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Federal Register

Tuesday
October 5, 1982

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Federal Energy Regulatory Commission

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Postal Service

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Presidential Documents

Title 3—

The President

Executive Order 12384 of October 1, 1982

Establishing an Emergency Board To Investigate a Dispute Between the Southeastern Pennsylvania Transportation Authority and the Delaware Transportation Authority, and Certain Labor Organizations

A dispute exists between the Southeastern Pennsylvania Transportation Authority (SEPTA) and the Delaware Transportation Authority (DTA), and certain labor organizations, designated on the list attached hereto and made a part hereof, representing those employees of the Consolidated Rail Corporation (Conrail) who are to be transferred to the SEPTA and DTA as part of the transfer of commuter rail service responsibility from Conrail to the SEPTA and DTA, pursuant to Section 1145 of the Northeast Rail Service Act of 1981.

The dispute concerns the terms and conditions of new collective bargaining agreements, which were required to be negotiated by September 1, 1982, by Section 510(a) of the Rail Passenger Service Act, as amended ("the Act"). As of this date, the parties have not entered into new collective bargaining agreements, and the SEPTA, the Northeast Commuter Services Corporation, and the Brotherhood of Locomotive Engineers have requested the President to establish an emergency board pursuant to Section 510(b) of the Act.

Section 510(c) of the Act provides for the President, upon request of a party, to appoint an emergency board to investigate such dispute and to make a report and recommendation for settlement.

NOW, THEREFORE, by the authority vested in me by Section 510 of the Rail Passenger Service Act, as amended (45 U.S.C. § 590), it is hereby ordered as follows:

1-101. *Establishment of Board.* There is established, effective October 1, 1982, a board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any commuter authority providing commuter rail service. The Board shall perform its functions subject to the availability of funds.

1-102. *Public Hearing.* The board shall conduct a public hearing on the dispute at which each party shall appear and provide testimony.

1-103. *Initial Report.* The board shall report on the dispute within 30 days after the date of its creation.

1-104. *Final Offers.* If the parties have not settled the dispute within ten days after the board's report, the board shall require the parties to submit, within five days, their final offers for settlement of the dispute.

1-105. *Final report.* Within 15 days after the submission of final offers, the board shall submit a report to the President setting forth its selection of the most reasonable offer.

Ronald Reagan

THE WHITE HOUSE,
October 1, 1982

Pennsylvania/Delaware:

LABOR ORGANIZATIONS

American Train Dispatchers Association
ARASA Division, Brotherhood of Railway and Airline Clerks
Brotherhood of Locomotive Engineers
Brotherhood of Maintenance of Way Employees
Brotherhood of Railway and Airline Clerks
Brotherhood Railway Carmen of the United States and Canada
Brotherhood of Railroad Signalmen
International Association of Machinists and Aerospace Workers
International Brotherhood of Boilermakers and Blacksmiths
International Brotherhood of Electrical Workers
International Brotherhood of Firemen and Oilers
Railroad Yardmasters of America
Sheet Metal Workers International Association
Transport Workers Union of America
United Transportation Union

[FR Doc. 82-27521
Filed 10-04-82; 9:34 am]
Billing code 3195-01-M

Editorial Note: The President's announcement of October 1, 1982, on creating an emergency board to investigate a railway labor dispute is printed in the *Weekly Compilation of Presidential Documents* (vol. 18, no. 39).

Presidential Documents

Executive Order 12385 of October 1, 1982

Establishing an Emergency Board To Investigate a Dispute Between New Jersey Transit Rail Operations, Inc. and Certain Labor Organizations

A dispute exists between New Jersey Transit Rail Operations, Inc. (NJTRO), and certain labor organizations, designated on the list attached hereto and made a part hereof, representing those employees of the Consolidated Rail Corporation (Conrail) who are to be transferred to the NJTRO as part of the transfer of commuter rail service responsibility from Conrail to the NJTRO, pursuant to Section 1145 of the Northeast Rail Service Act of 1981.

The dispute concerns the terms and conditions of new collective bargaining agreements, which were required to be negotiated by September 1, 1982, by Section 510(a) of the Rail Passenger Service Act, as amended ("the Act"). As of this date, the parties have not entered into new collective bargaining agreements, and the NJTRO and the Brotherhood of Locomotive Engineers have requested the President to establish an emergency board pursuant to Section 510(b) of the Act.

Section 510(c) of the Act provides for the President, upon request of a party, to appoint an emergency board to investigate such dispute and to make a report and recommendation for settlement.

NOW, THEREFORE, by the authority vested in me by Section 510 of the Rail Passenger Service Act, as amended (45 U.S.C. § 590), it is hereby ordered as follows:

1-101. *Establishment of Board.* There is established, effective October 1, 1982, a board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any commuter authority providing commuter rail service. The Board shall perform its functions subject to the availability of funds.

1-102. *Public Hearing.* The board shall conduct a public hearing on the dispute at which each party shall appear and provide testimony.

1-103. *Initial Report.* The board shall report on the dispute within 30 days after the date of its creation.

1-104. *Final Offers.* If the parties have not settled the dispute within ten days after the board's report, the board shall require the parties to submit, within five days, their final offers for settlement of the dispute.

1–105. *Final report.* Within 15 days after the submission of final offers, the board shall submit a report to the President setting forth its selection of the most reasonable offer.

Ronald Reagan

THE WHITE HOUSE,
October 1, 1982

New Jersey:

LABOR ORGANIZATIONS

American Train Dispatchers Association
ARASA Division, Brotherhood of Railway and Airline Clerks
Brotherhood of Locomotive Engineers
Brotherhood of Maintenance of Way Employees
Brotherhood of Railway and Airline Clerks
Brotherhood Railway Carmen of the United States and Canada
Brotherhood of Railroad Signalmen
International Association of Machinists and Aerospace Workers
International Brotherhood of Boilermakers and Blacksmiths
International Brotherhood of Electrical Workers
International Brotherhood of Firemen and Oilers
International Brotherhood of Teamsters
Railroad Yardmasters of America
Sheet Metal Workers International Association
Transport Workers Union of America
United Transportation Union

[FR Doc. 82-27522
Filed 10-04-82; 9:35 am]
Billing code 3195-01-M

Editorial Note: The President's announcement of October 1, 1982, on creating an emergency board to investigate a railway labor dispute is printed in the *Weekly Compilation of Presidential Documents* (vol. 18, no. 39).

Presidential Documents

Executive Order 12386 of October 1, 1982

Establishing an Emergency Board To Investigate a Dispute Between the New York Metropolitan Transportation Authority and the Connecticut Department of Transportation, and Certain Labor Organizations

A dispute exists between the New York Metropolitan Transportation Authority (MTA) and the Connecticut Department of Transportation (CDOT), and certain labor organizations, designated on the list attached hereto and made a part hereof, representing those employees of the Consolidated Rail Corporation (Conrail) who are to be transferred to the MTA and CDOT as part of the transfer of commuter rail service responsibility from Conrail to the MTA and CDOT, pursuant to Section 1145 of the Northeast Rail Service Act of 1981.

The dispute concerns the terms and conditions of new collective bargaining agreements, which were required to be negotiated by September 1, 1982, by Section 510(a) of the Rail Passenger Service Act, as amended ("the Act"). As of this date, the parties have not entered into new collective bargaining agreements, and the MTA and the Brotherhood of Locomotive Engineers have requested the President to establish an emergency board pursuant to Section 510(b) of the Act.

Section 510(c) of the Act provides for the President, upon request of a party, to appoint an emergency board to investigate such dispute and to make a report and recommendation for settlement.

NOW, THEREFORE, by the authority vested in me by Section 510 of the Rail Passenger Service Act, as amended (45 U.S.C. § 590), it is hereby ordered as follows:

1-101. *Establishment of Board.* There is established, effective October 1, 1982, a board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any commuter authority providing commuter rail service. The Board shall perform its functions subject to the availability of funds.

1-102. *Public Hearing.* The board shall conduct a public hearing on the dispute at which each party shall appear and provide testimony.

1-103. *Initial Report.* The board shall report on the dispute within 30 days after the date of its creation.

1-104. *Final Offers.* If the parties have not settled the dispute within ten days after the board's report, the board shall require the parties to submit, within five days, their final offers for settlement of the dispute.

1–105. *Final report.* Within 15 days after the submission of final offers, the board shall submit a report to the President setting forth its selection of the most reasonable offer.

Ronald Reagan

THE WHITE HOUSE,
October 1, 1982

New York/Connecticut:

LABOR ORGANIZATIONS

American Train Dispatchers Association
AMTRAK Service Workers Council
ARASA Division, Brotherhood of Railway and Airline Clerks
Brotherhood of Locomotive Engineers
Brotherhood of Maintenance of Way Employees
Brotherhood of Railway and Airline Clerks
Brotherhood Railway Carmen of the United States and Canada
Brotherhood of Railroad Signalmen
International Association of Machinists and Aerospace Workers
International Brotherhood of Boilermakers and Blacksmiths
International Brotherhood of Electrical Workers
International Brotherhood of Firemen and Oilers
International Brotherhood of Teamsters
Railroad Yardmasters of America
Sheet Metal Workers International Association
Transport Workers Union of America
United Transportation Union

[FR Doc. 82-27523
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Editorial Note: The President's announcement of October 1, 1982, on creating an emergency board to investigate a railway labor dispute is printed in the *Weekly Compilation of Presidential Documents* (vol. 18, no. 39).

Rules and Regulations

Federal Register
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Tuesday, October 5, 1982

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 16

Restrictions on Importation of Meat from New Zealand

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Final rule.

SUMMARY: This rule entitled "Limitation on Imports of Meat" is established as Part 16 to Title 7 of the Code of Federal Regulations and governs the entry or withdrawal from warehouse of certain meats imported from New Zealand. This rule is necessary to carry out the voluntary agreement entered into by New Zealand with the United States pursuant to Section 204 of the Agricultural Act of 1956. This agreement limits the export from New Zealand and the importation into the United States of certain meats during calendar year 1982.

EFFECTIVE DATE: October 5, 1982. See supplementary information.

FOR FURTHER INFORMATION CONTACT: Bryant Wadsworth (FAS), (202) 447–8031, Dairy, Livestock and Poultry Division, FAS, USDA, Room 6616 South Building, Washington, D.C. 20250.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and Executive Order 11539, as amended, the Office of the United States Trade Representative has negotiated an agreement with the Government of New Zealand whereby that country has voluntarily agreed to a limitation on the quantity of certain meats exported from it to the United States during calendar year 1982. The Secretary of Agriculture, with the concurrence of the Secretary of State and the United States Trade Representative, is authorized to issue regulations to carry out such agreement and to request the Commissioner of Customs to implement such action. The concurrence of the Secretary of State and the United States Trade Representative has been obtained for the issuance of these regulations.

The definition of meat in the regulations encompasses the Tariff Schedules of the United States (TSUS) item which are the subject of the voluntary agreement. In order to prevent circumvention of the import limitations, the definition also includes meat that would fall within such definition but for processing in Foreign-Trade Zones, territories, or possessions of the United States. In addition, transshipment restrictions are imposed which prevent the entry or withdrawal from warehouse for consumption of meat from New Zealand unless exported from that country as direct shipments or on through bills of lading or, if processed in Foreign-Trade Zones, territories, or possessions of the United States, shipped as direct shipments or on through bills of lading from such areas.

Effective Date

Meat released under the provisions of Sections 448(b) and 484(a)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1448(b) (immediate delivery), and 19 U.S.C. 1484(a)(1)(A) (entry)), prior to October 5, 1982 shall not be denied entry.

The action taken herewith has been determined to involve foreign affairs functions of the United States. Therefore, this regulation falls within the foreign affairs exception of Executive Order 12291 and the notice, public participation and effective date provisions of 5 U.S.C. 553. Further, the provisions of the Regulatory Flexibility Act do not apply to this rule since the notice of proposed rulemaking provisions of 5 U.S.C. 553 do not apply.

List of Subjects in 7 CFR Part 16

Meat and meat products, Imports.

Accordingly, Title 7 of the Code of Federal Regulations is amended by adding a new Part 16 entitled "Limitation on Imports of Meat", to read as follows:

PART 16—LIMITATION ON IMPORTS OF MEAT

Subpart A—Section 204 Import Regulations

Subpart B—Meat Import Law Regulations [Reserved]

Authority: Sec. 204, Pub. L. 540, 84th Cong., 70 Stat. 200, as amended (7 U.S.C. 1854), and Executive Order 11539 (35 FR 10733), as amended by Executive Order 12188 (45 FR 989).

Subpart A—Section 204 Import Regulations

§ 16.1 General.

The regulations set forth in this subpart are issued by the Secretary of Agriculture with the concurrence of the Secretary of State and the United States Trade Representative. The Commissioner of Customs has been requested to take such action as is necessary to implement these regulations.

§ 16.2 Definitions.

The following terms shall have the meaning set forth in this section:

(a) "Meat" means fresh, chilled or frozen cattle meat (item 106.10 of the Tariff Schedules of the United States (TSUS)), fresh chilled or frozen meat of goats and sheep, except lambs (TSUS 106.22 and 106.25), and prepared and preserved beef and veal, except sausage, if the articles are prepared, whether fresh, chilled, or frozen, but not otherwise preserved (TSUS 107.55 and 107.62), and meats which, but for processing in Foreign-Trade Zones, territories, or possessions of the United States prior to entry, or withdrawal from warehouse for consumption, into the United States Customs Territory, would fall within the above descriptions (and TSUS items) upon such entry or withdrawal from warehouse for consumption.

(b) "United States" means the 50 states of the United States, the District of Columbia, and Puerto Rico.

§ 16.3 Import Documentation.

Meat subject to the restrictions in 16.4 and 16.5 may not be entered into the Customs Territory of the United States

unless there is presented, at time of entry, documentation establishing (1) that there has been compliance with the applicable conditions of this Subpart A and (2) the country from which the meat was exported in the form in which it would fall within the definition of meat in TSUS items 106.10, 106.22, 106.25, 107.55 and 107.62.

§ 16.4 Transhhipment restrictions.

No meat of New Zealand origin may be entered or withdrawn from warehouse for consumption in the United States unless (1) it is exported into the Customs Territory of the United States as a direct shipment or on a through bill of lading from the country of origin or, (2) if processed in Foreign-Trade Zones, territories or possessions of the United States, it is exported into the Customs Territory of the United States as a direct shipment or on a through bill of lading from the Foreign-Trade Zone, territory or possession of the United States in which it was processed.

§ 16.5 Quantitative restrictions.

Imports from New Zealand. During calendar year 1982, no more than 340.0 million pounds of meat exported from New Zealand in the form in which it would fall within the definition of meat in TSUS 106.10, 106.22, 106.25, 107.55, or 107.62 may be entered or withdrawn from warehouse for consumption in the United States, whether shipped directly or indirectly from New Zealand to the United States.

Subpart B—Meat Import Law Regulations [Reserved]

Issued at Washington, D.C., this 30th day of September, 1982.

Richard E. Ling,

Acting Secretary.

[FR Doc. 82-27508 Filed 10-1-82; 8:45 pm]

BILLING CODE 3410-10-M

Agricultural Marketing Service

7 CFR Part 51

United States Standards for Grades Mixed Nuts In-The-Shell

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary rule.

SUMMARY: This action will temporarily revise the voluntary U.S. Standards for Grades of Mixed Nuts In The Shell. One of the largest packagers of mixed nuts has requested that the minimum mixture requirement for almonds (U.S. Extra Fancy and U.S. Fancy grades) be lowered from 10 to 5 percent for the current marketing season. A substantial reduction in the supply of the Peerless variety of almonds this year and adverse weather conditions causing shell staining have reduced the supply to the extent that it will be inadequate for this marketing season. An adjustment of the mixture requirement for this marketing season will assist the industry in providing the public with a major portion of this season's mixed nuts packaged and certified as to grade under the Department's continuous inspection program.

DATES: Effective September 27, 1982 through September 1, 1983.

FOR FURTHER INFORMATION CONTACT: Michael V. Morrelli, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-2011.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This action has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum 1512-1 and has been classified as a non-major rule because it does not meet the criteria contained therein for major regulatory actions.

Effect on Small Entities

Eddie F. Kimbrell, Deputy Administrator, Commodity Services, Agricultural Marketing Service, has determined this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601) because this action will relax a mixture requirement used in the voluntary grading program for mixed nuts and this action is of a temporary nature.

The current U.S. standards were recently revised effective August 18, 1981. These standards require that only the tree nut species Almonds, Brazils, Filberts, Pecans, and Walnuts may be used in the mixture and that the quantity of each species (U.S. Extra Fancy and U.S. Fancy grades) shall meet a minimum mixture of 10 percent and a maximum of 40 percent by weight.

In-shell mixed nuts are principally marketed from early October through December. Traditionally demands for at least 75 percent of this product occur before Thanksgiving. For supplies to reach the retailer in time for the season, packaging of the product must begin during the last week of September. Any substantial delay would mean that the product would not be available for its normal marketing season.

Potential suppliers have advised that the supply of the Peerless variety of almonds, traditionally used in the mixture because of its unique characteristics, will be inadequate to meet the needs for the current marketing season.

Consideration was given to substituting the Mission variety in lieu of Peerless. This approach lacks feasibility in that the Mission variety, in addition to being substantially smaller in size cannot be supplied in adequate volume for at least another three or four weeks. This would result in a significant delay in making the product available for its traditional marketing season.

In addition to a sharp reduction in crop output, rains have caused water stain damage further reducing useable supplies. According to trade sources the supplies are equal to only an estimated 20 percent of normal needs. Consequently, the required minimum 10 percent mixture of almonds for the U.S. Extra Fancy and U.S. Fancy grades cannot be met.

Therefore, pursuant to the provisions of the Administrative Procedure Act (5 U.S.C. 553) good cause is found that it is impractical, unnecessary and contrary to the public interest to give preliminary notice and provide for comments in this action in that: (1) There is insufficient time between the date when information became available upon which the changes incorporated in this action are based and the date to effectuate the final rule; (2) the traditional marketing season for 1982 has already begun and it is necessary that this action be applicable to this crop; (3) the bulk of marketing occurs by December 31; and (4) the major segments of the mixed nut industry request that this action be put in effect as soon as possible.

This action is of a temporary nature because it is based upon emergency circumstances relating to only the present marketing season. Therefore, the minimum percent of almonds for the grades U.S. Extra Fancy and U.S. Fancy is temporarily suspended by changing the percent from 10 to 5 percent.

List of Subjects in 7 CFR Part 51

Fresh fruits, Vegetables, and other products (Inspection, certification and standards).

PART 51 [AMENDED]

Accordingly the United States Standards For Grades of Mixed Nuts In The Shell (7 CFR 51.3520-51.3523) is revised by including a footnote applicable to §§ 51.3521 and 51.3522 to read as follows:

Grades

§ 51.3521 U.S. Extra Fancy.

Nut species	Allowable mixture		Minimum size	Minimum grade
	Minimum percent	Maximum percent		
Almonds	[1]10	40	25/64 inch (11.1 mm)	U.S. No. 1.
Brazils	10	40	Medium	U.S. No. 1.
Filberts	10	40	Long type varieties: 11/64 inch (17.5 mm)	U.S. No. 1.
			Round type varieties: 49/64 inch (19.4 mm)	
Pecans	10	40	Extra large	U.S. No. 1.
Walnuts	10	40	Large	U.S. No. 1.

§ 51.3522 U.S. Fancy.

Nut species	Allowable mixture		Minimum size	Minimum grade
	Minimum percent	Maximum percent		
Almonds	[1]10	40	25/64 inch (11.1 mm)	U.S. No. 1.
Brazils	10	40	Medium	U.S. No. 1.
Filberts	10	40	Long type varieties: 11/64 inch (17.5 mm)	U.S. No. 1.
			Round type varieties: 49/64 inch (19.4 mm)	
Pecans	10	40	Large	U.S. No. 1.
Walnuts	10	40	Medium	U.S. No. 1.

[1]The minimum percent of allowable mixture of almonds for the grades U.S. Extra Fancy and U.S. Fancy is temporarily suspended by changing the percent from 10 to 5 percent, for the period beginning Sept. 27, 1982, and ending Sept. 1, 1983.

(Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended (7 U.S.C. 1622, 1624))

Done at Washington, D.C. on: September 27, 1982.

Vern F. Highley,

Administrator.

[FR Doc. 82-27402 Filed 10-4-82; 8:45 am]

BILLNG CODE 3410-02-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Ch. VII

Interpretive Ruling and Policy Statement; Corporate Federal Credit Union Chartering Guidelines

AGENCY: National Credit Union Administration (NCUA).

ACTION: Statement of interpretation and policy.

SUMMARY: The purpose of this policy is to establish the process that must be followed by a proposed corporate credit union seeking a Federal charter. In addition, the guidelines also establish the review and approval process of the charter application by the National Credit Union Administration.

EFFECTIVE DATE: September 23, 1982.Q02

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Nicholas Veghts, Department of Supervision and Examination, Telephone: (202) 357-1065.

SUPPLEMENTARY INFORMATION: On July 14, 1982, the proposed Corporate Federal Credit Union Chartering Guidelines were published in the **Federal Register** (47 FR 30670 and 30671) for public comment. The chartering guidelines established the process the proposed CFCU must follow in order to demonstrate that it has the capabilities to be a financially and operationally sound institution from its inception. The guidelines also establish the review process of the National Credit Union Administration on this type of charter application.

Comments

All commenters were supportive of the proposed chartering guidelines for corporate Federal credit unions. Several commenters stated that the information being requested from the proposed CFCU during the chartering process will adequately allow NCUA to evaluate the viability of the proposed corporate credit union.

One commenter recommended that added emphasis needs to be placed upon the necessity for the application to include a detailed analysis of the proposed CFCU's investment strategy. The NCUA Board agrees that investment strategy is important for CFCUs. This is why the guidelines require the proposed CFCU to provide assumptions to support its financial development and to submit its planned policies and procedures in the area of investments. In addition, one of the objectives of the on-site review process is to evaluate the information provided by the CFCU which would include an evaluation of the proposed CFCUs investment philosophy and strategy. The NCUA Board believes that the information requested in the charter application and the established review process will be sufficient to evaluate this area, and, therefore, does not believe additional information needs to be requested.

Four commenters agreed that final authority on approval or disapproval of a CFCU should remain with the NCUA Board. Two of the commenters stated that the formation of a new CFCU is a national issue because of the interdependency of the existing corporate central network. The other two commenters believed that the NCUA Board should have final authority on granting a CFCU charter since the success or failure of a CFCU has such a far-reaching impact because a CFCU is a credit union's credit union.

In addition to requesting comments on the chartering guidelines, the NCUA Board also solicited public comment on some other questions concerning corporate credit unions.

1. Should there be a limitation on the number of corporate credit unions that are chartered?

Six commenters indicated that there should not be a limit on the number of CFCUs that are chartered. Two commenters further stated that if there is a need for service and it is not being provided by the existing CFCUs then a charter should be granted if the CFCU can demonstrate that it has the capability to become a viable institution.

2. Should a corporate charter be granted to a group which already has corporate service available?

Several commenters stated that they had no objection to granting a charter to a group that already had corporate credit union service available provided the need existed for service because the existing corporate credit union was not providing adequate service. Two commenters stated that competition is good and that credit unions would possibly have available services that would not otherwise be offered. Four commenters stated that competition among corporate credit unions is not always best because the creation of more corporate credit unions will

transform large corporates into many smaller ones. They believe the smaller corporate credit unions will encounter difficulty in competing with other financial institutions, offering services at reasonable costs and being able to build a strong equity base.

3. If overlapping fields of membership are permitted, how should the competitive impact on existing corporates be determined and reviewed?

Two commenters recommend that NCUA should develop a procedure whereby information on the proposed corporate credit union is made available and existing corporate credit unions are given the opportunity to comment upon the issuance of a new corporate charter. Another commenter believed that the impact on existing corporates could be determined from the information obtained during the chartering process for the proposed corporate credit union.

4. Should minimum values be established for numbers of members or asset base of potential members before a charter is granted?

Four commenters believe that there is no need for establishing values. Two of the four further stated that the chartering guidelines will provide the information necessary to determine the viability of the proposed CFCU and its ability to meet the needs of its members. One commenter stated that it believed a CFCU must have the capability of assets reaching $100 million in order to survive and be a competitive economic entity.

The NCUA Board has reviewed the comments to the questions and has concluded that compliance with the chartering guidelines, as presented, will ensure that a proposed corporate credit union will be in a position to begin operation on a sound basis and be able to meet the needs of its members. Therefore, at this time the NCUA Board believes that further changes to the Corporate Federal Credit Union Chartering Guidelines are not necessary.

NCUA expects to receive no more than nine applications per year. Therefore, in accordance with 44 U.S.C. 3506(c)(5), this application guideline was not subject to requirements of 44 U.S.C. 3507 of the Paperwork Reduction Act.

[IRPS–82–6]

Corporate Federal Credit Union Chartering Guidelines

I. When submitting a charter application, the proposed corporate credit union is responsible for providing information that details economic feasibility, operational plans for the initial 3 years of operation, and management ability. In this regard the NCUA Board will look for the following types of information:

A. Demonstration of economic feasibility of the proposed corporate credit union by such means as:

(1) Commitments from the proposed membership that will participate actively in the operation, including a list of subscribers and the amount of shares pledged;

(2) Development of pro forma balance sheets for the first 3 years of operation, including the assumptions to support the corporate credit union's economic development;

(3) Development of a detailed operating budget for the first year of operation, including the assumptions to support the corporate credit union's financial development; and

(4) Review of local and national economic factors that will impact on the proposed membership and the development of the corporate credit union.

B. Description of the operational plans of the proposed corporate credit union for the first 3 years of operation by explaining such things as:

(1) The types of members who will be served;

(2) The services to be offered to the membership;

(3) How the services will be provided to the membership (location, staff, computer, etc.);

(4) The policies and procedures for all phases of operation, (membership, lending, investments, borrowing, budgetary process, safeguarding of assets, etc.); and,

(5) The phase-in plans to begin operation once the charter has been granted.

C. Demonstration of ability of the proposed management and officials to operate and control the affairs of the proposed corporate credit union through such means as evaluation of:

(1) Financial institution and/or business experience; and,

(2) Duties and responsibilities in the proposed corporate Federal credit union.

II. The charter application and the information described in part I will then be forwarded to the appropriate regional office of the National Credit Union Administration for review. After the initial review by the regional office, an on-site meeting will be arranged by the regional office to review the charter application with the proposed officials and management. The main purpose of the meeting is to evaluate the adequacy of the information provided in the charter application and to discuss the proposed corporate credit union's plans to begin operation should the charter be approved.

