36830
394 ..... 36830
395 ..... 36830
396 ..... 36830
397 ..... 36830
398 ..... 36830
399 ..... 36830
1162 ..... 36732
1312 ..... 36732

**50 CFR**

17 ..... 39468
36 ..... 36011
216 ..... 36560
261 ..... 34989
262 ..... 34989
263 ..... 34989
264 ..... 34989
265 ..... 34989
266 ..... 34989

604.....37185
611.....37407, 37408
651.....37185
655.....39377
663.....37912, 37913
672.....36404
675.....37408
681.....34991

**Proposed Rules:**

23.....37923
216.....36568, 39405
611.....36569, 37924
641.....36574
642.....35670
650.....36576
653.....36035
661.....37613
685.....37924

## LIST OF PUBLIC LAWS

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

**Last List October 27, 1986.**