III. At the completion of the regional office review, the proposed corporate credit union will be informed by letter that either the charter application has been forwarded to the National Credit Union Administration Board (NCUA Board) for appropriate action or that the application cannot be forwarded until specific items are addressed and resolved.

Rosemary Brady,

Secretary of the Board.

[FR 82–27410 Filed 10–4–82; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 5, 19, 170, 173, 194, 250 and 251

[T.D. ATF–114; Ref: Notice No. 382]

Deregulation of Liquor Bottle Manufacturers and Other Miscellaneous Amendments

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule by the Bureau of Alcohol, Tobacco and Firearms (ATF) eliminates 27 CFR Part 173, Returns of Substances, Articles, or Containers. All sections pertaining to liquor bottle manufacturers are removed. Liquor bottle indicia requirements are eliminated. A section has been added to 27 CFR Part 194 to allow individuals to collect used liquor bottles for the purpose of recycling or reclaiming the glass or other approved liquor botle material Also, the definition of liquor bottle has been changed to reflect ATF's reliance on the Food and Drug Administration to approve materials intended for use as liquor bottles. All sections of Part 173 which pertain to articles, substances, or containers are moved to 27 CFR Part 170. The liquor bottle manufacturing industry is being deregulated because registration and recordkeeping requirements have been determined to be of little benefit to ATF and an unnecessary burden on the affected industry. In addition to these changes, the Bureau is also simplifying the distinctive liquor bottle regulations to allow the bottler or importer to get distinctive liquor bottles approved without submission of sample bottles unless a sample bottle is specifically requested. Several miscellaneous, clarifying and editorial changes have also been made.

EFFECTIVE DATE: November 4, 1982.

FOR FURTHER INFORMATION CONTACT: Robert L. White, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226 (202–566–7626).

SUPPLEMENTARY INFORMATION: ATF published a notice of proposed rulemaking, Notice No. 382, in the **Federal Register** on September 2, 1981 (46 FR 44000), proposing the deregulation of liquor bottle manufacturers and other miscellaneous amendments. The 90-day comment period closed on December 1, 1981.

Comments

Seven comments were received during the comment period. Three of the commenters wanted ATF to eliminate all indicia requirements on liquor bottles including the words "Liquor Bottle." Four reasons were given for this request. In the first place, the three commenters stated that they saw very little, if any, useful purpose to be served by retaining the requirement that the words "Liquor Bottle" be permanently marked on liquor bottles. Secondly, the commenters questioned why liquor bottles should be treated differently from beer and wine bottles which are not required to bear similar information. Thirdly, one of the commenters felt that the requirement of the words "Liquor Bottle" on all liquor bottles worked a hardship on his industry since many brandy marketers use wine glass, usually champagne bottles, to package their brandy. The commenters also stated that ATF's indicia requirements increased the cost to manufacture liquor bottles and one of the commenters felt that the indicia requirements might be a non-tariff trade barrier to imports (especially for foreign suppliers of low volume items who presently may or may not be observing the requirement).

After careful consideration, ATF has decided that the benefits to be gained from eliminating all indicia requirements on liquor bottles outweigh the benefits of keeping a liquor bottle indicia requirement. Therefore, ATF has decided to adopt this coment and eliminate all liquor bottle indicia requirements.

Three commenters submitted comments dealing with the reuse or recycling of liquor bottles. One of these commenters wanted ATF to allow the reuse of liquor bottles only for completely standardized bottles of differing sizes which could be differentiated by bottler only through removable markers or labels. This commenter felt that such a policy would encourage the use of standardized bottles which would greatly increase the efficiency of bottle reuse. A second commenter stated that he supported the proposal to allow a proprietor to reuse liquor bottles only to the extent such containers never left a proprietor's premises. This commenter stated that any proposal to allow used bottles on a proprietor's premises once the bottles had left the premises would be too costly and inflationary and would create adverse effects on competition in comparison with foreign-based enterprises. The third commenter stated that he supported the proposed expansion of the authorized possession of used liquor bottles to include bottle collection for purposes of recycling but that he thought this provision should be modified further to provide for the authorized recycling of plastics resins in the event of approval of the use of plastic liquor bottles.

The change that ATF proposed in Notice No. 382 concerning recycling of liquor bottles was intended to add a subsection (c) to 27 CFR 194.263 which would allow any person to assemble used liquor bottles for the purpose of recycling the liquor bottle material, which currently is primarily glass. The word "recycle" was meant to convey the idea that the liquor bottle would be ground up and used to make new liquor bottles or containers.

No change was contemplated concerning the reuse of liquor bottles. Liquor bottles can continue to be reused by authorized persons in accordance with 27 CFR 194.263 and 27 CFR 19.635. However, under certain circumstances, persons reusing liquor bottles are required to keep records on the disposition of used liquor bottles in accordance with 27 CFR 170.25. This same requirement was previously stated in 27 CFR 173.11.

In this final rule, the word "reclaim" is used in subsection (c) to 27 CFR 194.263 in addition to the word "recycle." Reclaim is defined to mean that the bottle is to be ground up and used to make products other than liquor bottles or containers. In order to eliminate any possible confusion, subsection (c) of 27 CFR 194.263 has been changed to allow persons to collect used liquor bottles for the purpose of recycling or reclaiming the glass or other approved liquor bottle material. Also, the definitions of the words "recycle" and "reclaim" have been added to 27 CFR 194.11.

One of the commenters felt that there is no longer any need for specific requirements for distinctive liquor bottles. He stated that consumers should rely on the label for the correct contents of liquor bottles. This commenter stated that instead of specific distinctive liquor bottle regulations, ATF should just have general regulations which restrict any liquor bottle which is deceptive to the consumer or creates a misleading impression. After careful evaluation of this comment, ATF feels that specific distinctive liquor bottle regulations are still necessary to prevent consumers from being misled as to the contents of unusually designed liquor bottles. Consumers can be misled as to the contents of liquor bottles in two ways. Either the headspace can be too large or the bottle can be designed in such a way as to make it appear, upon visual examination, that the bottle holds substantially more than its actual capacity (irrespective of the correctness of the stated net contents). ATF believes that distilled spirits bottlers and importers should continue to be required to get ATF approval of liquor bottles of unusual design in order to ensure that consumers are not deceived as to the contents of the bottles. Therefore, this comment concerning the elimination of distinctive liquor bottle regulations is not adopted.

The seventh and final commenter stated that he supported ATF's proposal to deregulate the liquor bottle manufacturing industry and the simplified procedures governing approval of distinctive containers.

Liquor Bottle Manufacturers

Liquor bottle manufacturers have not been identified by the Bureau as a source of jeopardy to the Federal revenue nor is there any evidence that requiring them to register with ATF is a deterrent to illegal liquor operations. Therefore, ATF is deregulating the liquor bottle manufacturing industry. This final rule removes 27 CFR Part 173, Returns of Substances, Articles, or Containers, from Chapter I of the Code of Federal Regulations. All sections of Part 173 pertaining to liquor bottle manufacturers are eliminated. Liquor bottle manufacturers are no longer required to register with ATF, and ATF Form 4328, Notice of Intent to Manufacture Liquor Bottles and Assignment of Manufacturer's Number, is obsolete. Since ATF will no longer assign liquor bottles manufacturers' numbers, these numbers are no longer required on liquor bottles. However, liquor bottles bearing the obsolete manufacturer's number may continue to be used. In addition to the elimination of the manufacturer's number, all liquor bottle indicia requirements for both domestic and imported liquor bottles are eliminated. The deregulation of the liquor bottle manufacturing industry will result in manpower savings to the

Government and will be more efficient for the industry. This deregulation will not result in increased cost to the industry.

Substances, Articles, or Containers

All sections of Part 173 which pertain to substances, articles, or containers are moved to 27 CFR Part 170 and added as Subpart B—Returns of Substances, Articles, or Containers. These sections of regulations are still required to ensure that ATF has the necessary tools to effectively combat illegal liquor operations. All mention of Form 169 or 169A will be changed to read Form 3330.3, Return of Articles, Containers or Substances.

Recycling or Reclaiming Liquor Bottle Material

The regulation in 27 CFR Part 194 governing possession of used liquor bottles is revised to allow any person to assemble used liquor bottles for the purpose of recycling or reclaiming the material from which the liquor bottles are made. However, regulations in Part 194 prohibiting reuse/refilling of liquor bottles by unauthorized persons remain in effect.

Elimination of References to Part 173

Due to the removal of Part 173, minor changes have been made to Parts 5, 19, 250 and 251 in order to eliminate references previously citing Part 173.

Distinctive Liquor Bottles

Regulations in 27 CFR Parts 19, 250 and 251 have been changed to simplify the procedures whereby distilled spirits proprietors, bottlers, or importers obtain approval to use distinctive liquor bottles. Proprietors, bottlers, and importers are no longer required to submit letter applications to get distinctive liquor bottles approved. Instead, the distilled spirits proprietor, bottler or importer will submit Form 1649/5100.31 to the Director for approval. The applicant will certify as to the total capacity of a representative sample bottle before closure (expressed in milliliters) on Form 1649/5100.31 in lieu of submitting the actual bottle or model. In addition, the applicant will affix a readily legible photograph (both front and back of the bottle) to the front of each copy of Form 1649/5100.31, along with the label(s) to be used on the bottle. The applicant will not submit an actual bottle or an authentic model unless specifically requested to do so. Any applicant who wishes to use the same label on several different distinctive liquor bottles will be required to get each bottle approved on a separate Form 1649/5100.31. Also, any distilled spirits bottler who brings into the United States empty distinctive liquor bottles must get the Director's approval of such bottles on Form 1649/5100.31 prior to using the bottles.

This procedure for getting distinctive liquor bottles approved as part of the label approval process is currently in effect as an alternate procedure. (See ATF Ruling 80–4; ATF Quarterly Bulletin 1980–2.) This Form 1649/5100.31 procedure makes the prior method of obtaining approval for distinctive liquor bottles on letter applications obsolete.

Definition of Liquor Bottle

The previous definition of liquor bottle stated that it could be made of glass or earthenware, or of other suitable material approved by the Director. The new definition of liquor bottle states that it can be made of glass or earthenware, or of other suitable material approved by the Food and Drug Administration. The new definition also states that the Director must determine that the bottle adequately protects the revenue. This change in the definition has become necessary because of advancing container technology which is providing new materials potentially adaptable for packaging distilled spirits. Pertinent issues involved in consideration of new or previously unapproved materials include the impact of those materials on—

(1) Revenues under the Internal Revenue Code (IRC);

(2) An orderly marketplace under the Federal Alcohol Administration Act (FAA); and

(3) Ingestion of materials by consumers under the Food, Drug and Cosmetic Act (FD&C).

ATF has established administrative procedures to continuously deal with issues related to the IRC and the FAA Act while the Food and Drug Administration has established administrative procedures to continuously deal with issues related to the FD&C Act. Consequently, the definition of liquor bottle has been changed to acknowledge the expertise of each agency. Regulations in 27 CFR Parts 19.11, 194.11, 250.11, and 251.11 have been changed accordingly.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because the final rule will not have a significant economic impact on a substantial number of small entities. The final rule is not expected to: have significant secondary or incidental effects on a substantial number of small entities; or impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Disclosure

Copies of the comments received on the notice of proposed rulemaking, Notice No. 382, pertaining to this final rule are available for inspection during normal business hours at the following location: ATF Reading Room, Room 4405, Office of Public Affairs and Disclosure, 12th and Pennsylvania Avenue, NW., Washington, D.C.

Drafting Information

The principal author of this document is Robert L. White, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel in other offices of the Bureau have participated in the preparation of this document, both in matters of substance and style.

List of Subjects

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Reporting requirements,

Research, Security measures, Spices and flavorings, Security bonds, Transportation, U.S. possessions, Warehouses, Wine.

27 CFR Part 170

Alcohol and alcoholic beverages, Authority delegations, Claims, Customs duties and inspection, Disaster assistance, Excise taxes, Labeling, Liquors, Packaging and containers, Penalties, Reporting requirements, Surety bonds, Wine.

27 CFR Part 173

Alcohol and alcoholic beverages, Authority delegations, Customs duties and inspection, Excise taxes, Imports, Packaging and containers, Penalties, Reporting requirements.

27 CFR Part 194

Alcohol and alcoholic beverages, Authority delegations, Beer, Claims, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Penalties, Reporting requirements, Wine.

27 CFR Part 250

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Customs duties and inspection, Electronic funds transfers, Excise taxes, Liquors, Packaging and containers, Reporting requirements, Surety bonds, Transportation, U.S. possessions, Wine.

27 CFR Part 251

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Customs duties and inspection, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Perfume, Reporting requirements, Transportation, Wine.

Authority and Issuance

Under the authority contained in 26 U.S.C. 7805 (68A Stat. 917, as amended), and in 27 U.S.C. 205 (49 Stat. 981, as amended), Title 27 of the Code of Federal Regulations is amended as follows:

CHAPTER I [AMENDED]

Paragraph 1. In 27 CFR Chapter I, Part 173 is removed from the table of contents.

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

§ 5.2 [Amended]

Par. 2. Section 5.2 is amended by removing "27 CFR Part 173—Returns of Substances, Articles or Containers." as a related regulation.

PART 19—DISTILLED SPIRITS PLANTS

Par. 3. The table of contents of 27 CFR Part 19 is amended to remove § 19.633.

§ 19.3 [Amended]

Par. 4. Section 19.3 is amended by removing "27 CFR Part 173—Returns of Substances, Articles or Containers." as a related regulation.

Par. 5. Section 19.11 is amended to change the definition of liquor bottle. As revised, this paragraph reads as follows:

§ 19.11 Meaning of terms.

* * * * *

Liquor bottle. A bottle made of glass or earthenware, or of other suitable material approved by the Food and Drug Administration, which has been designed or is intended for use as a container for distilled spirits for sale for beverage purposes and which has been determined by the Director to adequately protect the revenue.

* * * * *

Par. 6. Section 19.632 is revised to eliminate the last sentence which refers to 27 CFR Part 173. As revised, this section reads as follows:

§ 19.632 Bottles authorized.

Liquor bottles shall conform to the applicable standards of fill provided in Subpart E of 27 CFR Part 5, including those for liquor bottles of less than 200 ml. capacity. The use of any bottle size other than as authorized in Subpart E of 27 CFR Part 5 is prohibited for the packaging of distilled spirits for domestic purposes, except that 100 ml. bottles may be used for packaging distilled spirits for sale in intrastate commerce only.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

§ 19.633 [Removed]

Par. 7. Section 19.633 concerning indicia for bottles is removed. Indicia on liquor bottles is no longer required.

Par. 8. Section 19.634 is revised to simplify the procedure whereby a proprietor can obtain approval of liquor bottles of distinctive shape or design. The phrase "whether or not such bottles bear the indicia required under 27 CFR Part 173," which is located in the first paragraph, is eliminated. As revised, this section reads as follows:

§ 19.634 Distinctive liquor bottles.

(a) *Application.* A proprietor desiring approval of liquor bottles of distinctive shape or design, including bottles of less than 200 ml. capacity, or, to use such distinctive liquor bottles, shall submit Form 1649/5100.31 to the Director for approval. The applicant shall certify as to the total capacity of a representative sample bottle before closure (expressed in milliliters) on each copy of the form. In addition, the applicant shall affix a readily legible photograph (both front and back of the bottle) to the front of each copy of Form 1649/5100.31, along with the label(s) to be used on the bottle. The applicant shall not submit an actual bottle or an authentic model unless specifically requested to do so.

(b) *Approval.* Properly submitted Forms 1649/5100.31 for approval of distinctive liquor bottles shall be approved by the Director if the bottles are found to—

(1) Meet the requirements of 27 CFR Part 5;

(2) Be distinctive;

(3) Be suitable for their intended purpose;

(4) Not jeopardize the revenue; and

(5) Not be deceptive to the consumer.

The applicant shall keep a copy of the approved Form 1649/5100.31, including an approved photograph (both front and back) of the distinctive liquor bottle, on file at his premises. If Form 1649/5100.31 is disapproved, the applicant shall be notified of the Director's decision and the reasons therefor.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

Par. 9. Section 19.638 is revised to eliminate the phrase "whether or not it bears the indicia required under 27 CFR Part 173." As revised, this section reads as follows:

§ 19.638 Bottles not constituting approved containers.

The Director shall disapprove for use as a liquor bottle any bottle, including a bottle of less than 200 ml. capacity, which he determines to be deceptive. Any such bottle is not an approved container for the purposes of § 19.581 of this part, and shall not be used for packaging distilled spirits for domestic purposes.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

PART 170—MISCELLANEOUS REGULATIONS RELATING TO LIQUOR

Par. 10. The table of sections to 27 CFR Part 170 is amended to change the center heading "Subparts B–D—[Reserved]" and to reflect the addition of Subpart B—Returns of Substances, Articles, or Containers, immediately following Subpart A—Restamping Packages of Distilled Spirits. As revised, the table of sections for Subparts B–D reads as follows:

* * * * *

Subpart B—Returns of Substances, Articles, or Containers

Subparts C–D—[Reserved]

Authority: August 16, 1954, Chapter 736, 68A Stat. 917 (26 U.S.C. 7805), unless otherwise noted.

Par. 11. The regulations in Part 173 are revised and redesignated as Part 170, Subpart B, consisting of §§ 170.21 through 170.28, and a Subparts C–D—[Reserved] center heading is added to Part 170. Subpart B center heading, §§ 170.21 through 170.28, and the Subparts C–D—[Reserved] center heading read as follows:

Subpart B—Returns of Substances, Articles, or Containers

§ 170.21 Scope of subpart.

The regulations in this subpart relate to the returns and records of the disposition of articles from which distilled spirits may be recovered, of the disposition of substances of the character used in the manufacture of distilled spirits, and of the disposition of containers of the character used for the packaging of distilled spirits.

§ 170.22 Forms prescribed.

(a) The Director is authorized to prescribe all forms required by this subpart, including bonds, applications, notices, reports, returns and records. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this subpart.

(b) ATF Publication 1322.1, Public Use Forms, is a numerical listing of forms issued by the Bureau of Alcohol, Tobacco and Firearms. This publication is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(c) Requests for forms should be mailed to the ATF Distribution Center, 3800 Four Mile Run Drive, Arlington, Virginia 22206.

§ 170.23 Meaning of terms.

When used in this subpart and in forms prescribed under this subpart, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning as ascribed in this section. Words in the plural form shall include the singular, and vice versa, and words importing the masculine gender shall include the feminine. The terms "include", "includes" and "including" do not exclude things not enumerated which are in the same general class.

ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this subpart.

Articles. Denatured spirits or any product or preparation which contains more than 25% by volume of denatured spirits.

CFR. The Code of Federal Regulations.

Container. Any receptacle, vessel, barrel, cask, keg, bottle, jug, can, or jar of the character used for the packaging of distilled spirits.

Demand letter. The "demand letter" is the formal requirement of the special agent in charge that a person disposing of any article, container, or substance shall render a correct return.

Denatured spirits. Spirits to which denaturants have been added pursuant to formulas prescribed in Part 212 of this chapter.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

Dispose. "Dispose" and all forms of the word shall mean and include consign, sell, transfer, deliver, destroy, or lose, and all forms of those words.

Distilled spirits or spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced), but not denatured spirits unless specifically stated.

Person. An individual, trust, estate, partnership, association, company, or corporation.

Region. A Bureau of Alcohol, Tobacco and Firearms region.

Regional regulatory administrator. The principal ATF regional official in charge of regulatory enforcement.

Render. To deliver the completed return to the office indicated in the demand letter, not later than the date required by the demand letter, or to mail such completed return, in an envelope properly addressed and stamped, in sufficient time for such envelope to be postmarked by the U.S. Postal Service not later than the date required by the demand letter. The time and date of the United States postmark shall constitute the time and date of delivery of the return to the designated office.

Special agent in charge. The principal official responsible for the ATF criminal enforcement program within an AFT district.

Substance. Includes any of the following: Any grade or type of sugar, syrup, or molasses derived from sugar cane, sugar beets, corn, sorghum, or any other source; starch; potatoes; grain, or corn meal, corn chops, craked corn, rye chops, middlings, shorts, bran, or any other grain derivative; malt; malt sugar, or malt syrup; oak chips, charred or not charred; yeast; cider; honey; fruits; grapes; berries; fruit, grape, or berry juices or concentrates; wine; caramel; burnt sugar; gin flavor; Chinese bean cake or Chinese wine cake; urea; ammonium phosphate, ammonium carbonate, ammonium sulphate, or any other yeast food; ethyl acetate or any other ethyl ester; any other material of the character used in the manufacture of distilled spirits, or any chemical or other material suitable for promoting or accelerating fermentation; any chemical or material of the character used for the production of distilled spirits by chemical reaction; or any combination of any such materials or chemicals.

This chapter. Title 27, Code of Federal Regulations, Chapter I (27 CFR Chapter I).

United States. The several States and the District of Columbia.

U.S.C. The United States Code.

§ 170.24 Returns required; substances and articles.

Every person in the United States who disposes of any substance or article, as defined in § 170.23, shall, when required by a demand letter issued by the special agent in charge and until notified to the contrary in writing by such officer, render in writing a correct return on Form 3330.3, Returns of Articles, Containers or Substances, or on such other form authorized by the special agent in charge. The return shall enable the special agent in charge to make a determination in accordance with law as to whether all taxes due with respect to any distilled spirits produced or recovered from such substances or articles have been paid. The return shall be rendered for the periods specified in the demand letter and shall show—

(a) The date of each disposition of such substances or articles, and in such quantities, as shall be specified by the special agent in charge in the demand letter;

(b) The quantity and kind of each substance or article disposed of;

(c) The name and complete address of each purchaser, consignee, and other person actually receiving such substances or articles, and of any other person for, by, or through whom the substances or articles were ordered or disposed of;

(d) The date and method of shipment or delivery; and

(e) If delivered or shipped by truck or other conveyance, the State or city registration number of such truck or conveyance, and the name and complete address of the operator of such truck or conveyance as shown by his operator's license, giving the number of such operator's license and the State where issued. Where shipment is made by a common carrier, such as a railroad, trucking company, steamboat line, etc., the information required by paragraph (e) of this section need not be reported, but in lieu thereof there shall be furnished the complete routing of the shipment, full name and address of first carrier, and railroad car number or name of ship.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1373, as amended (26 U.S.C. 5291))

§ 170.25 Returns required; containers.

Every person in the United States who disposes of any containers as defined in § 170.23 shall, when required by a demand letter issued by the special agent in charge, and until notified to the contrary in writing by such officer, for the purpose of protecting the revenue, render in writing a correct return on Form 3330.3 or on such other form authorized by the special agent in charge. The return shall be rendered for the periods specified in the demand letter and shall show—

(a) The date of each disposition of such containers, and in such quantities, as may be specified by the special agent in charge in the demand letter;

(b) The quantity and kind of containers disposed of;

(c) The name and address of each purchaser, consignee, and other person actually receiving such containers and of any other person for, by, or through whom the containers were ordered or disposed of;

(d) The date and method of shipment or delivery; and

(e) If delivered or shipped by truck or other conveyance, the State or city registration number of such truck or conveyance, and the name and complete address of the operator of such truck or conveyance as shown by his operator's license giving the number of such operator's license and the State where issued. Where shipment is made by a common carrier, such as a railroad, trucking company, steamboat line, etc., the information required by paragraph (e) of this section need not be reported, but in lieu thereof there shall be furnished the complete routing of the shipment, full name and address of first carrier, and railroad car number or name of ship.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

§ 170.26 Rendition of returns.

(a) The return shall be rendered on Form 3330.3 to the officer or employee of the Bureau of Alcohol, Tobacco and Firearms designated in the demand letter. However, the special agent in charge may authorize the return to be rendered in another form requiring the same information in lieu of Form 3330.3 where it is shown that this is necessary in order to use tabulating equipment, or business machines, and will not (1) unduly hinder the effective administration of this part or (2) jeopardize the revenue. A person who proposes to use a form other than Form 3330.3 shall submit a letterhead application to do so to the special agent in charge. Such application shall describe the proposed form and set forth the need therefor. The special agent in charge shall determine whether there is a need for the substitute form and whether approval thereof would unduly hinder the effective administration of this part or result in jeopardy to the revenue. The special agent in charge shall inform the applicant of his decision and the reasons therefor. A substitute form shall not be employed until approval is received from the special agent in charge.

(b) The return shall be prepared and rendered in accordance with the instructions contained in the demand letter for the designated reporting period.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1373, as amended, 1374, as amended (26 U.S.C. 5291, 5301))

§ 170.27 Records required.

Every person who has been required to render a return shall maintain at his place of business such books, records, documents, papers, invoices, bills of lading, etc., relating to or connected with any such disposition, as will enable such person to make the required return. Such books, records, documents, papers, invoices, bills of lading, etc., shall be maintained for a period of three years and shall be kept readily available for, and open to, inspection by any officer of the Bureau of Alcohol, Tobacco and Firearms during the hours of business of such person.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1373, as amended, 1374, as amended (26 U.S.C. 5291, 5301))

§ 170.28 Tax.

Any person who produces, withdraws, sells, transports, or uses denatured distilled spirits, or articles, as defined in § 170.23, in violation of law or regulations shall be required to pay tax on such denatured distilled spirits or articles, as provided by 26 U.S.C. 5001(a)(6).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001))

Subparts C–D—[Reserved]

PART 173—RETURNS OF SUBSTANCES, ARTICLES, OR CONTAINERS [REDESIGNATED AS SUBPART B OF PART 170 AND REVISED]

Par. 12. Part 173 is removed from Title 27 CFR.

All sections in Part 173 which deal with articles, substances, or containers have been redesignated as Part 170, Subpart B and revised.

PART 194—LIQUOR DEALERS

Par. 13. Section 194.11 is amended to change the definition of liquor bottle and to add and define the words "reclaim" and "recycle." As revised, these paragraphs read as follows:

§ 194.11 Meaning of terms.

* * * * *

Liquor bottle. A bottle made of glass or earthenware, or of other suitable material approved by the Food and Drug Administration, which has been designed or is intended for use as a container for distilled spirits for sale for beverage purposes and which has been determined by the Director to adequately protect the revenue.

* * * * *

Reclaim. To grind up a liquor bottle or container and use the ground up material to make products other than liquor bottles or containers.

Recycle. To grind up a liquor bottle or container and use the ground up material to make new liquor bottles or containers.

* * * * *

Par. 14. Section 194.263 is amended by the addition of paragraph (c) authorizing possession of used liquor bottles for the purpose of recycling or reclaiming the liquor bottle material, and by making editorial changes. Section 194.263 is revised to read as follows:

§ 194.263 Possession of used liquor bottles.

The possession of used liquor bottles by any person other than the person who empties the contents thereof is prohibited except for the following:

(a) The owner or occupant of any premises on which such bottles have been lawfully emptied may assemble the same on such premises—

(1) For delivery to a bottler or importer on specific request of such bottler or importer;

(2) For destruction, either on the premises on which the bottles are emptied or elsewhere, including disposition for purposes which will result in the bottles being rendered unusable as bottles; or

(3) In the case of unusual or distinctive bottles, for disposition or sale as collectors' items or for other purposes not involving the packaging of any product for sale.

(b) Any person may possess, offer for sale, or sell unusual or distinctive bottles for purposes not involving the packaging of any product for sale.

(c) Any person may assemble used liquor bottles for the purpose of recycling or reclaiming the glass or other approved liquor bottle material.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

§ 250.313 [Removed]

Par. 15. The table of contents of 27 CFR Part 250 is amended to remove § 250.313.

Par. 16. Section 250.11 is amended to change the definition of liquor bottle. As revised, this paragraph reads as follows:

§ 250.11 Meaning of terms.

* * * * *

Liquor bottle. A bottle made of glass or earthenware, or of other suitable material approved by the Food and Drug Administration, which has been designed or is intended for use as a container for distilled spirits for sale for beverage purposes and which has been determined by the Director to adequately protect the revenue.

* * * * *

§ 250.313 [Removed]

Par. 17. Section 250.313 concerning indicia for bottles is removed. Indicia on liquor bottles is no longer required.

Par. 18. Section 250.314 is revised to simplify the procedure whereby an importer can obtain approval to bring distinctive liquor bottles (filled) into the United States from Puerto Rico or the Virgin Islands. This section is also revised to simplify the procedure whereby a bottler can obtain approval to use distinctive liquor bottles (empty) which have been brought into the United States from Puerto Rico or the Virgin Islands. The phrase "whether or not such bottles bear the indicia required under Part 173 of this chapter," which is located in the first paragraph of this section, is eliminated. As revised, § 250.314 reads as follows:

§ 250.314 Distinctive liquor bottles.

(a) *Application.* Liquor bottles of distinctive shape or design, including bottles of less than 200 ml. capacity, may be brought into the United States from Puerto Rico or the Virgin Islands by an importer (filled bottles) or a bottler (empty bottles). For filled bottles, the importer shall submit Form 1649/5100.31 to the Director for approval prior to bringing such bottles into the United States. For empty bottles, the bottler shall obtain approval from the Director on Form 1649/5100.31 prior to using the bottles. The importer or bottler, as applicable, shall certify as to the total capacity of a representative sample bottle before closure (expressed in milliliters) on each copy of the form. In addition, the applicant shall affix a readily legible photograph (both front and back of the bottle) to the front of each copy of Form 1649/5100.31, along with the label(s) to be used on the bottle. The applicant shall not submit an actual bottle or an authentic model unless specifically requested to do so.

(b) *Approval.* Properly submitted Forms 1649/5100.31 to bring distinctive liquor bottles (filled) into the United States from Puerto Rico or the Virgin Islands, or, properly submitted Forms 1649/5100.31 to use distinctive liquor bottles (empty) which have been brought into the United States from Puerto Rico or the Virgin Islands, shall be approved provided such bottles are found by the Director to—

(1) Meet the requirements of 27 CFR Part 5;

(2) Be distinctive;

(3) Be suitable for their intended purpose;

(4) Not jeopardize the revenue; and

(5) Not be deceptive to the consumer.

The applicant shall keep a copy of the approved Form 1649/5100.31, including an approved photograph (both front and back) of the distinctive liquor bottle, on file at his premises. If Form 1649/5100.31 is disapproved, the applicant shall be notified of the Director's decision and the reasons therefor. The applicant importer is responsible for furnishing a copy of the approved Form 1649/5100.31, including a photograph of the distinctive liquor bottle, to Customs officials at each affected port of entry where the merchandise is examined.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301)

Par. 19. Section 250.316 is revised to eliminate the phrase "whether or not it bears the indicia required under Part 173 of this chapter." As revised, this section reads as follows:

§ 250.316 Bottles not constituting approved containers.

The Director is authorized to disapprove any bottle, including a bottle of less than 200 ml. capacity, for use as a liquor bottle which he determines to be deceptive. The Customs officer at the port of entry shall deny entry of any such bottle containing distilled spirits upon advice from the Director that such bottle is not and approved container for distilled spirits for consumption in the United States.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

PART 251—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

Par. 20. The table of contents of 27 CFR Part 251 is amended to remove § 251.203.

Par. 21. Section 251.11 is amended to change the definition of liquor bottle. As revised, this paragraph reads as follows:

§ 251.11 Meaning of terms.

* * * * *

Liquor bottle. A bottle made of glass or earthenware, or of other suitable material approved by the Food and Drug Administration, which has been designed or is intended for use as a container for distilled spirits for sale for beverage purposes and which has been determined by the Director to adequately protect the revenue.

* * * * *

§ 251.203 [Removed]

Par. 22. Section 251.203 concerning indicia for bottles is removed. Indicia on liquor bottles is no longer required.

Par. 23. Section 251.204 is revised to simplify the procedure whereby an importer can obtain approval to bring distinctive liquor bottles (filled) into the United States. This section is also revised to simplify the procedure whereby a bottler can obtain approval to use distinctive liquor bottles (empty) which have been imported into the United States. The phrase "whether or not such bottles bear the indicia required under Part 173 of this chapter," which is located in the first paragraph of

this section, is removed. As revised, § 251.204 read as follows:

§ 251.204 Distinctive liquor bottles.

(a) *Application.* Liquor bottles of distinctive shape or design, including bottles of less than 200 ml. capacity, may be imported by an importer (filled bottles) or a bottler (empty bottles). For filled bottles, the importer shall submit Form 1649/5100.31 to the Director for approval prior to importation of such bottles into the United States. For empty bottles, the bottler shall obtain approval from the Director on Form 1649/5100.31 prior to using the bottles. The importer or bottler, as applicable, shall certify as to the total capacity of a representative sample bottle before closure (expressed in milliliters) on each copy of the form. In addition, the applicant shall affix a readily legible photograph (both front and back of the bottle to the front of each copy of Form 1649/5100.31, along with the label(s) to be used on the bottle. The applicant shall not submit an actual bottle or an authentic model unless specifically requested to do so.

(b) *Approval.* Properly submitted Forms 1649/5100.31 to import distinctive liquor bottles (filled), or, properly submitted Forms 1649/5100.31 to use distinctive liquor bottles (empty) which have been imported, shall be approved provided such bottles are found by the Director to—

(1) Meet the requirements of 27 CFR Part 5;

(2) Be distinctive;

(3) Be suitable for their intended purpose;

(4) Not jeopardize the revenue; and

(5) Not be deceptive to the consumer.

The applicant shall keep a copy of the approved Form 1649/5100.31, including an approved photograph (both front and back) of the distinctive liquor bottle, on file at his premises. If Form 1649/5100.31 is disapproved, the applicant shall be notified of the Director's decision and the reasons therefor. The applicant importer is responsible for furnishing a copy of the approved Form 1649/5100.31, including a photograph of the distinctive liquor bottle, to Customs officials at each affected port of entry where the merchandise is examined.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

Par. 24. Section 251.206 is revised to eliminate the phrase "whether or not is bears the indicia required under Part 173 of this chapter." As revised, this section reads as follows:

§ 251.206 Bottles not constituting approved containers.

The Director is authorized to disapprove any bottle, including a bottle of less than 200 ml. capacity, for use as a liquor bottle which he determines to be deceptive. The Customs officer at the port of entry shall deny entry of any such bottle containing distilled spirits upon advice from the Director that such bottle is not an approved container for distilled spirits for consumption in the United States.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

Signed: August 12, 1982.

Stephen E. Higgins,

Acting Director.

Approved: September 14, 1982.

J. M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 82-27293 Filed 10-4-82; 8:45 am]

BILLING CODE 4810-31-M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for Issue 10 of the Domestic Mail Manual (DMM), which is incorporated by reference in the **Federal Register**, 39 CFR 111.1.

Some of the revisions are minor, editorial, or clarifying. Substantive changes, such as the acceptance times for Express Mail Next Day Service or the decrease in rates for preferred-rate mailers, have previously been published in the **Federal Register.**

EFFECTIVE DATE: August 1, 1982.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp, (202) 245–4638.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual, which is incorporated by reference in the **Federal Register** (see 39 CFR 111.1) has been amended by the publication of a transmittal letter for Issue 10, dated August 1, 1982. The text of all published changes is filed with the Director of the Federal Register. Subscribers to the Domestic Mail Manual receive these amendments automatically from the Government Printing Office.

The following excerpt from the Summary of Changes section of the transmittal letter for Issue 10 covers the minor changes not previously described in interim or final rules published in the **Federal Register.**

Summary of Changes

Note.—Issue 10 contains all DMM revisions published between May 6 and July 29, 1982.

1. Section 115.5*f* is renumbered as 115.5*g*, and new 115.5*f* is added to allow photocopying or filming of the covers of mail for certain internal postal purposes (PB 21353, 5–27–82).

2. Section 142.11 is revised to delete the second footnote (designated by **), to reflect that fact that the stamps discussed in that footnote are available for sale (PB 21350, 5–6–82).

3. Section 144.3 is revised to replace trust fund or trust account with the term *advance deposit account* where appropriate (PB 21357, 6–24–82).

4. Section 144.311 is revised to correct instructions regarding the initial setting of postage on a meter that cannot be set to a zero balance (PB 21357, 6–24–82).

5. Section 144.492 is revised to broaden the permissible content of postal marking in ad plates to those relating to a class of mail (PB 21357, 6–24–82).

6. Section 147.252*a* is revised to specify that unused meter stamps must be submitted on the surface to which originally attached, along with the address portion of the piece (PB 21357, 6–24–82).

7. Section 152.7 is revised to permit Federal government executive departments and their regional offices to recall mail by submitting a Mailgram identifying the mail piece (PB 21355, 6–10–82).

8. Section 153.212 is revised to allow either a commercial agent or a notary public to witness the addresse's signature on Form 1583, *Application for Delivery of Mail through Agent* (PB 21352, 5–20–82).

9. * * *

10. Section 224.3 is revised to delete reference to Form 5631 and to require that Express Mail shipments addressed to post office box addresses and reshipped by Express Mail Next Day Service must be paid by a Special Permit Advance Deposit Account (PB 21362, 7–29–82).

11. Part 293 is revised to reflect new procedures and eliminate reference to Form 5625A, *Express Mail Custom Designed/Same Day Airport Service Mailing Statement* (PB 21358, 7–1–82).

12. Exhibit 367.24 is revised to implement changes in ADC service areas for Charlotte and Greensboro, NC, and for Birmingham and Montgomery, AL (PB 21350, 5–6–82).

13. Sections 467.112*b*(2), and 667.311*b*(2) are revised to permit the use of the prefix *GD* for general delivery. Sections 367.313*b*(2), 467.112*b*(2) and 667.311*b*(2) are revised to authorize the use of the prefix *HC* for highway contract route rather than *SR*, effective May 1, 1983 (PB 21356, 6–17–82).

14. * * *

15. Section 464.21 is deleted and the remainder of 464 is renumbered. Section 467.117, 467.118, and 467.119 are revised to indicate that mailers are no longer required to wrap individual copies of second-class publications, under specified conditions (PB 21357, 6–24–82).

16. Section 467.112*b*(2) is revised to incorporate new regulations governing carrier route package labels on second-class mailings (PB 21356, 6–17–82).

17. Sections 467.13, 667.122, 667.311, and 667.41 are revised to allow counterstacking of pieces within packages of second- and third-class bulk mail (PB 21356, 6–17–82).

18. Section 467.62*a* is revised to clarify conditions under which pieces in a 5-digit package may qualify for Level B, E, or H second-class per piece rates (PB 21357, 6–24–82).

19. Exhibit 722.1 is revised to correct the 3-digit ZIP Code area for Atlanta (PB 21360, 7–15–82).

20. The following sections of chapter 9 are revised to clarify and simplify existing procedures and to conform to revised procedures regarding special services: Sections 911.252, 912.44*c*, 912.45*a*, 912.52, 912.61*a*, 912.64, 912.72, 913.12, 913.43, 913.522, 913.62*d*, 913.721, 913.722, 915.5, 915.611*d*, 915.621, 915.622, 915.624, 916.1, 916.3, 931.21, 931.32, 932.41, 932.42, 933.31, 933.42*b* (PB 21360, 7–15–82).

21. Section 911.522 is added to allow a duplicate inquiry on uninsured registered mail to be filed 30 days after the original inquiry (PB 21350, 5–6–82).

22. Section 952.127 is revised to include new procedures for assigning numbers to post office boxes (PB 21355, 6–10–82).

23. Minor editorial changes are made in sections 914.54*b* and 914.61 to correct printing errors.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

In consideration of the foregoing, 39 CFR 111.3 is amended by adding at the end thereof the following:

§ 111.3 Amendments to the Domestic Mail Manual

* * * * *

Transmittal letter for issue	Dated	Federal Register publication
10	Aug. 1, 1982	47 FR 43951

(5 U.S.C. 552(a); 39 U.S.C. 401, 407, 408, 3001–3011, 3201–3218; 3403–3405, 3601, 3621; 42 U.S.C. 1973 cc–13, 1973 cc–14)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 82–27295 Filed 10–4–82; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–4–FRL 2206–6; MS–002]

Approval and Promulgation of Implementation Plans; Mississippi NSPS and NESHAPS Regulations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today approves regulations which Mississippi adopted to be able to administer and enforce Federal Standards of Performance for New Stationary Sources (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS), 40 CFR Parts 60 and 61. The State adopted these Federal regulations by reference on August 26, 1981, and submitted the associated changes in the State regulations to EPA on September 8, 1981, for approval as a revision of the Mississippi State implementation plan (SIP). (EPA delegated the NSPS and NESHAPS to Mississippi on November 30, 1981; see FR of March 24, 1982, at page 12626).

EFFECTIVE DATE: This action will be effective on December 6, 1982, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Mississippi's submittal may be examined during normal business hours at the following locations:

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

Air Management Branch, EPA Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365

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

Bureau of Pollution Control, Mississippi Dept of Natural Resources, P.O. Box 10385, Jackson, Mississippi 39209

FOR FURTHER INFORMATION CONTACT: Ms. Denise W. Pack, EPA Region IV, at the Atlanta address above, telephone 404/881–3286 (FTS 257–3286).

SUPPLEMENTARY INFORMATION: The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

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 6, 1982. This action may not be challenged later in proceedings to enforce its requirements. (See sec. 307(b)(2).)

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

Incorporation by reference of the Mississippi State implementation plan was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Sec. 110 of the Clean Air Act (42 U.S.C. 7410))

Dated: September 21, 1982.

Anne M. Gorsuch,

Administrator.

PART 52 [AMENDED]

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

Subpart Z—Mississippi

In § 52.1270, paragraph is amended by adding paragraph (c)(14) as follows:

§ 52.1270 Identification of plan.

* * * * *

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

* * *

(14) Incorporation by reference of NSPS and NESHAPS (revised definition of "person", addition of paragraph 3 to section 6 of APC–S–1, addition of section 8 to APC–S–1, and addition of subparagraph 2.6.3 to APC–S–2), submitted on September 8, 1981, by the Mississippi Bureau of Pollution Control.

[FR Doc. 82–27396 Filed 10–4–82; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6341

[AA–44897]

Alaska; Partial Revocation of Executive Order No. 8979, as Amended; Modification of Public Land Order No. 5183

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes Executive Order No. 8979, as amended, and modifies Public Land Order No. 5183. It removes from the Kenai National Wildlife Refuge the subsurface estate of lands conveyed to Cook Inlet Region, Inc., in accordance with the "Beaver Creek Settlement Agreement" of May 18, 1981, under the provisions of the Alaska Native Claims Settlement Act, as amended by the Alaska National Interest Lands Conservation Act.

EFFECTIVE DATE: October 5, 1982.

FOR FURTHER INFORMATION CONTACT: Beau McClure 202–343–6511 or Robert D. Arnold, Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

SUPPLEMENTARY INFORMATION: In accordance with the "Beaver Creek Settlement Agreement" of May 18, 1982, entered into pursuant to Sec. 22(f) of the Alaska Native Claims Settlement Act (43 U.S.C. 1621(f)) and Sec. 1302(h) of the Alaska National Interest Lands Conservation Act (94 Stat. 2475), and by virtue of the authority vested in the Secretary of the Interior by Sec. 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; (43 U.S.C. 1714), it is ordered as follows:

1. Executive Order No. 8979 of December 16, 1941, as amended by Public Land Order No. 3400 of May 23, 1964, which withdrew and reserved certain lands on the Kenai Peninsula, Alaska, for use of the Department of the Interior as a refuge and breeding ground for moose is hereby revoked in part, as to the subsurface estate of the lands described below:

Seward Meridian, Alaska

T. 6 N., R. 10 W.,
Secs. 13, 14 and 15, all;
Secs. 22 to 28, inclusive;
Secs. 32 to 36, inclusive.

Containing approximately 9,600.00 acres.

2. Public Land Order No. 5183 of March 9, 1972, which withdrew certain lands within the boundaries of the Kenai National Wildlife Refuge in the protection of public interest under Sec. 17(d)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1616(d)(1)) is hereby revoked as it relates to the lands described in paragraph 1.

Dated: September 27, 1982.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 82–27319 Filed 10–4–82; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Part 2800

Rights-of-Way, Principles and Procedures; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction.

SUMMARY: The final rulemaking on Rights-of-Way, Principles and Procedures contained in 43 CFR Part 2800 was published in the **Federal Register** on September 2, 1982 (47 FR 38804). Item 3 of that document amended § 2802.1(d), but the publication omitted the figure "(d)". This correction notice corrects that omission.

ADDRESS: Any inquiries or suggestions should be sent to: Director (330), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Leon Kabat (202) 343–5441.

Item 3 on page 38805 is corrected to read:

§ 2802.1(d) [Amended]

3. Section 2802.1(d) is amended by removing the second sentence in its entirety.

Dated: September 30, 1982.

David G. Houston,

Acting Assistant Secretary of the Interior.

[FR Doc. 82–27338 Filed 9–30–82; 2:55 pm]

BILLING CODE 4310–84–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

Social Security Administration

45 CFR Parts 232, 233, 302, and 303

Child Support Enforcement Program; Aid to Families With Dependent Children Program; Treatment of Assigned Support Payments Received Directly and Retained by AFDC Applicants or Recipients

AGENCY: Office of Child Support Enforcement (OCSE), and Social Security Administration, (SSA), HHS.

ACTION: Final rule with comment period.

SUMMARY: The Child Support Enforcement program under title IV–D of the Social Security Act (the Act) is charged with establishing paternity and securing support on behalf of recipients of Aid to Families with Dependent Children (AFDC) under title IV–A of the Act. As a condition of eligibility for AFDC, applicants and recipients must assign to the State the support rights of any person on whose behalf aid is sought or received. Assigned support collections are used, in part, to reimburse the assistance payments provided by the State and Federal governments, and generally do not affect the amount of the AFDC grant.

Another condition of eligibility for AFDC is that the applicant or recipient "cooperate with the State * * * in obtaining support payments". Current AFDC regulations at 45 CFR 232.12(b)(4) specify that cooperation includes "paying to the child support agency any (assigned) child support payments received from the absent parent." In some cases, however, recipients fail to forward these payments to the IV–D agency, and as a result have the use of the payments as income. The purpose of these regulations is to codify joint AFDC and Child Support Enforcement policy for handling those situations in which an AFDC recipient receives and retains child support payments from an absent parent.

EFFECTIVE DATE: October 5, 1982. We will consider written comments received on or before December 6, 1982 and make any changes necessary in response to those comments.

ADDRESS: Address comments to: Director, Office of Child Support Enforcement, Department of Health and Human Services, Room 1010, 6110 Executive Blvd., Rockville, Maryland 20852, Att'n: Policy Branch. Agencies and organizations are requested to

submit comments in duplicate. The comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m., in Room 1010 of the Department's offices at the above address.

FOR FURTHER INFORMATION CONTACT: Elizabeth Matheson, OCSE, Policy Branch, (301) 443–5350; or Mr. David Siegel, Transpoint Building, 2100 2nd Street, SW., Washington, D.C. 20201, (202) 245–2736.

SUPPLEMENTARY INFORMATION:

Background

When an assignment of support rights has been made by an AFDC applicant or recipient under Section 402(a)(26)(A) of the Act (42 U.S.C. 602(a)(26)(A)), it is the responsibility of the IV–D agency under Section 454(4) of the Act (42 U.S.C. 654(4)) to establish, enforce, and collect a support obligation for anyone covered by that assignment. Section 454(5) of the Act (42 U.S.C. 654(5)) specifically requires the IV–D agency to ensure that assigned payments "shall be made to the State for distribution pursuant to section 457 (with one exception) and shall not be paid directly to the family." Section 457 provides the method for assigned support collections to be either distributed among the State and Federal governments or given to the family.

The distribution requirements cannot be implemented when support payments are permitted to flow directly from the absent parent to the family, for several reasons: first, the statutory requirements for distribution of assigned collections by the IV–D agency cannot be carried out when the IV–D agency does not receive the collection; second, the enforcement function of the IV–D agency is hampered because the agency cannot monitor payments by the absent parent. It is, therefore, a primary responsibility of the IV–D agency to take prompt action to redirect payments which are being received by the family so that these payments flow from the absent parent to the IV–D agency and not to the family. However, there are circumstances, such as a backlog of cases or the need to change the payee of a court ordered support obligation, in which the AFDC recipient continues to receive support payments directly from the absent parent for some time after the case has been referred to the IV–D agency. For this reason, as noted above, AFDC regulations require that direct support payments be paid by the recipient to the IV–D agency, as a condition of AFDC eligibility.

A problem arises when a recipient fails to forward to the IV–D agency assigned support payments received directly from an absent parent (direct payments). For this reason, the Office of Family Assistance and the Office of Child Support Enforcement issued a joint Action Transmittal—Program Instruction (SSA–AT–81–7 (OFA) and OCSE–AT–81–7, dated March 27, 1981) to provide Federal policy on treatment of support payments received and retained by AFDC applicants or recipients until publication of final regulations on this subject. The Action Transmittal also provides for the application of the sanction for failure to cooperate for retention of past as well as current support payments.

What These Regulations Provide

These regulations codify the policy contained in Action Transmittal 81–7. Under these regulations, States must implement on a Statewide basis one of two methods for the treatment of retained direct support payments. We emphasize that the two methods for treatment of retained direct support payments are not intended to preclude or restrict the prosecution for fraud under applicable State civil or criminal law where warranted.

1. IV–A Income Method. Current AFDC regulations at 45 CFR 233.20(a) (1) and (3) require that the IV–A agency treat assigned support payments retained in the current month as income in determining need and amount of the assistance payment. An overpayment of assistance occurs for each month in which a direct support payment is retained by the recipient and not counted by the IV–A agency to reduce the AFDC payment. the Under IV–A income method, all States must implement the IV–A Plan provisions of 45 CFR 233.20(a)(13) for recovering these overpayments.

States that currently treat retained direct payments as income will not be required to change. Under the IV–A income method of accounting for retained support payments, the role of the IV–D agency is essentially limited to: (1) Contacting the recipient in the month in which a payment is due to be forwarded to the IV–D agency, and (2) informing the IV–A agency when it discovers that a recipient is retaining or has retained directly paid support.

Notwithstanding these provisions for IV–A agencies to account for retained direct support payments, recipients must still forward directly received support payments to the IV–D agency as a condition of eligibility under 45 CFR 232.12. If, in a IV–A income State, a recipient receives and retains a support payment in one month and consequently receives an overpayment of assistance for that month, the IV–A agency will implement recovery procedures consistent with the IV–A State plan.

2. IV–D Recovery Method. We are amending IV–D State plan regulations at 45 CFR 302.31 to provide a second method for treatment of retained direct payments whereby the IV–D agency recovers the retained amounts through a repayment agreement with the recipient. This requires an exception to 45 CFR 233.20(a)(3) which currently provides that retained support payments covered by an assignment be counted as income by the IV–A agency. When a State IV–D agency elects this method in its State plan, the IV–A agency will not count any retained direct support payments as income to meet need, except for the redetermination of eligibility under 45 CFR 232.20 and when a sanction for failure to cooperate is applied under 45 CFR 232.12(d). The procedures for IV–D recovery are specified at the new 45 CFR 302.31(a)(3) and 303.80.

The provisions for IV–D recovery in the amended 45 CFR 302.31 and in the new 45 CFR 303.80 are the same as those provided in our joint action transmittal. We are establishing a IV–D State plan provision for IV–D recovery in a new paragraph (a)(3) under 45 CFR 302.31. This amended IV–D State plan requirement provides that if a State elects the IV–D recovery method of accounting for retained direct payments, the IV–D agency will establish a repayment plan with the AFDC recipient in accordance with the requirements of § 303.80.

The new § 303.80 establishes specific procedures and limitations for repayment agreement between IV–D agencies and AFDC recipients. First, the IV–D agency must document that directly paid support has been retained and the amounts. Second, the IV–D agency must provide the recipient prior written notice of its intent to recover the amounts. This notice must specify both the amounts retained and the proposed method for recovery. The specific elements of this notice are provided at § 303.80(c)(2) (i) through (iv).

In addition to the written notice of intent to recover, the IV–D agency must provide the AFDC recipient with the opportunity for an informal meeting for the purpose of resolving any differences regarding repayment of the directly received retained support. The requirements for this meeting are provided in § 303.80(c)(3). At this meeting, the IV–D agency will explain the nature and amount of the recipient's debt. The recipient can submit documentation to rebut any part of the State's claim.

After these requirements have been met, the recipient enters into a repayment agreement with the IV–D agency subject to the requirements of § 303.80(d). This subsection provides that the repayment agreement must be individually structured so as to account for both the recipient's ability to repay and the size of the debt. We believe that an individualized agreement is essential to avoid both undue hardship on the recipient and unreasonably long repayment periods in relation to the amount of retained support.

Under the new § 303.80(e), when a recipient does not enter into or comply with the terms of a repayment agreement with the IV–D agency, the IV–A agency must refer the case to the IV–A agency with evidence of failure to cooperate. The new § 303.80(f) requires the IV–D agency to refer a case to the IV–D agency for a determination of the recipient's failure to cooperate with a repayment plan, and also to notify the IV–A agency when the recipient begins to cooperate. In the case of a recipient who fails to cooperate by initially refusing to enter into an agreement, cooperation is restored when that recipient signs a repayment agreement with the IV–D agency. In the case of a recipient who defaults on a repayment agreement, cooperation is restored when the recipient begins making regularly scheduled payments according to that agreement. At the new § 303.80(f)(2), we specifically provide that the resumption of payment in the case of a default does not mean payment of past due amounts which went unpaid during the period of default. Rather, cooperation is restored when the recipient makes a current, regularly scheduled payment according to the terms of the agreement. Amounts due from any period of default simply extend the duration of the repayment agreement by the number of months in which payments were not made. We also specify at § 303.80(f)(2) that repayment agreements may not include provisions for balloon payments or an acceleration clause as a condition for restoring cooperation in the case of a default.

State Plan Amendments

We are requiring amendments to both the IV–A State plan and the IV–D State plan which will indicate whether a given State elects the IV–A income method or the IV–D recovery method. This will assure that all retained direct payments are accounted for while protecting recipients from the possibility of duplicate accounting systems. The necessary plan preprint pages will be issued shortly after publication of these regulations. We urge State IV–A agencies and State IV–D agencies in each State to consult one another in the very near future to arrive at a decision as to which method will be used in that State, so that when the respective IV–A and IV–D State plan amendments are submitted for Departmental approval they will be consistent and hence approvable.

Additional Regulatory Change

We are making a technical change in 45 CFR 233.20(a)(3)(vi) to delete the first full sentence, because it no longer applies under new statutory requirements. The remaining two sentences in this subparagraph remain unchanged.

Rulemaking

Under the Administrative Procedure Act, 5 U.S.C. 553(b)(B), if the Department finds good cause that proposed rulemaking is unnecessary, impractical or contrary to the public interest, it may waive publication of proposed rules. We believe there is good cause for dispensing with a Notice of Proposed Rulemaking for the following reasons.

(1) This regulation reflects established policy that the Department previously published in Action Transmittal—Program Instruction 81–7, dated March 27, 1981. This Action Transmittal was included in an *amicus curiae* brief filed by the Government with the United States Supreme Court in *Thompson v. Berry*, Docket No. 80–456, cert. denied. 49 U.S.L.W. 3882 (1981), as representing current Departmental policy. Consequently, we believe that publication of proposed rules would be unnecessary.

(2) The Action Transmittal provides the only definitive statement of current Federal policy with regard to the treatment of retained direct support payments. We believe it would be contrary to the public interest and disruptive to the AFDC and Child Support Enforcement programs to publish regulations in proposed form, implying that the policy set forth in the Action Transmittal was no longer in effect. We believe publication of proposed rules would create the mistaken public impression that the policy has not been settled, when in fact it has been both settled and submitted to the Supreme Court as operating Federal policy. We believe it would be a disservice to the public to create such an impression. Moreover, the necessary State plan amendments to reflect State practices cannot be issued until publication of regulations in final form. Thus, it is in the interests of the States and the public to publish final rules as quickly as possible so that these plan amendments can be executed.

(3) This final rule will codify the Department's existing policies and procedures for accounting for all support payments received by an AFDC recipient from an absent parent. The regulation ensures that either the IV–A or the IV–D agency must account for all collections. This will result in immediate and long term savings to Federal, State and local governments participating in the AFDC and Child Support Enforcement programs. Thus, publication of proposed rule making would be contrary to the public interest.

(4) This regulation authorizes the two methods which our research indicates are already being employed to address the problem of retained direct support payments. It ensures a greater degree of uniformity among IV–A income States and among IV–D recovery States, but does not significantly alter what we know to be existing State and local agency practices. The regulation favorably affects recipients by requiring certain due process protections. Both the States and recipients will thus be served by publication of this regulation as a final rule, which will not disrupt existing permssible program practices.

Although the regulation is published in final form, we encourage public comments and will make any changes necessary in response to those comments.

OMB Clearance

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the revisions to the IV–A and IV–D State plans (§§ 282.12(b)(4), 233.20(a)(3) (v) and (vi) and 302.31(a)(3)) have been approved by the Office of Management and Budget under existing OMB Nos. 0960–0252(OFA) and 0960–0253(OCSE).

List of Subjects

45 CFR Part 232

Aid to Families with Dependent Children, Child support (new term), Child welfare, Family Assistance Office, Grant programs—social programs.

45 CFR Part 233

Aid to Families with Dependent Children, Aliens, Family Assistance Office, Public assistance programs, Reporting requirements.

45 CFR Parts 302 and 303

Child welfare, Grant programs/socia. programs.

(Sec 1102 of the Social Security Act, 49 Stat. 647 (42 U.S.C. 1302))

(Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement Program, and Program No. 13.761, Public Assistance—Maintenance Assistance (State Aid))

Note 1.—The Secretary has determined that this document is not a major rule as described by Executive Order 12291, because it does not meet any of the criteria set forth in Section 1 of the Executive Order.

Note 2.—The Secretary certifies that because these regulations apply to States and will not have a significant economic impact on a substantial number of small entities, they do not require a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act of 1980.

Dated: July 13, 1982.

John A. Svahn,

Commissioner of Social Security, and Director, Office of Child Support Enforcement.

Approved: September 1, 1982.

Richard S. Schweiker,

Secretary.

For the reasons discussed in the preamble, 45 CFR Parts 232, 233, 302 and 303 are amended to read as follows:

PART 232 [AMENDED]

1. In 45 CFR 232.12, paragraph (b)(4) is revised to read as follows:

§ 232.12 Cooperation in obtaining support.

The State plan must meet all requirements of this section.

* * * * *

(b) The plan shall specify that *cooperate* includes any of the following actions that are relevant to, or necessary for, the achievement of the objectives specified in paragraph (a) of this section.

* * * * *

(4) Paying to the child support agency any support payments received from the absent parent after an assignment under § 232.11 has been made. This includes support payments received in the current month and any amounts due to the IV-D agency under the IV-D State plan provisions for recovery of retained direct support payments at 45 CFR 302.31(a)(3)(ii).

* * * * *

PART 233 [AMENDED]

2. In 45 CFR 233.20, paragraphs (a)(3)(v) and (vi) are revised to read as follows:

§ 233.20 Need and amount of assistance.

(a) *Requirements for State Plans.* A State Plan for OAA, AFDC, AB, APTD or AABD must, as specified below:

* * * * *

(3) *Income and resources: OAA, AFDC, AB, APTD, AABD.* * * *

(v) Provide that agency policies will assure that:

(A) in determining eligibility for an assistance payment, support payments assigned under § 232.11 of this chapter will be treated in accordance with § 232.20 of this chapter; and

(B) in determining the amount of an assistance payment, assigned support payments retained in violation of § 232.12(b)(4) of this chapter, will be counted as income to meet need unless the approved IV-A State plan provides that such support payments are subject to IV-D recovery under §§ 302.31(a)(3) and 303.80 of this title or unless such payments are sufficient to render the family ineligible as provided at § 232.20 of this chapter.

(vi) In family groups living together, income of the spouse is considered available for his spouse and income of a parent is considered available for children under 21, except that, under the AFDC plan, if a spouse or parent is receiving SSI benefits under title XVI, then, for the period for which such benefits are received, his income and resources shall not be counted as income and resources available to the AFDC unit. For purposes of this exception, "a spouse or parent receiving SSI benefits" includes a spouse or parent receiving mandatory or optional State supplementary payments under section 1616(a) of the Act or under section 212 of Pub. L. 93-66.

PART 302 [AMENDED]

3. In 45 CFR 302.31, paragraph (a) is amended by adding a new paragraph (a)(3) to read as follows:

§ 302.31 Establishing paternity and securing support.

The State plan shall provide that:

(a) The IV-D agency will undertake:

* * * * *

(3) When assigned support payments are received and retained by an AFDC recipient, to proceed as follows:

(i) In States that implement the IV-A State plan requirements to count retained support payments as income under 45 CFR 233.20(a)(3)(v), the IV-D agency shall notify the IV-A agency whenever it discovers that directly received payments are being, or have been, retained; or

(ii) In States that do not implement the IV-A State plan requirements to count retained support payments as income to meet need, the IV-D agency shall recover the retained support payments. This recovery by the IV-D agency shall be carried out in accordance with the standards for program operations provided in § 303.80 of this chapter.

* * * * *

PART 303 [AMENDED]

4. In 45 CFR Part 303, § 303.80 is added to read as follows:

§ 303.80 Recovery of direct payments.

(a) *Definition.* "Direct payment" means an assigned support payment from an absent parent which is received directly by an AFDC recipient.

(b) *Direct payments that must be recovered by the IV-D agency.* In States that place the responsibility for recovery of direct payments with the IV-D agency under the State plan option at § 302.31(a)(3)(ii) of this chapter, the IV-D agency must recover all such payments. The only exceptions are those direct payments retained by the recipient during the period when the sanction for failure to cooperate is in effect, as provided at 45 CFR 232.12(d), or those retained amounts which are used by the IV-A agency to determine an assistance unit ineligible for continued assistance under § 232.20 of this title.

(c) *What the IV-D agency must do prior to establishing a repayment agreement with an AFDC recipient.* Before establishing a repayment agreement with an AFDC recipient, the IV-D agency must:

(1) Document that the recipient has, in fact, received and retained direct payments, and the amounts;

(2) Provide written notice of intent to recover the payments to the recipient that includes the following:

(i) An explanation of the recipient's responsibility to cooperate by turning over direct payments as a condition of eligibility for AFDC, and the sanction for failure to cooperate as provided at § 232.12(d) of this title;

(ii) A detailed list of the direct payments which have been retained by the recipient, as documented by the IV-D agency, including the dates and amounts of these payments as well as a description of any documentary evidence (such as photocopies of the checks) which the IV-D agency possesses;

(iii) A proposal for a repayment plan between the recipient and the IV-D agency;

(iv) An explanation that repaying retained direct payments to the IV-D agency according to a signed repayment plan which meets the conditions of paragraph (d) below is a condition of cooperation under § 232.12(b)(4) of this title.

(3) Provide the recipient with an opportunity for an informal meeting to clarify the recipient's responsibilities and to resolve any differences regarding repayment of the directly received support by the recipient.

(d) *Requirements of the repayment agreement.* The repayment agreement between the IV–D agency and the recipient who has received and retained direct payments must be reasonably related to:

(1) The recipient's income and resources including the AFDC grant; and

(2) The total amount of retained support.

(e) *Referrals to the IV–A agency for a determination of failure to cooperate.* The IV–D agency must refer a case to the IV–A agency with evidence of failure to cooperate if:

(1) The recipient refuses to sign a repayment agreement; or

(2) The recipient enters into a repayment agreement but subsequently fails to make a payment under the terms of the agreement.

(f) *Subsequent notification to the IV–A agency as required.* If the IV–D agency has referred a case to the IV–A agency with evidence of failure to cooperate for either of the reasons in paragraph (e) above, the IV–D agency must notify the IV–A agency when either of the following changes in circumstances occurs:

(1) The recipient who refused to enter into a repayment agreement consents to do so and signs the agreement; or

(2) The recipient who defaulted on an agreement begins making regularly scheduled payments according to the agreement. Under this paragraph, resumption of regularly scheduled payments cannot be interpreted to mean payment of amounts which were not paid during the period of default, nor amounts which could be categorized as balloon payments or which would be due as a result of an acceleration clause.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Status and Critical Habitat for Borax Lake Chub (Gila boraxobius)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Borax Lake chub to be an Endangered species and the Borax Lake area, Harney County, Oregon to be its Critical Habitat. The total land and water area designated as Critical Habitat is 640 acres. This action is being taken because the distribution of the Borax Lake chub is limited to Borax Lake, its outflow, and Lower Borax Lake in Harney County, Oregon. Geothermal developoment in and around Borax Lake and human modification of the lake threaten the integrity of the species' habitat and, hence, its survival. The rule will provide protection to the Borax Lake chub and its habitat.

DATES: This rule becomes effective on November 4, 1982.

ADDRESSES: Interested persons or organizations can obtain information from the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232. Comments, data, and materials relating to the rule are available for public inspection by appointment during normal business hours at the Service's Office of Endangered Species, Room 531, 1000 North Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Sanford Wilbur, Senior Staff Biologist, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503/231–6131).

SUPPLEMENTARY INFORMATION: Background: On May 28, 1980, the Service published an emergency rule (45 FR 35821–35823) effective for 240 days, listing the Borax Lake chub as Endangered and delineating its Critical Habitat. The Service published proposed rules on October 16, 1980 (45 FR 68886–68888) proposing the Borax Lake chub as Endangered with Critical Habitat and announced a public meeting and a public hearing. The public meeting was held in Burns, Oregon, on November 13, 1980. The public hearing was also held in Burns, Oregon, on December 2, 1980.

The Borax Lake chub is found only in Borax Lake (a small 10.2 acre, natural, thermal lake), its outflow, and Lower Borax Lake located in the Alvord Basin of south-central Oregon. It inhabits the highly mineralized, thermal lake that is fed by a thermal spring. The fish feeds on a variey of aquatic invertebrates and terrestrial insects which utilize the waters and wetlands surrounding Borax Lake.

Over time, the precipitation of minerals from the spring water maintaining the level of Borax Lake has raised the perimeter of the lake approximately 30 feet above the valley floor and isolated the chub from the surrounding watershed. The perched nature of the lake makes it extremely susceptible to human distrubance. In 1980, a modification of the perimeter of the lake diverted water form the lake and lowered its level approximately 1 foot. The lower levels adversely affect the chub by decreasing habitat and increasing water temperatures.

A second major threat to the Borax Lake chub is geothermal development. The entire Alvord Basin is a Known Geothermal Resource Area (KGRA) within which the Bureau of Land Management has already leased rights for geothermal exploration to private energy development companies. Such development adjacent to Borax Lake could adversely impact the species' habitat. One of the problems of exploratory drilling in this area is the possibility of interconnecting aquifers or springs. This kind of interconnection could, in effect, drain the lake which is at a higher elevation than the valley floor where much of the drilling will be occurring. This drilling could also disrupt the hot water aquifer feeding the lake, thus changing the aquifer pressure or temperature, and consequently change the lake. This alteration could range from a simple change in the temperature to a complete elimination of the flow. These threats to Borax Lake resulted in an emergency rule listing the Borax Lake chub as Endangered on May 28, 1980.

The Critical Habitat encompasses Borax Lake and the aquatic environments associated with its outflow located in T37S; R33E; SW¼ Sec. 11, W½ Sec. 14, and E¾ of the SE¼ Sec. 15 and SE¼ of the NE¼ Sec. 15, Harney County, Oregon. Some of the Critical Habitat is privately owned, but most is federally owned (Bureau of Land Management). The total area of the Critical Habitat is 640 acres.

Section 4(a) of the Act (16 U.S.C. 1531 *et seq.*) states:

"General—(1) The Secretary will by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

(1) the present or threatened destruction, modification, or curtailment of its habitat or range;

(2) utilization for commercial, sporting, scientific, or educational purposes at levels that detrimentally affect it;

(3) disease or predation;

(4) absence of regulatory mechanisms adequate to prevent the decline of a

species or degradation of its habitat; and

(5) other natural or manmade factors affecting its continued existence."

This authority has been delegated to the Assistant Secretary.

Summary of Factors Affecting the Species

These findings are summarized herein under each of the five criteria of Section 4(a) of the Act. These factors, and their application to the Borax Lake chub, are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.*—The Borax Lake chub is endemic to Borax Lake and its outflow. Borax Lake is an extremely fragile aquatic ecosystem which, because of its position, approximately 30 feet above the valley floor, is vulnerable to adverse alteration. Once in recent years (1980), channels were chipped along its perimeter to direct water toward the eastern side of the lake instead of allowing the outflow to follow its natural pathway toward a marsh located on the western side of the lake. If flows from the natural outlet are sufficient, water flows through the marsh and into Lower Borax Lake where it provides additional chub habitat. Because of the artificial diversion, much of the lower lake has been dry for several months during the year. Historically, because of its intermittent nature, most of the lower lake has probably never provided chub habitat throughout the year. However, some of the marsh retains permanent water from seepage around the lake and this area does provide suitable chub habitat. Much of this marsh habitat is currently dry because of the unnatural water diversion from the upper lake. If more diversions are constructed along the eastern side of the lake, the lake level will continue to decline, the marsh will continue to dry, and the continued existence of the chub will be increasingly threatened.

Development of the geothermal resource poses a substantial threat which may adversely affect the Borax Lake chub by modifying or destroying its aquatic habitat. Interest in geothermal exploration has been demonstrated in the Alvord Basin, an area designated by the U.S. Geological Survey as a Known Geothermal Resource Area, because of its geothermal potential. Some geothermal leases in the Alvord Basin have been issued by the Bureau of Land Management. The private land on which Borax Lake is located has also been leased to an energy company for geothermal exploration. The geothermal potential will be explored by the Anadarko Production Company, the holder of leases surrounding Borax Lake. Their plans presently call for three exploratory wells to be drilled in the Borax Lake area beginning September to December of this year. As part of the BLM leasing process Anadarko agreed to a monitoring program for the protection of Borax Lake. They also agreed to a stipulation that any change in the water quality or quantity of Borax Lake, resulting from their drilling, would result in suspension of operations until the problem was resolved. The U.S. Geological Survey has estimated that the Borax Lake area has the potential for production of 91 megawatts of electricity for 30 years. The survey has also stated that the actual probability of finding the geothermal reservoir is at worst 1 chance in 20 and at best 1 chance in 4. Anadarko has indicated it may take several years to determine if there is a geothermal resource large enough to develop in the Borax Lake area. Thus far there have been no adverse impacts to the Borax Lake ecosystem.

Development of a hot springs resort at Borax Lake for recreational purposes has been considered by a private landowner, but because of the lake's remoteness this appears unlikely.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* None.

3. *Disease or predation.* None.

4. *The inadequacy of existing regulatory mechanisms.* The Borax Lake chub is on the Oregon endangered species list but its habitat is not protected by Oregon State laws.

5. *Other natural or manmade factors affecting its continued existence.* None.

Summary of Comments and Recommendations

Section 4(b)(1)(B) of the Act requires that a summary of all comments and recommendations received be published in the **Federal Register** prior to adding any species to the List of Endangered and Threatened Wildlife and Plants. Comments received on the proposal are summarized below.

A total of 14 written comments were received, one from the Governor of Oregon, one from the Oregon Department of Fish and Wildlife, one from BLM, one from Anadarko Company, one from Harney County Chamber of Commerce, one from the County Court for Harney County, two from conservation organizations, and six from individuals.

The Governor of Oregon and the Oregon Department of Fish and Wildlife supported the proposed Endangered status and Critical Habitat for the Borax Lake chub. The Governor did stress the importance of balancing the listing and Critical Habitat designations with the potential geothermal benefits of the area. He also pointed out that the Oregon Department of Energy had worked closely with the geothermal lease holders in the Borax Lake area and that a plan for the protection of the chub and its habitat had been developed. The Oregon Department of Fish and Wildlife did recommend additional area around Borax Lake be determined as Critical Habitat.

The Bureau of Land Management supported the proposed Endangered status and Critical Habitat for the Borax Lake chub. In response, BLM provided observations of their biologists of the Borax Lake chub and its habitat. They also recommended changes, additions, and deletions, in the proposed Critical Habitat area in Section 15. The BLM comments included socioeconomic considerations in view of the potential geothermal development.

The Anadarko Production Company, which holds geothermal leases on private and Federal lands in the Borax Lake area, commented on the recognition of the Borax Lake chub as a distinct species, the proposed Critical Habitat and economics. They felt that there was not adequate information at this time to decide on the taxonomic status of the Borax Lake chub. They indicated that the chub in Borax Lake could represent a geographically isolated population of the Alvord chub, a subspecies of the Alvord chub or a distinct new species. The Critical Habitat comments suggested additions and deletions to the proposed area. They also suggested that the constituent elements of the habitat as specified by the Service be defined. Several of their comments expressed concern for the possible economic effects resulting from the listing.

The U.S. Geological Survey categorizes the basin as a Known Geothermal Resource Area (KGRA). There is potential for geothermal development. A BLM lease has been made of land in the Critical Habitat area to Anadarko Production Company for geothermal exploration. The geothermal reservoir has not yet been found. From statements made at the public meeting by Anadarko Production Company and by BLM, the U.S. Geological Survey has stated that the probability of finding such a reservoir is from 1 in 4 to 1 in 20.

Section 7 consultation on this leasing was initiated following the emergency listing of this species. This consultation has taken place and it is believed that the regulations stipulated in the BLM

lease are adequate for protection of the species. Anadarko is in agreement with the regulations and has stated that such regulation will not prohibit their development of the area if geothermal resources are present.

It is expected that the listing will not conflict with the geothermal development of the area, that no quantifiable economic cost will accrue as a result of the listing, and that the benefits of such development would be allowed to flow to residents of the Harney County area.

The comments from Harney County Chamber of Commerce and County Court for Harney County expressed concern over the possible economic impacts of Critical Habitat delineation on the geothermal explorations in the county. They also suggested that if private landowners are not allowed to develop geothermal resources in the area that they should receive compensation.

Two conservation organizations, Audubon Society of Portland and Oregon High Desert Study Group expressed support for the proposed listing and Critical Habitat delineation.

Comments were received from six individuals familiar with the Borax Lake area. Five supported the proposed listing and Critical Habitat determination for the Borax Lake chub. They pointed out the uniqueness of the area and urged protection of the proposed Critical Habitat. One individual opposed the proposal on the grounds that it would restrict geothermal explorations on private and Federal lands.

The concern expressed most frequently in response to the proposed Endangered status and Critical Habitat for the Borax Lake chub was relative to the potential impact on geothermal exploration on private and BLM lands in the area. At this time, the Service foresees no significant impact on geothermal exploration activities. Actually, there are many kinds of actions which can be carried out within the Critical Habitat of the Borax Lake chub which would not be expected to adversely affect the species or its habitat. Indeed no activity is automatically excluded. This point is poorly understood by much of the public. There is a widespread and erroneous belief that a Critical Habitat designation is somewhat akin to the establishment of a wilderness wildlife sanctuary and automatically closes an area to most uses. A Critical Habitat designation applies only to Federal agencies and their actions, and is an official notification to these agencies that their responsibilities under Section 7 of the Endangered Species Act are applicable in a certain area. The Service has consulted with BLM regarding the geothermal explorations in the Borax Lake area. As a result, the following two stipulations were included in the November 18, 1980, BLM geothermal lease that involves the Borax Lake area.

1. Any operation plan proposing drilling must include a plan to monitor the water quantity and quality in Borax Lake and springs northwest of the lake.

2. Upon notification by the supervisor or other authorized party that there has been a significant change in the water quantity or quality of Borax Lake, all operations will cease until the problem has been identified and resolved.

These two stipulations should allow protection of the habitat of the Borax Lake chub.

Anadarko, the company holding the geothermal lease in the Borax Lake areas, stated in the conclusion of their comments that:

> The position of Anadarko has been and is that geothermal development of the Borax Lake area under the Federal leases held by the Company can and must be carried out with full protection of the Borax Lake chub and the habitat necessary for that fish. We believe this to be true whether or not the chub is listed as an Endangered Species and whether or not a Critical Habitat is established under the Endangered Species Act.

Several comments addressed the boundary of the proposed Critical Habitat in T37S; R33E; Harney County, Oregon. The Oregon Fish and Wildlife Department and BLM suggested adding all or a portion of the NE¼ of Sec. 15. They indicated that all or at least a portion was Critical Habitat for the chub. Based on this recommendation and field examination, the Service is adding the SE¼ of the NE¼ of Sec. 15. BLM also suggested deleting portions of the W½ of the SE¼ of Sec. 15. Based on this recommendation and field examination, the Service is deleting the W½ of the SE¼ of Sec. 15. Anadarko supported the additions and deletions as suggested by BLM. Anadarko also suggested the deletion of portions of the proposed Critical Habitat in Sections 11 and 14. After field examination and consultation with other biologists, the Service did not believe that deletion of portions of Sections 11 and 14 from the proposed Critical Habitat was justified. Critical Habitat boundaries in Sections 11 and 14 are unchanged from the proposal.

A public hearing was held on December 2, 1980, in Burns, Oregon, to answer questions and receive statements relative to the Endangered status and Critical Habitat of the Borax Lake chub. A total of six statements were made at the hearing and included those from representatives from BLM, Anadarko Production Company, Harney County Chamber of Commerce and three individuals.

The statement made by the BLM indicated that they supported the permanent listing of the Borax Lake chub as Endangered as proposed in the Federal Register of October 16, 1980. They did recommend two changes in the location of the proposed Critical Habitat. One of the two changes involved adding the NE¼ of Sec. 15, T37S, R33E. The Service agrees in part with this recommendation and has added the SE¼ of the NE¼ sec. The other change involved the deletion of 55 acres west of Lower Borax Lake in the SE¼ of Sec. 15, T37S, R33E. The Service agrees in part and has deleted 30 acres in the western portion of the SE¼ of Sec. 15, T37S, R33E.

The BLM earlier reported on the socio-economic estimates based on potential geothermal resources sufficient to generate up to 110 megawatts of electrical energy. (This estimate was based on information which was superceded by later data concerning the actual expected impact of the listing.) The earlier data stated income generated, based on 7 cents per kwh for a 110 megawatt plant, would be worth about $54 million per year. Taxes produced from this income would be an estimated $27 million annually. Annual property tax revenue to Harney County, based on the current rate of $15.85 per $1,000 valuation would be between $1.85 and $5.2 million per year. Other county and State revenues would be derived from the 50 percent of the Federal revenues the State gets and passes on to the counties. These include annual lease rental and royalty income. There is a $2.00 per acre minimum rental income on KGRAs for the first 5 years, and the rental escalates after that. Royalty of 10 percent for income on a projected $3.5 million worth of steam or hot water produced for a 110 megawatt plant comes to $350,000 per year, with the State and county getting half. The BLM closed by expressing their appreciation for the cooperative attitude shown by the Fish and Wildlife Service during both the Section 7 consultation on the Borax Lake chub and the continued interaction during the listing process.

The Anadarko Production Company opened their statement by pointing out that they had been active in geothermal exploration and development in the Alvord Basin area since 1971. They indicated that they are committed to an exploration and development program that included the leases which they

acquired in the vicinity of Borax Lake. Anadarko went on record that they agreed with the assessments made by the speaker from the BLM, but pointed out that the USGS in their most recent document (circular 790) estimated that the Borax Lake area had the potential for the production of 91 megawatts of electricity for 30 years, slightly less than the 110 megawatts referred to earlier.

Anadarko also agreed that the resource there, if it exists, could be in the 90 to 110 megawatts range. They also pointed out that the USGS had also stated that the actual probability of finding the geothermal reservoir was, at the worst, perhaps 1 chance in 20 and at the best, perhaps 1 chance in 4. They went on to explain that there is no way of knowing whether there is a geothermal reservoir until they have at least one successful exploratory well. At that point, they could determine the actual size of the resource and whether it would be economically productive for a period of 30 years.

In closing, Anadarko stated that:

> Geothermal is not similar to many major energy projects in that it will not create a sudden land rush or a "boom town" characteristic in the Alvord area. We will probably not see that happen even if a discovery is made at Borax Lake or anywhere in that area. We will probably not see more than two drilling rigs, oil field scale drilling rigs, operating in that area over the next ten years. Because of the relatively unknown nature of geothermal at the present time, we simply can't rush at it. We have to be very orderly in the development. We are not going to have a massive influx of people into the valley. Probably if a discovery was made, the peak, as far as people moving into the valley would be concerned, would occur during the construction of the power plant. At best that is still several years off.

A member of the audience asked the Anadarko speaker a question concerning the total land area impacted by a 110 megawatt development. In response, Anadarko indicated that the first plant would be small, approximately 20 megawatts, would take 4 to 5 years to develop and would affect about 400 acres. A larger plant, approximately 55 megawatts, would affect approximately 600 to 700 acres. This acreage includes all generating facilities, production, and reinjection wells.

The representative from the Harney County Chamber of Commerce opened his statement by pointing out that the habitat of the Borax Lake chub had been altered considerably by human modification over the past 100 years. Most notable of these was the borax operation which diverted mineral rich water from the lake to extract borax. The body of water referred to as Lower Borax Lake may have been formed during the borax extraction operation. He also indicated that diversion of flow for irrigation, public or private should be at the option of the owner. The Chamber of Commerce stated that if the option is abridged or excluded by the designation of Critical Habitat full restitution of potential value should be awarded to the landowner.

Three individuals made brief statements concerning the Borax Lake chub proposal. One of the three supported the proposed listing and Critical Habitat designation, the other two opposed the proposal.

After a thorough review and consideration of all the information available, the director has determined that the Borax Lake chub is in danger of becoming extinct throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Act, as specified in the proposal of October 16, 1980 (45 FR 68886–68888). Listing as Endangered and determination of Critical Habitat will provide this species with necessary protection to ensure its survival.

Critical Habitat

The Act defines "Critical Habitat" to include (a) areas within the geographical area occupied by the species at the time that species is listed which are essential to the conservation of the species and which may require special management considerations or protection and (b) specific areas outside the geographic area occupied by the species at the time, upon a determination by the Secretary that such areas are essential for the conservation of the species.

Critical Habitat for the Borax Lake chub is proposed as follows:

> **Oregon.** Harney County. Borax Lake and environment associated with the outflow from Borax Lake located within T37S; R33E; SW¼ Sec. 11, W½ Sec. 14, E¾ of the SE¼ Sec. 15, and the SE¼ of the NE¼ of Sec. 15.

These areas provide the Borax Lake chub with all the necessary requirements for survival and reproduction such as food, spawning habitat, water temperatures, etc.

Section 4(f)(4) of the Act requires, to the maximum extent practicable, that Critical Habitat determinations be accompanied by a brief description and evaluation of those activities which, in the opinion of the Secretary, may adversely modify such habitat if undertaken, or those Federal actions which may be impacted by such designation. Such activities are identified below for this species. It should be emphasized that Critical Habitat designation may not affect each of the activities listed below, as Critical Habitat designation only affects Federal agency activities through Section 7 of the Act.

Activities which occur within the proposed Critical Habitat include cattle grazing, nature study, swimming, geothermal exploration, irrigation, and hunting. Of these activities, grazing, hunting, nature study, and swimming do not appear to adversely modify the habitat to any substantial degree. Geothermal exploration and irrigation may adversely modify the habitat should it occur within the area adjacent to Borax Lake or its outflows or should it modify the spring flow and/or its water temperature.

Such disturbances from geothermal development would include, but would not be limited to, subsidence problems and/or modifications in the hydrology of the area that may affect the springs supporting Borax Lake. Full scale development of a geothermal plant may have negative effects on the lake due to air pollution (venting of steam and other gases), possible ground water contamination, subsidence, and other related impacts. If geothermal development occurs in the Alvord Basin (and no plant construction is now known to be scheduled), it will probably entail only small-scale plants, a maximum of 91 to 110 megawatts capacity.

Construction of such plants on Federal land may be restricted so as not to adversely affect the proposed Critical Habitat. Development on private land could possibly be impacted through Section 9 of the Act. It could be further restricted it Federal approval or funding is involved.

Section 4(b)(4) of the Act requires the Service to consider economic and other impacts of specifying a particular area as Critical Habitat. The Service has prepared a final impact analysis and believes at this time that the rule is not a major rule and does not require preparation of a regulatory analysis under Executive Order 12291. The Service has contacted Federal agencies that have jurisdiction over the land and water affected by this action. These Federal agencies and other interested persons or organizations have submitted information on economic or other impacts of this action. This information was used in the preparation of the final impact analysis.

Effect of the Rule

Section 7(a) of the Act provides:

1. The Secretary shall review other programs administered by him and utilize such programs in furtherance of

the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of Endangered species and Threatened species listed pursuant to Section 4 of this Act.

2. Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") is not likely to jeopardize the continued existence of any Endangered or Threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to Subsection (h) of this section. In fulfilling the requirements of this paragraph, each agency shall use the best scientific and commercial data available.

3. Each Federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under Section 4 or result in the destruction or adverse modification of Critical Habitat proposed to be designated for such species.

Provisions for Interagency Cooperation are codified at 50 CFR Part 402. This rule would require Federal agencies not only to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the Borax Lake chub, but also to insure that their actions are not likely to result in the destruction or adverse modification of their Critical Habitat. Private activity will not be affected by the rule unless it involves a taking under Section 9 of the Endangered Species Act. Other activities affecting the habitat will be impacted only if there is Federal involvement in those activities. No significant modifications to projects with Federal involvement are presently foreseen.

With respect to the Borax Lake chub, all prohibitions of Section 9(a)(1) of the Act, as implemented by 50 CFR 17.21 and 17.23, will apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the U.S. to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale these species in interstate or foreign commerce. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

Regulations in 50 CFR 17.22 and 17.23 provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered species under certain circumstances. Such permits involving Endangered species are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available.

National Environmental Policy Act

An Environmental Assessment has been prepared in conjunction with this rulemaking. It is on file in the Service's Washington Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia, and may be examined by appointment during regular business hours. This assessment is the basis for a decision that this rule is not a major Federal action that significantly affects the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, implemented at 40 CFR 1500–1508.

Determination of Effects

The Department of the Interior has determined that this rule is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act. The only small entities in the area are the two individuals who use the land for grazing and Harney County, Oregon. Under the present geothermal development plans of the Anadarko Production Company, there will be no significant impact to Harney County, Oregon. The listing is entirely compatible with present grazing practices and no changes in land use are foreseen.

This rule does not contain information collection subject to Office of Management and Budget approval under 44 U.S.C. 3501 *et seq.*

This finding is made as a result of analysis by the Office of Endangered Species of information received from personnel of the BLM State Office and Fish and Wildlife Service Regional field experts.

Authors

The primary authors of this rule are Dr. Kathleen E. Franzreb, U.S. Fish and Wildlife Service, Endangered Species Staff, 2800 Cottage Way, Sacramento, California 95825 (FTS 468–4106 or 916/484–4664) and Dr. James D. Williams, U.S. Fish and Wildlife Service, Office of Endangered Species, Washington, D.C. 20240 (FTS 235–1975 or 703/235–1975). The following sources were used in the preparation of this final rulemaking:

Williams, J. E. and K. M. Howe. Environmental Assessment for the protection of the Borax Lake area, Harney County, Oregon. Unpub. report to Unique Wildlife Ecosystem Program, U.S. Fish and Wildlife Service, Boise, Idaho. 35 p.

Williams, J. E. A preliminary report on the taxonomic status of *Gila* inhabiting Borax Lake, Harney County, Oregon. Unpub. report. Dept. of Fisheries and Wildlife, Oregon State University, Corvallis, Oregon. (prep., 1977) 5 p.

Williams, J. E. and C. E. Bond. A new species of cyprinid fish from southeastern Oregon with a comparison to *Gila alvordensis* Hubbs and Miller. Proc. Biol. Soc. Wash. 92(2): 291–298.

List of Subjects In 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Authority

This rule is issued under the authority contained in the Endangered Species Act 1973, as amended (16 U.S.C. 1531 *et seq.*: 87 Stat. 884, 92 Stat. 3751).

Regulations Promulgation

PART 17 [AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended by revising the entry in Section 17.11(h) for: "Chub, Borax Lake," under "Fishes" as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Chub, Borax Lake	*Gila boraxobius*	U.S.A. (OR)	Entire	E	123	17.95(e)	N/A

§ 17.95 [Amended]

Section 17.95(e), Fishes, is amended by adding Critical Habitat of the Chub, Borax Lake after that of the Cavefish, Alabama, as follows:

Borax Lake Chub

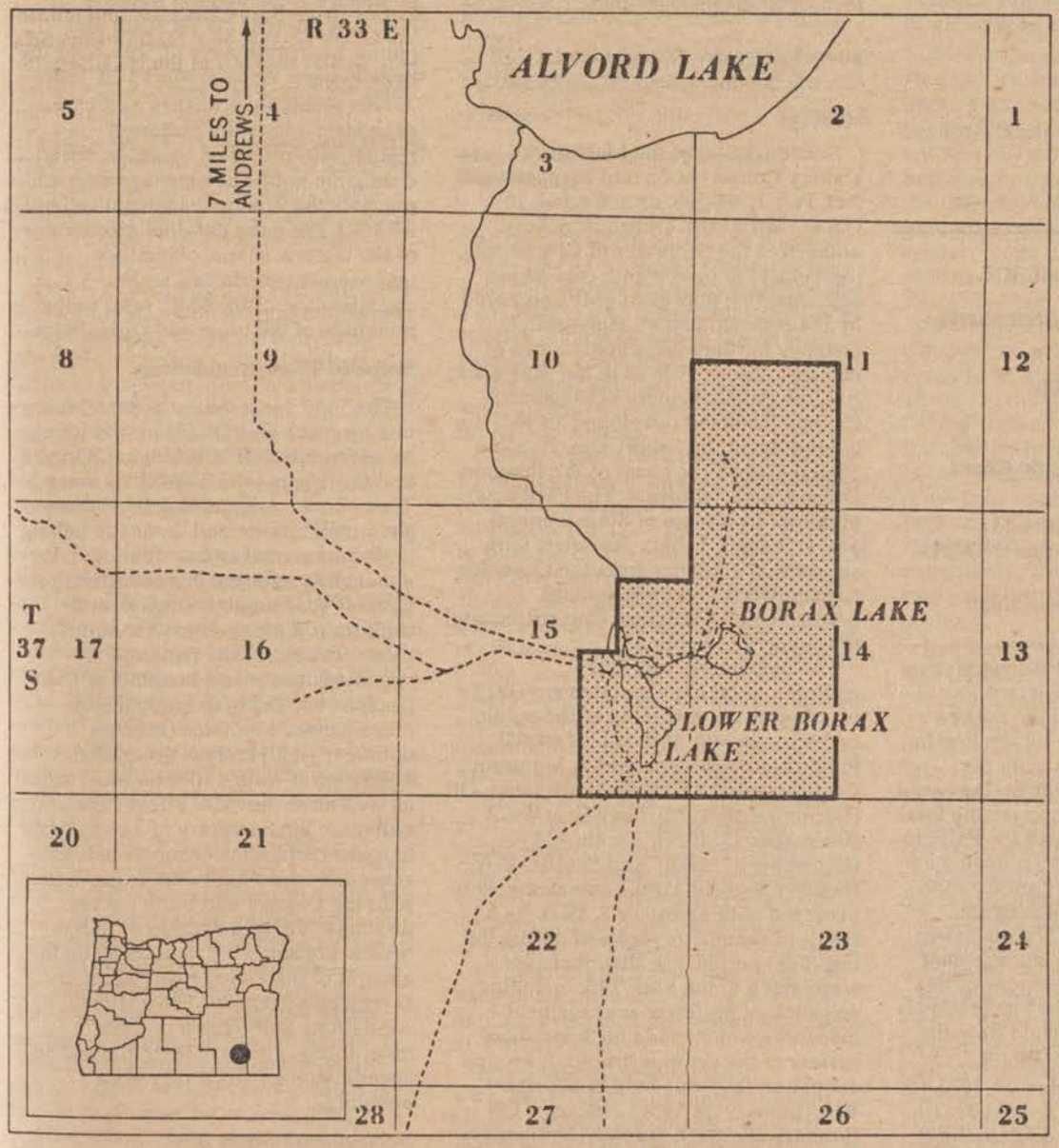
(Gila boraxobius)

Oregon. Harney County. Borax Lake and environments associated with the outflow from Borax Lake located within SW¼ Sec. 11, W½ Sec. 14, E¾ of the SE¼ Sec. 15, and the SE¼ of the NE¼ Sec. 15; T37S; R33E.

BILLING CODE 4310-55-M

BORAX LAKE CHUB

Harney County, OREGON



BILLING CODE 4310-55-C

Principal constituent elements of this habitat for the Borax Lake chub are considered to be the constant temperature and flow of water into Borax Lake and the natural water flow out of Borax Lake into associated aquatic environs and the aquatic and terrestrial food organisms of this ecosystem.

Dated: September 15, 1982.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 82-27222 Filed 10-4-82; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 663

[Docket No. 2901-176]

Foreign Fishing and Pacific Coast Groundfish Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; notice of final management estimates.

SUMMARY: The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) approved the fishery management plan (FMP) for the Pacific Coast groundfish fishery, with the exception of one provision, on January 4, 1982. This document comprises the final regulations, consistent with the FMP, to govern domestic and foreign fishing for groundfish in the fishery conservation zone off the coasts of Washington, Oregon, and California. The document also announces the final management estimates for 1982. The purpose of this FMP and its implementing regulations is to achieve the optimum yield from the Pacific Coast groundfish fishery.

EFFECTIVE DATE: September 30, 1982, for all sections except § 663.6 and 663.7(j) for vessel identification; § 663.26(b)(2) for pelagic and bottom trawls; (b)(3)(i) and (b)(3)(iii) for pelagic trawls; (b)(7) for roller trawls; (d)(iv) and (f)(ii) for one-mile marking of groundlines for traps or longlines. See the section on Delayed Effectiveness in this preamble for exact wording of these deferred provisions. These gear requirements will take effect on January 1, 1983.

ADDRESSES: H.A. Larkins, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Seattle, WA 98115.

Copies of the FMP and the final regulatory impact review/regulatory flexibility analysis are available from the Pacific Fishery Management Council, 526 S.W. Mill Street, Second Floor, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: H. A. Larkins, 206-527-6150; or the Pacific Fishery Management Council, 503-221-6352.

SUPPLEMENTARY INFORMATION: OMB Control Numbers 0648-0075, 0648-0114.

History

Section 305(a) of the Magnuson Fishery Conservation and Management Act, Pub. L. 94-265, as amended, 16 U.S.C. 1801 *et seq.* (Magnuson Act), authorizes the Secretary of Commerce (Secretary) to promulgate regulations implementing approved FMPs prepared by the regional fishery management councils for their geographic areas of concern. Under Title III of the Magnuson Act, the Pacific Fishery Management Council (Council) developed an FMP for groundfish in the fishery conservation zone (FCZ) off the coast of Washington, Oregon, and California. The FMP was prepared by a team of State, Federal, and university fishery scientists with substantial guidance from the Council's Groundfish Advisory Subpanel, Scientific and Statistical Committee, and the concerned public.

The combined draft FMP/environmental impact statement (EIS) was first made available to the public on November 30, 1979 (44 FR 69005). Public hearings were held in Monterey, CA (December 14, 1979), North Bend, OR (December 15, 1979), Long Beach, CA (December 15, 1979), Arcata, CA (December 17, 1979), and Seattle, WA (January 5, 1980). Public comments were accepted until February 4, 1980. As a result of comments received during the comment period, significant changes were made to the FMP/EIS, including selection of preferred management measures which made further public review of the draft desirable. A second set of hearings was held in Westport, WA (January 29, 1981), Newport, OR (January 30, 1981), Eureka, CA (January 30, 1981), and Santa Barbara, CA (January 30, 1981).

The FMP was partially approved by the Assistant Administrator on January 4, 1982, under a delegation of authority from the Secretary. The management measure which was not approved would have prohibited foreign joint venture processing vessels from receiving or processing U.S. caught Pacific whiting (whiting) in the area 3 to 6 nautical miles from shore. There was insufficient justification for this restriction and it would have increased the operating costs for U.S. vessels delivering to foreign processors (see Comment 1 below). Consequently, the Secretary will allow properly permitted joint venture processors to operate between 3 and 200 nautical miles, the full width of the FCZ. The FMP's proposed regulations were published in the **Federal Register** on February 10, 1982 (47 FR 6043) and public comments were accepted for the next 48 days, through March 29, 1982.

This preamble primarily addresses changes made to the proposed regulations, responds to issues raised during the public comment period, and presents the final management estimates for 1982. For more detailed discussions of the history, scope, objectives, management strategies, and classification of the FMP, refer to the preamble of the proposed regulations.

Scope of These Regulations

The FMP supersedes the preliminary management plan (PMP) for the foreign trawl fisheries off Washington, Oregon, and California (42 FR 8578), as amended. These final implementing regulations govern all foreign and domestic fishing, both commercial and recreational, for almost fifty species of groundfish in the FCZ off Washington, Oregon, and California. Unless otherwise stated, those portions of the regulations specifying numerical amounts of fish (such as trip limits or quotas) and management estimates (such as optimum yield) include groundfish taken in territorial waters (0-3 nautical miles) as well as in the FCZ. These regulations authorize the Secretary or his designee to make certain in-season or between-season changes following consultation with the Council and State fishery directors. Varying degrees of public review are specified depending on the amount of discretion involved in the Secretary's decision. The FMP and its regulations will remain in force indefinitely, although certain numerical specifications will be reviewed annually.

Management Strategies

Optimum yield. The optimum yield (OY) for most groundfish species is defined as all fish that are harvested under regulations adopted by the Secretary. For this group of groundfish, OY is not expressed numerically. This allows the flexibility to manage for the maximum yield from the group as a whole rather than the maximum yield from a few species. However, special circumstances require that five species be managed separately. The five species that have individual numerical OYs are Pacific whiting, Pacific ocean perch,

shortbelly rockfish, widow rockfish, and sablefish.

Annual specifications. At the beginning of each calendar year, management estimates will be specified for each species with a numerical OY. The estimates of OY, acceptable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and the total allowable level of foreign fishing (TALFF) set forth in the FMP and in this preamble are effective for the calendar year 1982 and for subsequent years unless adjusted by the Secretary under the procedures outlined in these regulations.

Points of concern. The FMP provides for continuing monitoring of biological, catch, and effort data for individual groundfish species. Critical biological factors have been identified as points of concern which, when noted, will trigger a detailed Council/National Marine Fisheries Service (NMFS) evaluation of the need for additional management measures (see § 663.22).

Adjustments of numerical OYs. Numerical OYs and associated ABCs may be adjusted at any time. Any number of increases may occur as long as the sum of the increases for any given calendar year does not exceed 30% of the OY estimate at the beginning of the year. Downward adjustments of any amount may be made for resource conservation purposes on a case-by-case basis through the points of concern mechanism (see §§ 663.22, 663.23, 663.24).

Pacific ocean perch rebuilding schedule. In order to rebuild stocks of Pacific ocean perch within 20 years, trip limits are imposed on vessels catching that species. U.S. fishermen are advised that the regulation proposed at §663.27(b)(2) has been adjusted in the final regulations, reducing the 10,000 pounds or 10 percent limit to 5,000 pounds or 10 percent by weight of all fish on board, whichever is greater, of Pacific ocean perch per fishing trip.

Allocations. Some allocations between user groups have been addressed in the FMP. These allocations are implemented by trip limits, gear specifications, and area closures. The Council recognizes in the FMP a California State law, in effect on the date of FMP approval, regarding set netting requirements in the waters south of 38°00′ N. latitude. Article 5 of the California Fish and Game Code, Sections 8680–8700 (repeated in Appendix B of the FMP) prohibits the use of gillnets in certain areas, sets gear specifications, and requires a State permit for gill-netters off California. This State law is consistent with the Magnuson Act and the objectives of the FMP. To avoid further delay in implementing the FMP, the Council intends to adopt any Federal allocation measures by FMP amendment.

Experimental fishing permits. The Secretary may issue experimental fishing permits (EFPs) which would authorize, for limited experimental purposes, the direct or incidental harvest of groundfish which would otherwise be prohibited (see § 663.10).

Major Changes to the Proposed Regulations

Foreign Fishing, Part 611. A few clarifying changes have been made to this section. Dungeness crab (species code 690) is now explicitly included in § 611.9(d)(4) which mentions prohibited species to be recorded in the daily cumulative catch log.

The regulations are generalized to apply to joint ventures other than those for Pacific whiting.

The boundary between the Monterey and Conception fishing areas is changed to 36°00′ N. latitude from 35°30′ N. latitude in § 611.9, Appendix II, Figure 3, to conform to International North Pacific Fisheries Commission standards. This change does not affect current foreign data reports because no foreign fishing is conducted south of 39°00′ N. latitude.

The closed area provision at § 611.70(g)(2) is reworded so that annual adjustments made under § 663.24 can be accommodated without additional change to joint venture regulations.

The policy in effect for the last two years allowing foreign vessels to combine several shift reports into a single, daily message was over looked in the proposed regulations and is now incorporated at § 611.70(j)(2) and subsequent paragraphs are renumbered.

Reports of prohibited species in the daily cumulative receipt log were not explicitly required, but are now included at § 611.70(j)(6)(vii).

The proposed regulations at § 611.70(j)(8)(i) "Daily report" did not clearly identify the conditions under which weekly reports of receipts of U.S.-harvested fish must be submitted on a daily basis. Also, part of the annual report catch requirement, item (B) of § 611.70(j)(8)(ii) "Annual report," was mistakenly deleted. Both corrections are made.

In order to group the reporting requirements that supplement § 611.4, the report of fish on board when entering the fishery is shifted from § 611.70(j)(7) in the proposed regulations to § 611.70(j)(3) in the final regulations.

In § 611.70(j)(4) the requirement for submission of logbooks was vague and in now qualified by "after termination of a fishery due either to closure of the fishery, departure of a vessel from the grounds for the season, or expiration of the fishing permit."

A new paragraph § 611.70 (k) "Prohibited species" is added to remove ambiguity of joint venture responsibility toward prohibited species.

Pacific Coast Groundfish Fishery, Part 663. Three clarifications are made under § 663.2 "Definitions." First, because vessels often return to port without offloading their catch (due to bad weather, mechanical failures, etc.), the definition of "fishing trip" is reworded so that a trip ends when a vessel "lands fish" rather than when it returns to port. Second, the definition of "land" or "landing" is rewritten, without substantive change to content, for consistency with other Federal regulations and to restrict lightering. Third, the definition of "recreational fishing" is made consistent with that in the FMP by including gear type and use of caught fish and by removing references to commercial fishing licenses. In addition the definitions of "groundfish" and "fishing gear" are expanded to include material that was originally proposed in the regulatory sections.

In § 663.5 "Management subareas" the NOAA/NOS chart referred to in paragraph (a)(1)(ii) should be #18007 (not #18002), and the boundary between the Monterey and Conception areas listed in paragraphs (4) and (5) is at 36°00′ N. latitude (not 35°30′ N. latitude).

The restrictions against salmon retention in § 663.7(i) "General prohibitions" are modified, deleting mention of gear and the manner of its use. The original wording could have had the unintended effect of prohibiting use of hook-and-line gear for groundfish when the receational salmon season is closed. Reference to the salmon regulations should be 50 CFR 661 (not 50 CFR 611). Pacific halibut was inadvertently omitted from the category of prohibited species in the proposed regulations and is now included.

The provisions requiring a ladder, manrope, safety line, and light for safe boarding under subparagraphs (2) and (3) of § 663.8(c) "Boarding" are deleted because they already are covered under the subsequent paragraph requiring the vessel operator "to ensure the safety of the boarding party." Furthermore, the proposed regulation was unduly burdensome on small vessels lacking the need for or room to store the proposed boarding equipment.

Some civil procedure regulations have been assigned a new number; the reference under § 663.9 "Penalties" is

changed to include 15 CFR Part 904 as well as 50 CFR Part 621.

The duration of each experimental fishing permit under § 663.10(d) "Experimental fisheries" is clarified to be a maximum of one year, consistent with the FMP.

Section 663.26 has been revised to put definitions in § 663.2 "Definitions" and to group together restrictions on similar gear. In addition, three substantive revisions are made. The use of "double walled codend" is made consistent with the FMP by specifying equal mesh size which must coincide knot-to-knot in the double layers of the codend and by prohibiting its use in all trawls with mesh size less than 4.5 inches (as well as in pelagic trawls). The surface markings required for longline and trap gear are clarified. The word "disc" is now deleted from the definitions of pelagic trawl and roller trawl. Also, the 14-inch minimum diameter requirement for rollers or bobbins used in the Eureka, Columbia, and Vancouver subareas is linked to trawl mesh size less than 4.5 inches, as specified in the FMP.

The proposed wording of § 663.27(a) "Catch restrictions" made it unlawful for a recreational fisherman to catch any lingcod or rockfish in excess of the bag limit, even if fishing for other species which may be lawfully retained. The recreational catch limits are clarified.

The FMP states that the trip limit for Pacific ocean perch would be reduced from 10,000 pounds or 10% to 5,000 pounds or 10% by weight of all fish on board per fishing trip if the 20-year rebuilding schedule is not achieved in 1981. Although landings in the Vancouver subarea were within the 600 metric ton goals, landings in the Columbia area were 963 metric tons, exceeding the 950 metric ton rebuilding level. Consequently, § 663.27(b)(2) is modified to incorporate the 5,000 pound limit.

Delayed Effectiveness

Several provisions in the FMP are new or more restrictive than previous requirements and could impose an undue economic burden on domestic fishermen if imposed immediately. These provisions will be deferred until January 1, 1983, to allow a phase-in period for compliance with the regulations. The deferred provisions are:

Vessel identification provisions stated in § 663.6 and § 663.7(j);

Bottom trawl mesh size provisions as follows—section 663.26(b)(2) minimum trawl mesh size of 4.5 inches in the Vancouver and Columbia subareas.

Pelagic trawl provisions for chafing gear and mesh size as follows—section 663.26(b)(2) minimum trawl mesh size of 3.0 inches for pelagic gear;

Section 663.26(b)(3)(i) "Chafing gear must not be connected directly to the terminal (closed) end of the codend."; and

Section 663.26(b)(3)(iii) "* * * chafing gear covering the upper one-half (top side) of the codend must have a minimum mesh size of 6 inches."

Roller or bobbin trawl provisions as follows—section 663.26(b)(7) "In the * * * Columbia, and Vancouver subareas, if trawl mesh size less than 4.5 inches is used, rollers or bobbins must be a minimum of 14 inches in diameter."; in other words, trawls used in Eureka subarea must comply with this provision upon publication of this notice.

Longline and trap groundline marking provisions as follows—section 663.26(d)(iv) "Traps laid on a groundline must also be marked at the surface every one mile of groundline with a pole and flag, and either a light or a radar reflector."; and

Section 663.26(f)(ii) "Every one mile of groundline must also be marked at the surface with a pole and flag, and either a light or a radar reflector."

The States of California, Oregon, and Washington have agreed that current State regulations covering these provisions will remain in effect until January 1, 1983, and will conform with these regulations thereafter.

Comments and Responses

The comments received during the 48-day public comment period on the proposed regulations are addressed below. Although some of the issues were considered previously in the course of plan development, they are addressed again here.

Comment 1. Almost half the comments criticized the secretarial decision to disapprove the FMP measure which would have closed coastwide the 3–6 nautical mile area to joint venture processing. Commenters included the Council, shore-based processors, U.S. fishermen, the California Department of Fish and Game, and representatives and officials of coastal ports and communities. The major objections concerned: harm to the resource because of overfishing; increased interception of incidential species taken closer to shore; discarded fish souring the grounds; crowded fishin grounds; competition with shore-based processors; and dislike of foreign vessels in the FCZ.

Response. The target species, Pacific whiting, is underutilized. Incidentally caught species are limited by amounts retained, imposing an incentive on U.S. joint venture trawlers to avoid species that cannot be retained by foreign processors.

It has been stated that species taken incidental to the Pacific whiting fishery are more likely to be caught close to shore, and, if joint venture processors were restricted to areas seaward of 6 nautical miles, U.S. trawlers delivering to these processors would follow them farther offshore thereby minimizing incidental catches since Pacific whiting must be processed immediately. There is no assurance, however, that domestic trawlers fishing for joint ventures would abandon the area inside 6 nautical miles even though the proportion of food quality fish declines the farther the codend is towed to processors.

The Council's Groundfish Management Team was directed by the Council to examine the potential impact of allowing joint venture processing up to 3 nautical miles from shore. Unfortunately, the best available scientific data are limited and inconclusive. The survey data used were gathered by bottom trawl and thus are not directly applicable to a pelagic trawl fishery. The hauls examined contained whiting as a major species, but were not directed toward Pacific whiting; no attempt was made to catch Pacific whiting selectively and avoid incidental species as would be done in commercial operations. The data points are too few for adequate analysis. Thus the best available scientific data on incidental species interception do not justify limiting the economic potential of U.S. fishermen fishing for joint ventures by prohibiting foreign joint venture processing in the 3–6 nautical mile area.

Fish are discarded from U.S. trawlers (whether or not associated with joint venture operations) as well as from joint venture processors. Small-sized whiting were unusually abundant in 1981 and joint venture processors discarded almost 500 metric tons of these whiting. Discards of incidental species were not abnormally high in 1981 and did not indicate a threat to the resource. Undersized whiting and rockfish are the most common species accidentially lost or discarded in this fishery. Both of these species have air bladders and thus will float and disperse before sinking to the bottom, so that concentrations of dead whole fish on the bottom would be unusual. Conversely, processing wastes sink immediately and are more likely to be a problem than are whole fish. The 1982 joint venture premit requires that offal be discarded seaward of 12 nautical miles. The joint venture representatives also have agreed to comply with the Regional Director's request, sent after the close of the 1981

season, to utilize more fully species received from U.S. vessels (within incidental retention allowances) and to avoid unnecessary discards.

Twenty foreign fishing permits for joint venture processors have been granted in 1982 compared with 28 in 1981, and the number of processing vessels operating in any given area on a given day also is expected to be lower in 1982. Even at 1981 levels, the number of *all* foreign fishing vessels (joint venture processors and foreign trawlers) operating in the FCZ off the coasts of Washington, Oregon, and California rarely exceeded 30 on a given day. This is not an excessive number considering the size of the fishing grounds and dispersal of the fleets. Documented gear conflicts involving domestic vessels and joint venture processors are rare. Restricting joint venture processors from the 3–6 nautical mile area will not necessarily reduce the number of U.S. trawlers in that area, but will reduce the value of U.S.-caught Pacific whiting delivered to foreign processors at sea, because Pacific whiting deteriorates if not processed immediately.

Neither estimate of domestic annual processing (DAP) nor joint venture processing (JVP) has been reached since inception of the Magnuson Act in 1977. Since 1978, shore-based production of whiting taken in the FCZ has been fairly constant, just below 2,000 metric tons each year, far less than half the annual projected estimates of DAP. U.S. trawlers are capable of supplying Pacific whiting to shore-based processors between joint venture operations, as is done with other species, if the demand exists. The fish are available, but markets for the U.S. product apparently are not. Clearly, at-sea processors provide a readily available market for U.S.-caught fish. The joint venture product does not enter the U.S. market and does not compete directly with shore-based products.

Joint venture operations have enhanced the U.S. fishing industry, providing employment and new technology to exploit underutilized species, and relieving pressure on the highly commercialized and competitive fisheries for traditional species. Increased observer coverage in the future should allay fears of inaccurate reporting and excessive discards, and the points-of-concern mechanism in the FMP will closely monitor stress in individual stocks of fish.

Many of the comments received pertained to joint ventures in general, have already been addressed in the course of plan development, and are not specific to the 3–6 nautical mile issue. The same arguments made against the 3–6 nautical mile issue were also made when joint venture processors were allowed to approach to 9 nautical miles offshore in 1979 and to 6 nautical miles in 1980. The anticipated problems have not materialized. Allowing foreign processors up to 3 nautical miles from shore enables rapidly deteriorating Pacific whiting to be processed quickly, increasing the proportion of food quality fish and the value of each delivery for U.S. fishermen. Similarly, more time and fuel are spent on fishing rather than transport, to the benefit of U.S. fishermen. Because U.S. markets for some groundfish species are scarce, the benefits of this approach far outweigh the costs to the U.S. fishing industry. Given the available information, there is insufficient reason to diminish the efficiency of joint venture operations in the FCZ by restricting foreign processing vessels from the 3–6 nautical mile area.

Comment 2. Two fixed gear fishermen were concerned that the requirements to mark each mile of groundline as stated in the proposed regulations at § 663.26 (b)(6) and (b)(12) are costly, unsafe, ineffective, and significantly reduce fishing time.

Response. This requirement is deferred until January 1, 1983. The Council's Groundfish Management Team and Advisory Subpanel intend to give this matter further study.

Comment 3. A gear manufacturer questioned the inclusion of the word "discs" in specifications for pelagic and roller trawls, and requested clarification of roller trawl provisions.

Response. The word "discs" is deleted and the requested clarifications are made.

Comment 4. Due to the cost of buying new web and limited stock of available gear, a financing organization favored deferral of the trawl mesh size requirements for bottom trawls, allowing domestic fishermen to buy new gear in compliance with the FMP as old gear wore out.

Response. Portions of the bottom trawl requirements at § 663.26(b)(2), (b)(3), and (b)(7) are deferred until January 1, 1983. See section on delayed effectiveness in this preamble for the exact provisions.

Comment 5. One individual protested the FMP's prohibition of a set net fishery for groundfish north of 38°00' N. latitude.

Response. A major concern with ocean set netting north of 38°00' N. latitude is the potential harvest of salmon incidental to a groundfish fishery. Gillnets are highly efficient gear for catching salmon. The serious management problem posed by the use of such gear prompted an understanding between Canada and the United States 25 years ago, discouraging the use of nets to harvest salmon in the ocean. The understanding reached by Canada and the United States has been implemented by both Federal and State regulations for areas offshore of California, Oregon, Washington, and Alaska. Adherence to this agreement is vital to U.S. interests in that this voluntary action by Canada prevents additional interception of salmon of U.S. origin by Canadian fishermen.

Nonetheless, data are lacking which would clearly substantiate that incidental salmon catches in an ocean gillnet fishey for groundfish would be insignificant, or conversely, likely to cause harm to the salmon resource or fishery. Because such data are lacking, the Council chose a cautious and reasoned approach. The FMP includes an experimental fishing permit (EFP) provision which will allow, with appropriate limitations, a fishery to be conducted which otherwise would not be authorized. The data gathered from a fishery conducted under the EFP provision would provide the basis for future decisions to continue or terminate the fishery.

Comment 6. Several letters proposed time or area restrictions for trawlers. The commenters suggested that the trawl fishery adversely affects spawning and immature fish of all species; that the trawl catch of salmon is unacceptably high; that the environment is degraded by trawls scouring the sea floor and by discards of unwanted species; that larger vessels able to fish during winter months have an unfair advantage over the rest of the trawl fleet; and that such restrictions would remedy inequitable treatment given recreational fisheries in the FMP.

Response. Most groundfish species spawn offshore during the winter. The loss of reproductive potential to the population due to harvest of mature fish is considered in the determinations of OY and ABC. Catches of small, immature fish are controlled by minimum mesh size requirements. If any species is found to be stressed (under the points of concern mechanism outlined in the FMP), measures to relieve the stress, such as time and area closures, would be examined.

Increased observer coverage on foreign trawlers and joint venture processors should improve the reliability of estimates for incidental salmon taken in these operations. Since 1978, the number of salmon received by foreign vessels has not exceeded one fish per ten metric tons of whiting in joint ventures, and one fish per five metric tons of whiting in the trawl

fishery. In 1981, about 12,000 salmon were received (and discarded) by foreign vessels. The domestic trawl catch of salmon is poorly documented, and, given current budget limitations, more accurate estimates are not expected in the near future.

There is no indication that bottom trawling has caused irreversible damage to the sea floor, rendering it unsuitable for habitation by other species. Discards have been a sporadic problem over the years and were particularly visible in 1981 with the increase in catch of small whiting which were subsequently discarded. Joint venture processors are required to discard offal seaward of 12 nautical miles in 1982.

The FMP intends that fishing success will be determined by competition in the marketplace and not through Federal regulation. There is no conservation or management reason to prohibit large trawlers from using their full operational potential.

Restricting trawl operations for the purpose of benefiting recreational fisheries is an issue of allocation between user groups. The benefits derived from limiting normal operation of an established fishery must demonstrably outweigh the costs; disruption of the winter trawl fishery would interrupt established markets and could destabilize the market for the entire trawl fleet. Although the proportion of fish taken recreationally in the groundfish fishery has declined from sex to four percent in the past five years, the actual tonnage taken has not varied substantially, averaging about 3,500 metric tons annually. There is no evidence that the recreational fishery is generally declining, nor is there indication that trawl time or area closures would dramatically boost the recreational fishing industry. Foreign trawl activity is greatly reduced under the FMP (the initial TALFF in 1982 is 35,500 metric tons compared with 60,000 metric tons in 1981) and, at current expectations, the decrease in foreign effort will not be fully replaced by domestic trawlers. This will reduce the potential for preemption of grounds and pressure on the stocks.

The Council will examine the possibility of allocation among user groups on a case-by-case basis.

Comment 7. One complaint was aimed at the Federal role in groundfish management in general rather than at these proposed regulations . This individual felt that overestimates of fish stocks irresponsibly encouraged entry into the groundfish industry, causing over-capitalization and the subsequent collapse of operations by many fishermen and processors, as well as collapse of the groundfish stocks. He also felt that joint ventures and foreign fisheries operate at the expense of domestic industry and dangerously deplete the resource.

Response. There have been no Federal regulations for domestic groundfish fisheries off Washington, Oregon, and California prior to implementation of these regulations in 1982. The stock estimates presented in the FMP are based on the best scientific data available but in most cases are conservative estimates. Joint venture operations were approved to exploit underutilized species, notably Pacific whiting, thereby expanding U.S. fishing activity and employment, enabling access to the world market, and relieving pressure on traditional groundfish fisheries. The amounts of fish authorized to be received in joint venture and foreign operations are in excess of domestic processors' needs as determined by semi-annual surveys of the production and intentions of the domestic fishing industry. The points of concern mechanism in the FMP will respond to indications of stressed fish stocks, and provide a means to maintain the OYs of the groundfish complex and the viability of the fishery.

Comment 8. Issuance of a standard application form for Experimental Fishing Permits was requested.

Response. This suggestion was rejected because of the desire of the Office of Management and Budget to reduce the number of Federal forms. Further, it was concluded that a form would not significantly facilitate applications for or processing experimental fishing permit. Since fewer than ten applications are expected annually, the Paperwork Reduction Act does not apply.

Comment 9. Several editorial and some substantive recommendations were received from the U.S. Coast Guard.

Response. The recommendations that are adopted are: including Dungeness crab in the daily cumulative catch log (§ 611.9(d)(4)); clarifying when the foreign logbook must be submitted to HMFS (§ 611.70(j)(4)); reordering the reporting requirements under § 611.70(j)(4); reordering the reporting requirements under § 663.2; rewording but not changing the intent of § 663.6(a) on vessel identification and § 663.8(b) on signals; and clarifying recreational catch limits in § 663.27(a).

Recommendations not accepted are: deletion of § 611.70(b) "Definitions" because it duplicates much of § 611.2; inclusion in § 611.70 of the domestic fishing regulations explaining biological conditions that could cause the closure of foreign fishing; separation of reporting requirements for the foreign trawl fishery from those for foreign joint venture operations; use of product units (block, carton, bag) in the foreign transfer log (§ 611.9(b)) and paragraphs (j)(4) and (j)(5) of § 611.70. The latter would change a reporting requirement approved by OMB under the Paperwork Reduction Act. Regarding the second item, the foreign vessel agents and representatives have access to domestic fishing regulations in part 663. A foreign vessel captain is not required to participate in the procedures to close a fishery, but only whether it is opened or closed. Regarding the third item, there is significant overlap between foreign trawl and foreign joint venture reporting requirements. If consolidation of the requirements proves too confusing, they will be separated in a future rulemaking.

Comment 10. A complimentary note was received from the Canadian government's Department of Fisheries and Oceans.

Response. Comment noted.

Comment 11. The State of Oregon reconfirmed consistency between the FMP and its coastal zone programs.

Response. Comment noted.

Notice of Management Estimates and Retention Amounts

At this time, the Secretary is announcing the final management estimates for the 1982 calendar year. These estimates were made preliminarily in the preamble to the proposed regulations and comments were invited during the public comment period for the proposed regulations. No comments were received. However, a mid-season survey of domestic processors revealed that U.S. processing of shortbelly rockfish in 1982 would be less than the 10,000 metric ton estimate of DAP published with the proposed regulations. Accordingly, OY and DAH are maintained at 10,000 metric tons, and DAP is reduced to 9,000 metric tons, making 1,000 metric tons of shortbelly rockfish available for joint venture processing (JUP). The data upon which these estimates are based are available at the offices of the Regional Directors in Seattle, WA, and Terminal Island, CA.

Final Estimates of Acceptable Biological Catch (ABC) for 1982

TABLE 1.—ESTIMATES OF ABC FOR 1982 (IN THOUSANDS OF METRIC TONS)

Species/areas	Vancouver	Columbia	Eureka	Monterey	Conception	Total
Groundfish:						
Lingcod	1.0	4.0	0.5	1.1	0.4	7.0
Pacific cod	2.2	0.9	(1)	(1)	(1)	3.1
Pacific whiting						[2] 175.5
Sablefish				[3] 2.5		[2] 13.4
Rockfish:						
Pacific ocean perch	0.0–0.6	0.0–0.95	(1)	(1)	(1)	0.0–1.55
Shortbelly						[2] 10.0
Widow	(1)	10.6	7.7	(1)	(1)	(1)
Other rockfish: [5]						
Bocaccio	(1)	(1)	(1)	4.1	2.0	6.1
Canary	4.0	1.3	0.6	(1)	(1)	5.9
Chilipepper	(1)	(1)	(1)	1.3	1.0	2.3
Yellowtail	2.3	2.4	0.3	(1)	(1)	5.0
Remaining rockfish	2.0	2.5	1.9	4.3	3.3	14.0
Flatfish:						
Dover sole	1.0	4.0	8.0	5.0	1.0	19.0
English sole	0.6	2.0	0.8	0.9	0.2	4.5
Petrale sole	0.6	1.1	0.5	0.8	0.2	3.2
Other flatfish (except arrowtooth flounder)	0.7	3.0	1.7	1.8	0.5	7.7
Other fish: [6]						
Jack mackerel						[7] 12.0
Others	3.0	7.0	2.0	2.0	2.0	16.0

[1] These species are not common or important in the areas footnoted. Accordingly, for convenience, Pacific cod is included in the "other fish" category for the areas footnoted, and rockfish species are included in the "remaining rockfish" category for the areas footnoted only.
[2] Total all areas.
[3] Monterey Bay only.
[4] Insufficient data available to estimate ABC.
[5] "Other rockfish" means rockfish species, listed in § 663.2, which do not have a numerical OY.
[6] "Other fish" includes sharks, skates, ratfish, morids, grenadiers, jack mackerel, arrowtooth flounder, and, in the Eureka, Monterey, and Conception areas, Pacific cod. "Other fish" is part of the "other species" category listed in §663.2.
[7] North of 39°00' N. latitude.

Final Specifications of Optimum Yield (OY) and its Distribution for 1982

TABLE 2.—SPECIFICATIONS OF OY AND ITS DISTRIBUTION FOR 1982 (IN THOUSANDS OF METRIC TONS)

Species	Total OY	DAH	DAP	JVP	Reserve	TALFF
Pacific whiting	175.5	105.0	5.0	100.0	35.0	35.0
Sablefish	[1] 13.4	13.4	13.4	[2] 0.0	0.0	[2] 0.0
Pacific ocean perch	[3] 1.55	1.55	1.55	[2,4] 0.0	0.0	[2] 0.0
Shortbelly rockfish	10.0	10.0	9.0	[2,4,7] 1.0	0.0	[2,4] 0.0
Widow rockfish	26.0	26.0	26.0	[2,4] 0.0	0.0	[2,4] 0.0
Other species	([5])	([5])	([5])	[2,6] 0.0	0.0	[2,6] 0.0

[1] Of this 13,400 metric tons, 2,500 metric tons is from part of the Monterey subarea. See § 663.21(a)(2).
[2] Incidental catch allowance percentages (based on TALFF) and incidental retention allowance percentages (based on JVP) are: sablefish 0.173%, Pacific ocean perch 0.062%, rockfish excluding Pacific ocean perch 0.738%, flatfish 0.1%, jack mackerel 3.0%, and other species 0.5%. See footnotes 4 and 6 of this table. See § 611.70(c)(2) for application of incidental retention allowance percentages to joint venture operations.
[3] Of this 1,550 metric tons, 600 metric tons is for the Vancouver subarea and 950 metric tons for the Columbia subarea. Pacific ocean perch from other subareas are included in the OY for "other species." See § 663.21(a)(3).
[4] In foreign trawl and joint venture processing operations, shortbelly and widow rockfishes are included in the category "rockfishes excluding Pacific ocean perch."
[5] The total OY for "other species" is that amount of fish that may be lawfully harvested and/or processed under § 611.70 and Part 663. See § 663.2 for species listing.
[6] In foreign trawl and joint venture processing operations, "other species" means all species, including non-groundfish species, except Pacific whiting, sablefish, Pacific ocean perch, rockfish excluding Pacific ocean perch, flatfish, jack mackerel, and prohibited species.
[7] DAP and JVP for shortbelly rockfish have been changed from the figures published in the proposed rulemaking. This change reflects the Secretary's determination that a surplus of 1,000 mt is available this year for joint venture operations (47 FR 38543, September 1, 1983).

Classification

The Assistant Administrator of NOAA has determined that the FMP is necessary and appropriate for the conservation of Pacific groundfish, and that it is consistent with the national standards and other provisions of the Magnuson Act as well as other applicable law.

Executive Order 12291 and Regulatory Flexibility Act. The Administrator of NOAA has determined that these regulations are not a major rule under E.O. 12291. A regulatory impact review (RIR) has been prepared, which also serves as the initial regulatory flexibility analysis (IRFA) required by the Regulatory Flexibility Act. The initial RIR/IRFA indicates that the regulations are not major under E.O. 12291 and describes the costs and benefits of the various management regimes in the FMP. No comments were received on the RIR/IRFA. Consequently, a final RIR/RFA, substantially the same as the initial document, is available from the Council (see Addresses).

National Environmental Policy Act of 1969. The Council prepared a draft EIS under Section 102(2)(C) of the National Environmental Policy Act of 1969. The EIS describes the affected marine, coastal, and human environments and discusses the possible impacts from the preferred and alternate management measures presented in the FMP. The draft EIS was filed with the Environmental Protection Agency (EPA) on November 23, 1979, and reviewed by the public in combination with the draft FMP. It was modified and submitted as a supplemental draft EIS to EPA on December 24, 1980. The Assistant Administrator considered the analyses in the FMP/EIS, public comments, and alternate management measures before approving the FMP. The final EIS was submitted to EPA with publication of the proposed regulations. The notice of availability of the final EIS was published by EPA on February 12, 1982 (47 FR 6483).

Paperwork Reduction Act of 1980. The FMP relies predominantly on data already required by the States. There are two Federal requests for information from domestic interests. The first is a survey of fish processors conducted each year to determine the amount of Pacific whiting and other species that will be processed during the season. This survey enables determination of DAP, and therein the amounts available to joint ventures and foreign fisheries. The OMB control number for this survey is 0648–0114. The second request for information concerns fishermen seeking an experimental fishing permit (EFP). The FMP is explicit on the information needed to evaluate the merits of an EFP application. Under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the new information collection provisions contained in the proposed rules need not be approved by the Office of Management and Budget since fewer than ten applications each year are expected.

The Federal request for information from foreign parties has been approved by OMB and assigned control number 0648–0075.

Administrative Procedure Act. The Administrator of NOAA finds there is good cause to waive the 30-day delayed effectiveness under the Administrative Procedure Act. Some groundfish have been fished heavily in recent years but data on this fishing effort were not available until after the proposed regulations were published. At least four species, Dover sole and widow, yellowtail, and canary rockfishes, already would trigger the point of concern mechanism under the FMP, if it

had been implemented, requiring immediate evaluation and possibly management measures to alleviate biological stress.

It appears certain that the recent success of the widow rockfish fishery has stressed that species beyond immediate recovery. Areas that were fished successfully in 1981 are relatively unproductive in 1982; the proportion of younger fish is increasing in some previously fished areas, indicating depletion of older, larger fish. The Groundfish Management Team has recommended landing restrictions, reduction of ABCs for all areas with previous ABC estimates, and reduction of the coastwide OY for widow rockfish. Since this fishery is currently underway, it is imperative that regulations be in place to protect this resource.

There is reason to believe that response by the three States to these problems would not be consistent or timely. The points of concern mechanism under the FMP is the most efficient and reliable means of dealing with such conservation problems, but does not become effective until the final FMP regulations are implemented.

Waiving the 30-day delayed effectiveness period is not inconsistent with the deferral of management measures discussed earlier. The deferred provisions allow a phase-in period for certain more restrictive regulations and are not expected to jeopardize the species which already would have triggered a point of concern.

The public had ample opportunity to comment on the FMP and its regulations during two public hearing sessions (in 1979–80 and 1981), the 48-day public comment period for these proposed regulations (which ended March 29, 1982), and at numerous Council meetings.

List of Subjects

50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting requirements.

50 CFR Part 663

Fish, Fisheries, Fishing.

Dated: September 29, 1982.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

Part 611—[Amended]

For the reasons set out in the preamble, 50 CFR Part 611 is amended as follows:

1. The authority citation of 50 CFR Part 611 is:

Authority: 16 U.S.C. 1801 *et seq.*, unless otherwise noted.

2. Section 611.4(c) is revised to read as follows:

§ 611.4 Vessel reporting.

* * * * *

(c) The notices required by paragraphs (a)(1) and (a)(5) of this section must be *delivered* to the appropriate Coast Guard commander at least 24 hours before beginning or ceasing fishing. The other notices required by paragraph (a) of this section must be *transmitted* before the event requiring notice and *delivered* within 72 hours of the event, except as specified in § 611.70(j)(2) for the Pacific coast groundfish fishery.

* * * * *

3. In § 611.9, paragraph (d)(4) and Appendix II, Figure 3 are revised, and a new species code is added in Part B of Appendix I, under the "Invertebrates" section to read as follows:

§ 611.9 Reports and recordkeeping.

* * * * *

(d) * * *

(4) In the Pacific coast groundfish fishery, the Gulf of Alaska groundfish fishery, and Bering Sea and Aleutian Islands fishery, record in addition to allocated species the prohibited species of salmon (species code 210) and halibut (species code 722) which are discarded, in terms of the number of fish. In the Pacific coast groundfish fishery, Dungeness crab (species code 690) also is a prohibited species which must be discarded and recorded by number.

* * * * *

Appendix—Species Codes

* * * * *

B. PACIFIC OCEAN FISHES

Code and common English name	Scientific name
. . . . .	
INVERTEBRATES	
. . . . .	
690 Dungeness crab	Cancer magister
. . . . .	

Appendix II—Area Codes

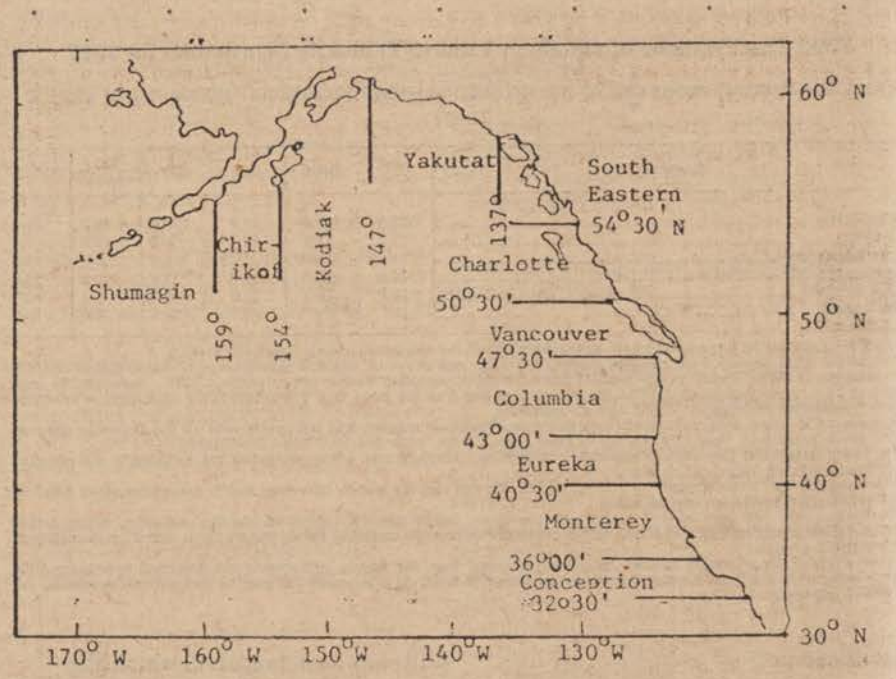


Figure 3. Fishing areas of the Gulf of Alaska and northeast Pacific.

4. Section 611.70 is revised to read as follows:

§ 611.70 Pacific coast groundfish fishery.

(a) *Purpose.* This subpart regulates all foreign fishing for groundfish conducted under a Governing International Fishery Agreement within the fishery conservation zone seaward of the States of Washington, Oregon, and California. For regulations governing fishing for groundfish in the same area by vessels of the United States, see part 663 of this chapter.

(b) *Definitions.* For purposes of this section, the following terms are defined:

(1) *Directed or target fishing* means fishing for the primary purpose of catching a particular species (the directed or target species).

(2) *Incidental catch* means groundfish species which are unavoidably caught during a directed fishery.

(3) *Joint venture processing* means processing by a foreign fishing vessel of U.S.-harvested groundfish species, whether directly or incidentally caught.

(4) *Prohibited species* means salmonids, Pacific halibut, and Dungeness crab.

(5) *Regional Director* means the Northwest Regional Director, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Seattle, Washington 98115.

(6) *Secretary* means the Secretary of Commerce or the person(s) to whom appropriate authority has been delegated.

(c) *Authorized foreign fishing.*—(1) *Amounts.* The total allowable levels of foreign fishing (TALFF), joint venture processing (JVP), incidental catch and retention allowance percentages, amounts of fish set aside as reserves, and the estimated domestic annual harvest (DAH) and domestic annual processing (DAP) are published in the **Federal Register** prior to the beginning of each fishing season, and during the season if these amounts are modified, to reflect changes in resource condition and performance of the U.S. industry. Current TALFF and JVP amounts are available from the Regional Director.

(2) *Restriction on joint venture incidental retention allowance.* The incidental retention allowance percentages are published in the **Federal Register** to reflect changes in resource condition and performance of the U.S. industry. The allowance percentages apply to each 5000 metric tons (mt) of species with a JVP allowance received by vessels of a foreign nation from U.S. vessels. If the retained amount of an incidental species or species complex reaches the specified percentage, no further amount of that species or species complex may be retained until vessels of that nation have received a full 5,000 mt of the species with a JVP allowance.

(d) *Modifications to authorized foreign fishing.*—(1) *Modifications.* The Secretary may establish or modify amounts of TALFF, JVP, and corresponding incidental catch and retention allowances during the season by publishing a notice in the **Federal Register** in accordance with this paragraph (d). The Secretary may publish season and area restrictions for any directed fishery for species other than Pacific whiting under the procedures of this paragraph (d).

(i) TALFF may be increased by any part of the reserve and initial estimated DAH for the species under consideration that the Secretary determines will not be harvested by U.S. fishermen during the remainder of the calendar year.

(ii) JVP may be increased by the amount of DAH for the species under consideration that the Secretary determines will not be processed by U.S. processors during the remainder of the fishing year.

(2) *Procedures to reassess DAH and DAP.*—(1) *Preliminary reassessment.* On July 1, or as soon as practicable thereafter, the Secretary will reassess DAH and DAP for each species for which a numerical OY exists. The Secretary will consult with the Pacific Fishery Management Council and will consider the following factors in making the reassessments:

(A) U.S. catch and effort as of July 1;

(B) Projected U.S. catch and effort for the remainder of the fishing year;

(C) U.S. processing performance as of July 1; and

(D) Projected U.S. processing performance for the remainder of the fishing year.

The preliminary reassessments will be published in the **Federal Register** on or about July 1.

(ii) *Final reassessment.* On August 1, or as soon as practicable thereafter, the Secretary will make a final reassessment of DAH and DAP for each species for which a numerical OY exists. The Secretary will consult with the Pacific Fishery Management Council and take into consideration all information received under paragraph (d)(2)(iv) of this section, all factors considered in making the preliminary reassessments under paragraph (d)(2)(i) of this section, and any additional relevant information. The final reassessment will be published in the **Federal Register** on or about August 1 with the reasons for the determinations.

(iii) *Availability of data.* All data relevant to the preliminary and final reassessments under paragraphs (d)(2)(i) and (d)(2)(ii) of this section will be available in aggregate form for public review at the Regional Director's office during the public comment period.

(iv) *Public comment.* Comments from the public that are relevant to preliminary and final reassessments in paragraphs (d)(2)(i) and (d)(2)(ii) of this section should be submitted to the Regional Director before August 1 or as stated in the **Federal Register** notice.

(3) *Procedures for other modifications*—(i) *Proposed modifications.* At any time during the calendar year, the Secretary may propose to modify the incidental catch or retention allowance percentages for any groundfish species or species complex. At any time the Secretary may propose to establish or modify seasons or areas for directed fisheries for species other than Pacific whiting. The Secretary will consult with the Pacific Fishery Management Council and will consider the following factors:

(A) Observed rates of incidental catches in previous foreign directed fishery or joint venture operations;

(B) Current estimates of the relative abundance and availability of species caught or received incidentally;

(C) Ability of the foreign fishery to attain TALFF or JVP;

(D) Past and projected foreign and U.S. fishing efforts;

(E) Status of the stock;

(F) Impact on domestic industry; and

(G) Other relevant scientific information.

Any proposed modification will be published in the **Federal Register.**

(ii) *Final modification.* Within thirty days following the publication of a proposal under paragraph (d)(3) of this section, or as soon as practicable thereafter, the Secretary may make a final decision. The Secretary will consult with the Pacific Fishery Management Council and take into consideration all information received under paragraph (d)(3)(iv) of this section, all factors considered in making the proposal under paragraph (d)(3)(i) of this section, and any additional relevant information. Any final decision will be published in the **Federal Register** with the reasons for the modification.

(iii) *Availability of data.* Data relevant to the proposed and final decisions under paragraphs (d)(3)(i) and (d)(3)(ii) of this section will be available in aggregate form for public review at the Regional Director's office during the public comment period.

(iv) *Public comment.* Comments from the public that are relevant to proposed and final decisions in paragraphs (d)(3)(i) and (d)(3)(ii) of this section should be submitted to the Regional Director by the date specified in the relevant **Federal Register** notice.

(e) *Fishery closures*—(1) *General.* The catching, retention, or receipt of any species or species complex is prohibited after the applicable open season has ended or after the fishery has been closed under a regulation or notice of closure issued under this section or part 663 (Regulations for the domestic Pacific Coast Groundfish Fishery).

(2) *Directed fishery.* Catching and retaining any species or species complex is prohibited after the vessels of a foreign nation have caught:

(i) That nation's allocation of TALFF; or

(ii) The maximum incidental catch allowance for that nation of any species or species complex.

(3) *Joint venture fishery.* (i) The receipt of any species of U.S.-harvested fish is prohibited after the maximum JVP amount has been received. (ii) The retention of a species or species complex of U.S.-harvested fish having an incidental retention allowance is prohibited after the maximum incidental retention allowance for that species or species complex has been retained.

(f) *Seasons.—(1) Directed fishery.* Directed foreign fishing authorized under this subpart may begin at 0701 G.M.T. (0001 Pacific Daylight Time) June 1 and will end not later than 0800 GMT on November 1 (2400 Pacific Standard Time on October 31), unless a different period of time is specified in a foreign fishing permit.

(2) *Joint venture fishery.* There is no season restriction unless specified in a foreign fishing permit or under § 611.70(d).

(g) *Closed areas.*—(1) *Directed fishery.* No directed foreign fishing may be conducted:

(i) Shoreward of a line drawn twelve nautical miles from the baseline used to measure the U.S. territorial sea;

(ii) North of 47°30′ N. latitude;

(iii) South of 39°00′ N. latitude;

(iv) Within the "Columbia River Recreational Fishery Sanctuary"—that area between 46°00′ N. latitude and 47°00′ N. latitude and east of a line connecting the following coordinates in the order listed: 46°00′ N. latitude, 124°55′ W. longitude; 46°20′ N. latitude, 124°40′ W. longitude; and 47°00′ N. latitude, 125°20′ W. longitude; or

(v) Within the "Klamath River Pot Sanctuary"—that area between 41°20′ N. latitude and 41°37′ N. latitude and east of a line connecting the following coordinates in the order listed: 41°20′ N. latitude, 124°32′ W. longitude; and 41°37′ N. latitude, 124°34′ W. longitude.

(2) *Joint venture fishery.* Except as specified under § 663.24 or § 611.70(d), no U.S.-harvested fish may be received or processed south of 39°00′ N. latitude.

(h) *Gear restrictions—directed fishery.* (1) Except as authorized under paragraph (h)(2) of this section, gear other than a pelagic trawl with a minimum stretched mesh size of 100 mm, measured between the inside of one knot and the inside of the opposing knot when wet, is prohibited. Liners must not be used in the codend of the trawl. Devices or methods of gear use which have the effect of reducing the mesh size in the codend are prohibited. Fishing on the seabed is prohibited.

(2) Any outer protective mesh covering (outer bag or chafing gear) of a mesh size less than two times the mesh size of the inner codend is prohibited. Any outer protective mesh covering which is not aligned knot-to-knot to the inner net and tied to the straps and riblines is prohibited. Such outer mesh must not be connected directly to the terminal (closed) end of the codend. Thread size of an outer protective mesh covering must not be greater than four times the diameter of the thread size of the inner net.

(i) *Directed fisheries.* (1) It is unlawful for any operator or owner of a foreign fishing vessel to conduct a directed fishery for any species or species complex for which that nation does not have an allocation of TALFF.

(2) It is a rebuttable presumption that any trawl that contains more than 50 percent by weight of any species or species complex (such as "other species") was conducted for the purpose of catching that species or species complex and therefore constitutes a directed fishery for that species or species complex.

(j) *Reports and recordkeeping.* (Approved by the Office of Management and Budget under OMB control number 0648–0075).

(1) In addition to the vessel reporting requirement of § 611.4, the operator of each foreign fishing vessel permitted for both directed fishing and joint venture operations shall notify the appropriate Coast Guard commander (see § 611.4, Tables I and II) before beginning and before ending a period of joint venture processing. Such notice must be *transmitted before the event requiring notice* and *delivered* within 72 hours of the event. The notices required by this paragraph must contain the following information: the message identifier "VESREP" to indicate it is a required vessel report, vessel name, international radio call sign, date (month and day), time (hour and minutes GMT), latitude and longitude (degrees and minutes), fishing area (use code specified in Appendix II to § 611.9), and the action code "START JV OPS" or "END JV OPS." An illustration of a sample report is as follows: The stern trawler NAVIS, LTUX, will begin joint venture processing on July 9, 1982, at 1320 GMT at position 43°40′ N. latitude, 124°30′ W. longitude in the Columbia area. The required message would be transmitted as follows:

From: M/V NAVIS, LTUX
To: Coast Guard Pacific Area San Francisco CA
VESREP
NAVIS/LTUX/0709/1320/4340N/12430W/71/START JV OPS//

(2) *Multiple shift reports.* If a foreign vessel operates within 20 nautical miles of a fishing area boundary, its operator may submit in one message the shift reports (required under § 611.4) for all fishing area shifts occurring during one fishing day (0001–2400 G.M.T.). This message must be transmitted prior to the last shift made in the day and delivered within 72 hours of the shift. All other requirements of §611.4 must be followed.

(3) *Report of fish on board when entering fishery.* Before operating in this fishery, the operator of each foreign vessel with fish on board will report to the Regional Director the species and amounts of fish on board which were harvested outside of this fishery. Any fish on board not so reported will be presumed to have been harvested in this fishery. Such reports must be submitted under the procedures specified in § 611.4(b).

(4) *Logbooks.* (i) The operator of each foreign fishing vessel shall maintain logbooks available from the National Marine Fisheries Service in accordance with the requirements of § 611.9, paragraphs (j)(4), (5), and (6) of this section, and the conditions and restrictions of that vessel's foreign fishing permit.

(ii) Cargo vessels (class 3 permit) do not receive National Marine Fisheries Service logbooks, and must comply with the transfer log requirements of § 611.9(b).

(iii) The logbook for foreign vessels catching fish in the directed fishery contains the daily fishing log (see paragraph (j)(5) of this section), the daily cumulative catch log (see § 611.9(d)) and the transfer log (see paragraph (j)(5) of this section and § 611.9(b)).

(iv) The logbook for foreign vessels receiving U.S.-harvested fish contains the daily receipt log (see paragraph (j)(5) of this section), the daily cumulative receipt log (see paragraph (j)(6) of this section), and the transfer log (see paragraph (j)(5) of this section and § 611.9(b)).

(v) These logs are the basis for all reports required under § 611.4, § 611.9, and this section. Required data must be recorded in duplicate and in English. Weights recorded in the daily fishing, daily cumulative catch, daily receipt, and daily cumulative receipt logs must be round weights (the weight of the whole fish). Weights recorded in transfer logs must be product weights (the weight of processed fish). On-deck estimates (round weight) of catch or amounts received in each haul must be logged before the next codend is on deck. The factory weight (product weight converted to round weight) of each haul or codend received must be

recorded within 24 hours after the codend is on deck. The logbooks must be made available for inspection by the National Marine Fisheries Service or U.S. Coast Guard personnel, who may remove the original handwritten pages at any time. All original handwritten pages in the logbooks not removed by the National Marine Fisheries Service or U.S. Coast Guard personnel must be submitted to the Regional director within three weeks after termination of a fishery due either to closure of the fishery, departure of a vessel from the grounds for the remainder of the season, or expiration of the fishing permit. Duplicate copies must be retained on the foreign vessel throughout the period the vessel is permitted to receive U.S.-harvested fish.

(5) *Daily catch, daily receipt, and transfer logs.* The following information must be recorded accurately in the daily catch, daily receipt, and transfer logs as applicable:

(i) Vessel name and permit number;

(ii) Radio call sign;

(iii) Dates;

(iv) Times and vessel's positions (in degrees and minutes of latitude and longitude) at the beginning and end of each set (when the net is at fishing depth);

(v) Bottom depth, averaged over length of tow;

(vi) Depth of gear, averaged over length of tow;

(vii) Time and vessel's position (in degrees and minutes of latitude and longitude) at each transfer of fish or fish products between foreign vessels;

(viii) Product weight or number, by species, of all fish or fish products transferred between foreign vessels;

(ix) time and vessel's position (in degrees and minutes of latitude and longitude) at each receipt of U.S.-harvested fish;

(x) On-deck estimates (round weight) of the amount of catch or receipt and the factory weight (product weight converted to round weight) to the nearest tenth of a metric ton (0.1 mt) or directed species in each haul or codend received;

(xi) On-deck estimates (round weight) of the amount of catch or receipt and the factory weight (product weight converted to round weight) to the nearest hundredth of a metric ton (0.01 mt) in each haul or codend received of species for which vessels of that nation have an incidental catch or retention allowance;

(xii) Amount of catch or receipt in numbers in each haul or codend received of marine mammals and prohibited species (salmonids, Pacific halibut, Dungeness crab); and

(xiii) Disposition of the fish caught or received: human consumption (including consumption on board), fishmeal, or discarded.

(6) *Daily cumulative receipt logs.* Operators of foreign vessels receiving U.S.-harvested fish shall maintain a daily cumulative receipt log and shall record on a daily and a cumulative basis the round weight of all species received during the permit period, whether retained or discarded. Information for each fishing area must be maintained on a separate page of the log. Data for a day (0001 G.m.t. to 2400 G.m.t.) must be recorded before the end of the next day. The following information must be recorded accurately in the daily cumulative receipt log:

(i) Name and call sign of the vessel;

(ii) Permit number;

(iii) Date;

(iv) Directed and incidental species by common name and species code number;

(v) Fishing area and area code number where received;

(vi) Daily receipts of directed and incidental species to nearest tenth of a metric ton (0.1 mt round weight);

(vii) Daily receipts of numbers of marine mammals and prohibited species (salmonids, Pacific halibut, and Dungeness crab);

(viii) Disposition of species received: human consumption (including consumed on board), fishmeal, or discarded; and

(ix) Cumulative total receipts (round weight) of each directed and incidental species in each fishing area.

(7) *Weekly report of receipts of U.S.-harvested fish by foreign processing vessels.* Weekly reports must be submitted as specified in § 611.9. In addition to the information required by § 611.9(f), weekly reports must contain: (i) Weight of fish discarded, by species, rounded to the nearest tenth of a metric ton (0.1 mt). Discard amounts must be followed by the word "DISCARD." Amounts of fish not reported as discarded are presumed to be retained.

(ii) For each foreign vessel receiving U.S.-harvested fish, the total number of U.S. vessels that delivered codends and the total number of codends received, by area, during the reporting period. At the end of the report for each area (see § 611.9, Appendix 5, Item C) add the letter "V" (for "vessel") followed by the number of U.S. vessels which delivered fish, and the letter "R" (for "received") followed by the number of codends received. EXAMPLE: The stern trawler NAVIS, operating under permit number LT–82–0001–A which authorizes the receipt of U.S.-harvested Pacific whiting and other associated species in the Pacific groundfish fishery, received 26 codends from four U.S. vessels in the Columbia area (code 71) during the week of June 6–12, 1982. The following species and amounts were received: Pacific whiting (code 704) 156.3 mt; rockfish excluding Pacific ocean perch (code 849) 0.2 mt; jack mackeral (code 208) 27.0 mt; and other species (code 499) 5.0 mt (of which 0.1 mt was retained and 4.9 mt were discarded). During the same week NAVIS received 2 codends containing a total of 8.0 mt of whiting from one U.S. vessel in the Eureka area (code 72). The text of the Telex report would appear as follows:

REOREP
NAVIS/LT820001A/0612//
71//704/156.3//849/.2//208/27.0//499/.1//
499/4.9 DISCARD//V4/R26//72//
704/8.0//V1/R2//

(8) In addition to the requirements of § 611.9, the operator of each foreign fishing vessel must submit reports as follows to the Regional Director.

(i) *Daily Report.* From the time the Secretary estimates that 90 percent of JVP, an incidental retention allowance, a nation's fishing allocation, or incidental catch allowance of any species or species complex has been reached, and so notifies the designated representative of the nation(s) involved, the information required under § 611.9(e) "Weekly Catch Report" and § 611.9(f) "Weekly Reports of Receipts of U.S.-Harvested Fish" must be submitted on a daily basis and must reach the Regional Director no later than three days after the reported fishing day.

(ii) *Annual report.* Each nation with fishing vessels conducting directed fishery operations must report annual catch and effort statistics by May 31 of the following year in tabular form as follows:

(A) Effort in hours trawled, by vessel class, by gear type, by month, by ½° latitude by 1° longitude statistical areas.

(B) Catch by vessel class, by gear type, by month, by ½° latitude by 1° longitude statistical areas:

(*1*) To the nearest tenth of a metric ton (0.1 mt round weight), any species for which that nation has a fishing allocation or incidental catch allowance; and

(*2*) The numbers of salmonids, Pacific halibut, and Dungeness crab.

(k) *Prohibited species—joint venture fishery.* Any prohibited species or part thereof which is received from a vessel of the United States, after allowing for sampling by a U.S. foreign fishing observer (if any), must be returned to sea immediately with a minimum of

injury regardless of its condition. (Regulations concerning prohibited species taken in the directed fishery are found at § 611.13 and § 611.9(d)(4).)

For the reasons set out in the preamble, 50 CFR Part 663 is added to read as follows:

PART 663—PACIFIC COAST GROUNDFISH FISHERY

Subpart A—General Provisions

Sec.

Subpart B—Management Measures

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

Subpart A—General Provisions

§ 663.1 Purpose and scope.

(a) The regulations in this part govern fishing for groundfish by fishing vessels of the United States in the fishery conservation zone (FCZ) off the coasts of Washington, Oregon, and California.

(b) Regulations governing fishing for groundfish by fishing vessels other than vessels of the United States are published at 50 CFR Part 611, Subpart A and § 611.70.

(c) These regulations implement the Pacific Coast Groundfish Plan developed by the Pacific Fishery Management Council for groundfish fisheries off the coasts of Washington, Oregon, and California.

§ 663.2 Definitions.

In addition to the definitions in the Magnuson Act, the terms used in this part have the following meanings (some definitions in the Magnuson Act have been repeated here to aid understanding of the regulations):

Acceptable biological catch (ABC) means a seasonally determined catch that may differ from maximum sustainable yield (MSY) for biological reasons.

Authorized officer means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Commercial fishing means fishing by a person in possession of a valid personal State commercial fishing license, or fishing by a person on a vessel which also has aboard a person in possession of a valid personal State commercial fishing license.

Fishery conservation zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal states to a line each point of which is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishery management area means the fishery conservation zone off the coasts of Washington, Oregon, and California between 3 and 200 nautical miles offshore, and bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico.

Fishing means:

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking, or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described above.

This term does not include any scientific research activity which is conducted by a scientific research vessel.

Fishing gear:

(a) *Bobbin trawl* means the same as a roller trawl.

(b) *Bottom trawl* means a trawl in which the otter boards or the footrope of the net are in contact with the seabed. It includes Danish and Scottish seine gear.

(c) *Chafing gear* means webbing or other material attached to the bottom (underside) or around the codend of a trawl net to protect the codend from wear.

(d) *Codend* means the terminal, closed end of a trawl net.

(e) *Double-ply mesh* means double twine tied into a single knot.

(f) *Double-walled codend* means a codend constructed of two walls of webbing.

(g) *Gillnet* means a single-walled, rectangular net which is set upright in the water.

(h) *Hook-and-line* means one or more hooks attached to one or more lines.

(i) *Longline* means a stationary, buoyed, and anchored groundline with hooks attached.

(j) *Pelagic (midwater or off-bottom)* means a trawl in which the otter boards may be in contact with the seabed but the footrope of the net remains above the seabed.

(k) *Pot* means a trap.

(l) *Roller trawl* means a trawl net with footropes equipped with rollers or bobbins made of wood, steel, rubber, plastic, or other hard material which keep the footrope above the seabed thereby protecting the net.

(m) *Set net* means a stationary, buoyed, and anchored gillnet or trammel net.

(n) *Single-walled codend* means a codend constructed of a single wall of webbing knitted with single or double-ply mesh.

(o) *Spear* means a sharp, pointed, or barded instrument on a shaft.

(p) *Trammel net* means a gillnet made with two or more walls joined to a common float line.

(q) *Trap* means a portable, enclosed device with one or more gates or entrances and one or more lines attached to surface floats.

(r) *Trawl mesh size* means the distance between the inside of one knot and the inside of the opposing knot in the trawl mesh.

(s) *Trawl net* means a cone or funnel-shaped net which is towed through the water by one or two vessels.

(t) *Trawl riblines* means heavy rope or lines that run down the sides, top, or underside of a trawl net from the mouth of the net to the terminal end of the codend to strengthen the net during fishing.

Fishing trip means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel lands fish.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for: (a) fishing; or (b) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Fishing year means the year beginning at 0801 GMT (0001 local time) on January 1 and ending at 0800 GMT on January 1 (2400 local time on December 31).

Groundfish means species managed by the Pacific Coast Groundfish Plan, specifically:

Common name and scientific name

Pacific whiting, *Merluccius productus*
sablefish, *Anoplopoma fimbria*
Pacific ocean perch, *Sebastes alutus*
shortbelly rockfish, *S. jordani*
widow rockfish, *S. entomelas*

"Other species":

Sharks: leopard shark, *Triakis semifasciata*
soupfin shark, *Galeorhinus zyopterus*
spiny dogfish, *Squalus acanthias*
Skates: big skate, *Raja binoculata*
California skate, *R. inornata*
longnose skate, *R. rhina*
Ratfish: ratfish, *Hydrolagus colliei*
Morids: finescale codling, Antimora microlepis
Grenadiers: Pacific rattail, *Coryphaenoides acrolepis*
Roundfish: lingcod, *Ophiodon elongatus*
Pacific cod, *Gadus macrocephalus*
jack mackerel (north of of 39°00′ N. latitude), *Trachurus symmetricus*
Rockfish: black rockfish, *Sebastes melanops*
blue rockfish, *S. mystinus*
bocaccio, *S. paucispinis*
canary rockfish, *S. pinniger*
chilipepper, *S. goodei*
copper rockfish, *S. caurinus*
cowcod, *S. levis*
darkblotched rockfish, *S. crameri*
greenspotted rockfish, *S. chlorostictus*
lonspine thronyhead, *Sebastolobus altivelis*
olive rockfish, *Sebastes serranoides*
redstripe rockfish, *S. proriger*
rougheye rockfish, *S. aleutianus*
sharpchin rockfish, *S. zacentrus*
shortspine thornyhead, *Sebastolobus alascanus*
silvergray rockfish, *Sebastes brevispinis*
splitnose rockfish, *S. diploproa*
stripetail rockfish, *S. saxicola*
vermilion rockfish, *S. miniatus*
yellowmouth rockfish, *S. reedi*
yellowtail rockfish, *S. flavidus*
yelloweye rockfish, *S. rubberimus*
Flatfish: arrowtooth flounder (arrowtooth turbot), *Atheresthes stomias*
butter sole, *Isopsetta isolepis*
Dover sole, *Microstomus pacificus*
English sole, *Parophrys vetulus*
flathead sole, *Hippoglossoides elassodon*
Pacific sanddab, *Citharichthys sordidus*
petrale sole, *Eopsetta jordani*
rex sole, *Glyptocephalus zachirus*
sand sole, *Psettichthys melanostictus*
starry flounder, *Platichthys stellatus*

Incidental catch or *incidental species* means groundfish species caught while fishing for the primary purpose of catching a different species.

Land or *landing* means to begin offloading fish, to arrive in port with the intention of offloading fish, or to cause fish to be offloaded.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. §§ 1801 *et seq.*, as amended.

Maximum sustainable yield (MSY) means an average over a reasonable length of time of the largest catch which can be taken continuously from a stock.

Official number means the documentation number issued by the U.S. Coast Guard or the certificate number issued by a State or by the U.S. Coast Guard for undocumented vessels.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Pacific Coast Groundfish Plan means the fishery management plan (FMP) for the Washington, Oregon, and California groundfish fishery developed by the Pacific Fishery Management Council and approved by the Secretary of Commerce on January 4, 1982, and as it may be subsequently amended.

Person means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Recreational fishing means fishing with authorized recreational fishing gear for personal use only, and not for sale or barter.

Regional Director means the Northwest Regional Director, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Seattle, Washington 98115. For fisheries occurring primarily or exclusively in the fishery management area seaward of California, *Regional Director* means the Northwest Regional Director, National Marine Fishereis Service, acting upon the recommendation of the Southwest Regional Director, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Secretary means the Secretary of Commerce or the person(s) to whom appropriate authority has been delegated.

Trip limit means the total allowable amount of a groundfish species or species complex by weight, or by percentage of weight of fish on board, which may be landed from a single fishing trip.

Vessel of the United States means (a) a vessel documented or numbered by the U.S. Coast Guard under U.S. law; or (b) a vessel, under five net tons, which is registered under the laws of any State.

§ 663.3 Retention to other laws.

(a) *Federal laws.* (1) *Pacific halibut.* Fishing for Pacific halibut is governed by the regulations promulgated by the International Pacific Halibut Commission and approved by the United States (see part 301 of this title).

(2) *Salmon.* Fishing for salmonids in the Pacific Fishery Management Council's fishery management area is governed by Federal regulations at Part 661 of this title. Fishing for pink and sockeye salmon between 48°00′ N. latitude and the Provisional International Boundary between the United States and Canada (United States Convention waters) is governed by the Convention for the Protection, Preservation, and Extension of the Sockeye Salmon Fishery of the Fraser River System as amended by the Pink Salmon Protocol (see part 371 of this title).

(3) *Anchovy.* Fishing for northern anchovy in the Pacific Fishery Management Council's Pacific Anchovy Fishery Area (south of 38°00′ N. latitude) is governed by Federal regulations at part 662 of this title.

(b) *State laws.* This part recognizes that any State law which pertains to vessels registered under the laws of that State while in the fishery management area, and which is consistent with the Pacific Coast Groundfish Plan, including any State landing law, shall continue in effect with respect to fishing activities regulated under this part.

§ 663.4 Reports.

This part recognizes that catch and effort data necessary for implementing the Pacific Coast Groundfish Plan are collected by the States of Washington, Oregon, and California under existing State data collection requirements. Telephone surveys of domestic industry

(see § 611.70(d) and § 663.24) will be conducted biannually by the National Marine Fisheries Service to determine amounts of fish which will be made available to foreign fishing and joint venture processing. (Approved by the Office of Management and Budget under OMB control number 0648–0114). No additional Federal reports are required of fishermen or processors as long as the data collection and reporting systems operated by State agencies continue to provide the Secretary with statistical information adequate for management.

§ 663.5 Management subareas.

(a) The fishery management area is divided into five subareas for the regulation of groundfish fishing, with the following designations and boundaries:

(1) *Vancouver.* (i) Northeastern boundary—that part of a line connecting the light on Tatoosh Island, Washington, with the light on Bonilla Point on Vancouver Island, British Colombia (at 48°35′75″ N. latitude, 124°43′00″ W. longitude) south of the International Boundary between the United States and Canada (at 48°29′37.19″ N. latitude, 124°43′33.19″ W. longitude), and north of the point where that line intersects with the boundary of the U.S. territorial sea.

(ii) Northern and northwestern boundary is a line connecting the following coordinates in the order listed, which is the provisional international boundary of the U.S. FCZ as shown on NOAA/NOS Charts #18480 and #18007:

Point	N. latitude	W. longitude
1	48°29′37.19″	124°43′33.19″
2	48°30′11″	124°47′13″
3	48°30′22″	124°50′21″
4	48°30′14″	124°54′52″
5	48°29′57″	124°59′14″
6	48°29′44″	125°00′06″
7	48°28′09″	125°05′47″
8	48°27′10″	125°08′25″
9	48°26′47″	125°09′12″
10	48°20′16″	125°22′48″
11	48°18′22″	125°29′58″
12	48°11′05″	125°53′48″
13	47°49′15″	126°40′57″
14	47°36′47″	127°11′58″
15	47°22′00″	127°41′23″
16	46°42′05″	128°51′56″
17	46°31′47″	129°07′39″

(iii) Southern limit: 47°30′ N. latitude.

(2) *Columbia.* (i) Northern limit: 47°30′ N. latitude; (ii) Southern limit: 43°00′ N. latitude.

(3) *Eureka.* (i) Northern limit: 43°00′ N. latitude; (ii) Southern limit: 40°30′ N. latitude.

(4) *Monterey.* (i) Northern limit: 40°30′ N. latitude; (ii) Southern limit: 36°00′ N. latitude.

(5) *Conception.* (i) Northern limit: 36°30′ N. latitude; (ii) Southern limit: The United States-Mexico International Boundary, which is a line connecting the following coordinates in the order listed:

Point	N. latitude	W. longitude
1	32°35′22″	117°27′49″
2	32°37′37″	117°49′31″
3	31°07′58″	118°36′18″
4	30°32′31″	121°51′58″

(b) Any person fishing subject to this part is bound by the above-described international boundaries, nothwithstanding any dispute or negotiation between the United States and any neighboring country regarding their respective jurisdictions, until such time as new boundaries are established or recognized by the United States.

(c) The inner boundary of the fishery management area is a line coterminous with the seaward boundaries of the States of Washington, Oregon, and California (the "3-mile limit").

(d) The outer boundary of the fishery management area is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is a provisional or permanent international boundary between the United States and Canada or Mexico.

§ 663.6 Vessel identification.

(a) *Display.* The operator of a groundfish vessel which is over 25 feet in length shall display the vessel's official number on the port and starboard sides of the deckhouse or hull, and on a weatherdeck so as to be visible from above. The number must contrast with the background and be in block Arabic numerals at least 18 inches high for vessels over 65 feet long and at least 10 inches high for vessels between 25 and 65 feet in length. The length of a vessel for purposes of this section is the length set forth in U.S. Coast Guard or State records.

(b) *Maintenance of numbers.* The operator of a groundfish fishing vessel shall keep the identifying markings required by paragraph (a) of this section clearly legible and in good repair, and shall ensure that no part of the vessel, its rigging, or its fishing gear obstructs the view of the official number from an enforcement vessel or aircraft.

§ 663.7 General prohibitions.

It is unlawful for any person:

(a) To possess, have custody or control of, ship or transport, offer for sale, sell, purchase, import, or export any groundfish taken, retained, or landed in violation of the Magnuson Act, this part, or any other regulation promulgated under the Magnuson Act;

(b) To refuse to allow an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation promulgated under the Magnuson Act;

(c) To forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any inspection or search described in paragraph (b) of this section;

(d) To resist a lawful arrest for any act prohibited by this part;

(e) To interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, with the knowledge that such other person has committed any act prohibited by this part;

(f) To interfere with, obstruct, delay, or prevent by any means a lawful investigation or search conducted in the process of enforcing the Magnuson Act;

(g) To transfer, or attempt to transfer, directly or indirectly, any U.S.-harvested groundfish to any foreign fishing vessel within the FCZ, unless the foreign vessel has been issued a permit which authorizes the receipt of U.S.-harvested fish of the species being transferred;

(h) To sell, offer to sell, or purchase any groundfish taken in the course of recreational groundfish fishing;

(i) To retain any species of salmonid or Pacific halibut caught by means of fishing gear authorized under this part unless authorized by 50 CFR Parts 301, 371 or 661;

(j) To falsify or fail to affix and maintain vessel and gear markings as required by § 663.6;

(k) To fail to comply immediately with enforcement and boarding procedures specified in § 663.8;

(l) To fish for groundfish in violation of any terms or conditions attached to an EFP under § 663.10;

(m) To fish for groundfish using gear not authorized under § 663.26, or under and EFP issued under § 663.10;

(n) To take and retain, or land more groundfish than specified under § 663.27, § 663.28, or under an EFP issued under § 663.10;

(o) To violate any other provision of this part, the Magnuson Act, any notice issued under subpart B of this part, or any other regulation or permit promulgated under the Magnuson Act.

§ 663.8 Enforcement.

(a) *General.* The operator of any fishing vessel subject to these regulations shall immediately comply with instructions issued by an authorized officer to facilitate safe boarding and ispection of the vessel, its gear, equipment, and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Signals.* Upon being approached by a U.S. Coast Guard cutter or aircraft, or other vessel or aircraft authorized to enforce the Magnuson Act, the operator of the fishing vessel shall be alert for signals conveying enforcement instructions. The VHF–FM radiotelephone is the normal method of communicating between vessels. Listen the VHF–FM channel 16 (emergency channel) for instructions to shift to another VHF–FM channel and receive boarding instructions. Visual methods or loudhailer may be used if the radio does not work. The following signals, extracted from U.S. Hydrographic Office publication H.O. 102 International Code of Signals, may be communicated by flashing light or signal flags:

(1) "L", meaning "You should stop your vessel instantly."

(2) "SQ3", meaning "you should stop or heave to; I am going to board you."

(3) "AA AA AA etc.," meaning "Call for unknown station or general call." The operator should respond by identifying his vessel by radio, visual signals or illuminating his Official Number.

(4) "RY–CY", meaning "You should proceed at slow speed. A boat is coming to you."

(c) *Boarding.* The operator of a vessel signaled to stop or heave-to for boarding shall:

(1) Stop immediately and lay to or maneuver in such a way as to allow the boarding party to come aboard; and

(2) Take such other actions as necessary to ensure the safety of the boarding party.

§ 663.9 Penalties.

Any person or fishing vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Magnuson Act, and 50 CFR Part 620 (Citations), 50 CFR Part 621 and 15 CFR Part 904 (Civil Procedures), and other applicable laws.

§ 663.10 Experimental fisheries.

(a) *General.* The Secretary may authorize, for limited experimental purposes, the direct or incidental harvest of groundfish managed by the pacific Coast Groundfish Plan which would otherwise be prohibited by this part. No experimental fishing may be conducted unless authorized by an experimental fishing permit (EFP) issued by the Secretary in accordance with the criteria and procedures specified in this section. EFPs will be issued without charge.

(b) *Application.* An applicant for an EFP shall submit to the Regional Director at least 60 days before the desired effective date of the EFP a written application including, but not limited to, the following information:

(1) The date of the application;

(2) The applicant's name, mailing address, and telephone number;

(3) A statement of the purposes and goals of the experiment for which an EFP is needed, including a general description of the arrangements for disposition of all species harvested under the EFP;

(4) A statement of whether the proposed experimental fishing has broader significance than the applicant's individual goals;

(5) For each vessel to be covered by the EFP:

(i) Vessel name;

(ii) Name, address, and telephone number of owner and master;

(iii) U.S. Cost Guard documentation, State license, or registration number;

(iv) Home port;

(v) Length of vessel;

(vi) Net tonnage; and

(vii) Gross tonnage.

(6) A description of the species (directed and incidental) to be harvested under the EFP and the amount(s) of such harvest necessary to conduct the experiment;

(7) For each vessel covered by the EFP, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used; and

(8) The signature of the applicant.

The Secretary may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected in writing.

(Approval by Office of Management and Budget not required, under 44 U.S.C. 3506(c)(5)).

(c) *Issuance.* (1) If an application contains all of the required information, the Secretary will publish a notice of receipt of the application in the **Federal Register** with a brief description of the proposal, and will give interested persons an opportunity to comment. The Secretary will also forward copies of the application to the Pacific Fishery Management Council, the U.S. Coast Guard, and the fishery management agencies of Oregon, Washington, California, and Idaho, accompanied by the following information:

(i) The current utilization of domestic annual harvesting and processing capacity (including existing experimental harvesting, if any) of the target and incidental species for which an EFP is being requested;

(ii) A citation of the regulation or regulations which, without the EFP, would prohibit the proposed activity; and

(iii) Biological information relevant to the proposal.

(2) At a Pacific Fishery Management Council meeting following receipt of a complete application, the Secretary will consult with the Pacific Fishery Management Council and the Directors of the State fishery management agencies concerning the permit application. The applicant will be notified in advance of the meeting at which the application will be considered, and invited to appear in support of the application if the applicant desires.

(3) Within 5 working days after the consultation in paragraph (c)(2) of this section, or as soon as practicable thereafter, the Secretary shall notify the applicant in writing of the decision to grant or deny the EFP, and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

(i) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application; or

(ii) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect any species of fish in a significant way; or

(iii) Issuance of the EFP would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose; or

(iv) Activities to be conducted under the EFP would be inconsistent with the intent of this section or the management objectives of the Pacific Coast Groundfish Plan; or

(v) The applicant has failed to demonstrate a valid justification for the permit; or

(vi) The activity proposed under the EFP would create a significant enforcement problem.

(4) The decision of the Secretary to grant or deny an EFP is final and unappealable. If the permit is granted, the Secretary will publish a notice in the **Federal Register** describing the experimental fishing to be conducted under the EFP. The Secretary may attach terms and conditions to the EFP consistent with the purpose of the experiment including, but not limited to:

(i) The maximum amount of each species which can be harvested and landed during the term of the EFP, including trip limits, where appropriate;

(ii) The number, sizes, names, and identification numbers of the vessels authorized to conduct fishing activities under the EFP;

(iii) The time(s) and place(s) where experimental fishing may be conducted;

(iv) The type, size, and amount of gear which may be used by each vessel operated under the EFP;

(v) The condition that observers be carried aboard vessels operated under an EFP;

(vi) Data reporting requirements; and

(vii) Such other conditions as may be necessary to assure compliance with the purposes of the EFP consistent with the objectives of the Pacific Coast Groundfish Plan.

(d) *Duration.* Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is effective for no longer than one year unless revoked, suspended, or modified. EFPs may be renewed following the application procedures in this section.

(e) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(f) *Transfer.* EFPs issued under this part are not transferable or assignable. An EFP is valid only for the vessel(s) for which it is issued.

(g) *Inspection.* Any EFP issued under this part must be carried aboard the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer.

(h) *Sanctions.* Failure of the holder of an EFP to comply with the terms and conditions of an EFP, a notice issued under Subpart B of this part, any other applicable provision of this part, the Magnuson Act, or any other regulation promulgated thereunder, shall be grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP will be governed by 15 CFR Part 904 Subpart D, or 50 CFR Part 621.

Subpart B—Management Measures

§ 663.21 General limitations.

(a) *Optimum yield.* (1) Numerical optimum yields (OYs) for Pacific whiting, sablefish, Pacific ocean perch, shortbelly rockfish and widow rockfish in the five regulatory subareas are published in the **Federal Register**. OYs for those five species are the maximum amount which may be retained or landed each year in the fishery management area or relevant subarea and include fish caught in the territorial sea (0–3 nautical miles). The "other species" complex has no numerical OY and is regulated by the gear, area, and catch restrictions set forth in this Subpart B.

(2) The OY for sablefish in the Monterey subarea pertains to that part of the subarea between 37°00′ N. latitude and 36°30′ N. latitude only. The OY for sablefish for the remainder of the Monterey subarea is included in the "Total OY" for sablefish.

(3) Pacific ocean perch are categorized as "other species" in the Eureka, Monterey, and Conception subareas. This species is not common or important in these subareas. Accordingly, the OY for Pacific ocean perch applies only to the Vancouver and Columbia subareas.

(b) *Notice of closure.* If the Secretary determines that the numerical OY for any species in the fishery management area or in any regulatory subarea will be reached during the fishing year, the Secretary will publish a notice of closure under the provisions of § 663.23, prohibiting retention or landing of that species caught in the fishery management area or in the applicable regulatory subarea.

§ 663.22 Inseason adjustments.

(a) *Reduction of fishing levels.* (1) Except as otherwise provided by Section 305(e) of the Magnuson Act, after receiving a recommendation and written report by the Pacific Fishery Management Council, the Secretary may publish one or more notices under § 663.23 to reduce fishing levels if it is determined that continued fishing at current levels would cause biological stress to any species or species complex. Biological stress may exist when:

(i) Exploitable biomass or spawning biomass is below a level expected to produce MSY for a species or species complex;

(ii) Recruitment is substantially below replacement level;

(iii) Fishing mortality rate exceeds that required to take ABC for the calendar year;

(iv) Catch for the calendar year is projected to exceed the best current estimate of ABC; or

(v) Any other abnormality in the biological characteristics of the species or species complex is discovered, such as changes in age composition, size composition, or age at maturity.

(2) A public hearing will be held before any determination that continued fishing at current levels would result in biological stress to any species or species complex, and before publishing any notice reducing fishing levels on any species or species complex.

(3) In issuing any notice reducing fishing levels under this paragraph, the Secretary may adjust the management measures in this part. Adjustments to management measures may include: size, trip, and bag limits; termination of directed and/or incidental harvest by foreign or domestic fishermen, or both, of a species or species complex; area and subarea closures; time closures; gear limitations; and quotas. To the extent practicable, adjustments to management measures will be consistent with the objectives and priorities of the Pacific Coast Groundfish Plan.

(b) *Increase in numerical OYs.* (1) After receiving a recommendation and written report from the Pacific Fishery Management Council, the Secretary may publish one or more notices under § 663.23 to increase the numerical OY for any species during the fishing year, if it is determined that such increase would not cause biological stress to that or any other species and would promote full utilization of the groundfish resource. The Secretary will consider the following in making the determination:

(i) Exploitable biomass and spawning biomass relative to MSY levels for the species under consideration;

(ii) Fishing mortality rate relative to MSY levels for the species under consideration;

(iii) Magnitude of incoming recruitment;

(iv) Projected effort and corresponding catches relative to ABC;

(v) In the case of species normally taken in mixed catches, the relative contribution of the species to the total catch;

(vi) The impact, if any, of the proposed increase in OY on other species.

(2) A public hearing will be held before any determination is made which forms the basis for an increase to a numerical OY and before the Secretary publishes any notice to implement such increase.

(3) The sum of any increases to a numerical OY during a single fishing year may not exceed 30 percent of the OY for that species at the beginning of the fishing year.

§ 663.23 Notices.

(a) The Secretary shall publish the notices described in § 663.21, § 663.22 or § 663.27 in proposed form in the **Federal Register** for public comment, unless the Secretary finds for good cause that such notice and public review ae

impracticable, unnecessary, or contrary to the public interest. During the public comment period, the aggregate data upon which the proposed notice is based will be available for public inspection at the Regional Office during business hours.

(b) If the Secretary determines, for good cause, that a notice described in § 663.21, § 663.22, or § 663.27(b)(3) must be issued without affording a prior opportunity for public comment, public comments on the notice shall be received by the Secretary for a period of 15 days after the effective date of the notice. During any such 15-day period, the aggregate data upon which the notice was based will be available for public inspection in the office of the Regional Director during business hours.

(c) Any notice issued under this section will not be effective until 30 days after publicaation in the **Federal Register** unless the Secretary finds and publishes with the notice good cause for an earlier effective date.

(d) Notices issued under this section will emain in effect until the expiration date stated in the published notice or until rescinded, modified, or superseded.

(e) Nothing contained in this section limits the authority of the Secretary to issue emergency regulations under Section 305(e) of the Magnuson Act.

§ 663.24 Annual adjustments.

(a) Each year, the Secretary will publish a notice in the **Federal Register** specifying optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable level of foreign fishing (TALFF) for Pacific whiting, sablefish, Pacific ocean perch, shortbelly rockfish, and widow rockfish. The Secretary may publish season and area restrictions, incidental catch and receipt allowance restrictions, and any other restrictions, for any TALFF or JVP amount that may be specified for species other than Pacific whiting. The Secretary will also publish the annual ABCs for groundfish in the **Federal Register.** Annual specifications of numerical OYs and ABCs by the Secretary will not exeed 30 percent of the OYs and ABCs specified at the beginning of the previous year.

(b) *Procedures.*—(1) *Preliminary specifications.* On November 1, or as soon as practicable thereafter, the Secretary will make and publish in the **Federal Register** preliminary specifications for the next calendar year as described in paragraph (a) of this section. The Secretary will consult with the Pacific Fishery Management Council and consider the following factors in making the preliminary specifications:

(i) Results of a survey of domestic processors and joint venture operations to estimate processing capacity and planning utilization;

(ii) Results of a survery of fishermen's trade associations to estimate fishing capacity and planned utilization; and

(iii) Relevant scientific information.

(2) *Final specifications.* On December 1, or as soon as practicable thereafter, the Secretary will make final specifications for the next calendar year as described in paragraph (a) of this section. The Secretary will consult with the Pacific Fishery Management Council and take into consideration all information received under paragraph (b)(4) of this section, all factors considered in making the preliminary determinations under paragraph (b)(1) of this section, and additional relevant information. The final specifications will be published as a notice in the **Federal Register** on or about December 1 with the reason for the specifications.

(3) *Availability of data.* All data relevant to the preliminary and final specifications under paragraphs (b)(1) and (b)(2) of this section will be compiled in aggregate form and will be available for public review at the office of the Regional Director during the public comment period.

(4) *Public comment.* Comments from the public that are relevant to the preliminary and final specifications in paragraphs (b)(1) and (b)(2) of this section may be submitted to the Secretary until December 1 or as specified in the **Federal Register.**

§ 663.25 Season. [Reserved]

§ 663.26 Gear restrictions.

(a) *General.* The following types of fishing gear are authorized, with the restrictions set forth in this section: bottom trawl, gillnet, hook-and-line, longline, pelagic trawl, pot or trap, roller or bobbin trawl, set net, spear, trammel net, and trawl net.

(b) *Trawl gear*—(1) *Use.* Trawl nets may be used on and off the seabed. Trawl nets may be fished with or without otter boards, and may use warps or cables to herd fish.

(2) *Mesh size.* Trawl nets may be used if they meet the minimum sizes set forth below. Minimum trawl mesh size requirements are met if a stainless steel wedge can be passed with thumb pressure only through 16 of 20 sets of two meshes each of wet mesh in the codend.

MINIMUM TRAWL MESH SIZE (IN INCHES)

Trawl type	Vancouver	Subarea		Monterey	Conception
		Columbia	Eureka		
Bottom	4.5	4.5	4.5	4.5	4.5
Roller or bobbin	3.0	3.0	3.0	4.5	4.5
Pelagic	3.0	3.0	3.0	3.0	3.0

(3) *Chafing gear.* (i) Chafing gear must not be connected directly to the terminal (closed) end of the codend.

(ii) In all bottom trawls, chafing gear must have a minumum mesh size of 15 inches, unless only the bottom one-half (underside) of the codend is covered by chafing gear.

(iii) In roller and bobbin trawls in the Vancouver, Columbia, and Eureka subareas, and all pelagic trawls, chafing gear covering the upper one-half (top side) of the codend must have a minimum mesh size of 6 inches.

(4) *Double-walled codends.* (i) Double-walled codends must not be used in any pelagic trawl, or in any other trawl with mesh size less than 4.5 inches.

(ii) The double-walled layers of the codend must be the same mesh size and coincide knot-to-knot, and must not be longer than 25 trawl meshes or 12 feet, whichever is greater.

(5) *Bottom trawls.* A net used in a bottom trawl must have at least two continuous riblines sewn to the net and extending from the mouth of the trawl net to the terminal end of the codend, if the fishing vessel is simultaneously carrying aboard a net of less than 4.5 inch mesh size.

(6) *Pelagic trawls.* Pelagic trawl nets must have unprotected footropes at the trawl mouth (without rollers or bobbins). Footropes must be 1.75 inches or less in diameter, including twine necessary for seizing material. Sweeplines, including the bottom leg of the bridle, must be bare.

(7) *Roller trawl or bobbin trawl.* In the Eureka, Columbia, and Vancouver subareas, if trawl mesh size less than 4.5 inches is used, rollers or bobbins must be a minimum of 14 inches in diameter.

(c) *Set nets.* Fishing for groundfish with set nets is prohibited in the fishery management area north of 38°00′ N. latitude.

(d) *Traps or pots.* (1) Traps must be attended at least once every seven days.

(2) Traps must have biodegradable escape panels constructed with #21 or smaller untreated cotton twine in such a manner that an opening at least 8 inches in diameter results when the twine deteriorates.

(3) Traps set individually must be marked at the surface with a pole and

flag, light, radar reflector, and a buoy displaying clear identification of the owner.

(4) Traps laid on a groundline must be marked at the surface at each terminal end of the groundline with a pole and flag, light, radar reflector, and a buoy displaying clear identification of the owner. Traps laid on a groundline must also be marked at the surface every one male of groundline with a pole and flag, and either a light or a radar reflector.

(e) *Spears.* Spears may be propelled by hand or by mechanical means.

(f) *Longlines.* (1) Longlines must be attended at least once every 7 days.

(2) Longlines must be marked at the surface at each terminal end with a pole and flag, light, radar reflector, and a buoy displaying clear identification of the owner. Every one mile of groundline must also be marked at the surface with a pole and flag, and either a light or a radar reflector.

(g) *Recreational fishing.* The only types of fishing gear authorized for recreational fishing are hook-and-line and spear.

§ 663.27 Catch restrictions.

Groundfish species harvested in the territorial sea (0–3 nautical miles) will be counted toward the catch limitations in this section.

(a) *Recreational fishing.* The limits for each person engaged in recreational fishing are three lingcod per day and 15 rockfish per day. Multi-day limits are authorized by a valid permit issued by the State of California and must not exceed the daily limit multipled by the number of days in the fishing trip.

(b) *Commercial fishing*—(1) *Rockfish.* The trip limit for a vessel engaged in fishing with a pelagic trawl with mesh size less than 4.5 inches in the Conception or Monterey subareas is 500 pounds or 5 percent by weight of all fish on board, whichever is greater, of the species group composed of bocaccio, chilipepper, splitnose, and yellowtail rockfishes per fishing trip.

(2) *Pacific ocean perch.* The trip limit for Pacific ocean perch is 5,000 pounds or 10 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

(3) *Sablefish.* When it is determined that 95 percent of the OY will be reached for that portion of the Monterey subarea between 37°00′ N. latitude and 36°30′ N. latitude, or for the fishery management area as a whole, the Secretary will publish a notice of closure in accordance with § 663.23 establishing a trip limit for that area. The trip limit will be based on the most recent data available for the season and will equal the average percentage of sablefish in all trawl landings containing sablefish in the area (37°00′ N. latitude—36°30′ N. latitude, or the fishery management area as a whole), but in no event will the trip limit exceed 30 percent by weight of all fish on board.

§ 663.28 Restrictions on other fisheries.

(a) *Pink Shrimp.* The trip limit for a vessel engaged in fishing for pink shrimp is 1,500 pounds (multiplied by the number of days of the fishing trip) of groundfish species other than Pacific whiting, shortbelly rockfish, or arrowtooth flounder.

(b) *Spot and ridgeback prawns.* The trip limit for a vessel engaged in fishing for spot or ridgeback prawns is 1,000 pounds of groundfish species per fishing trip.

§ 663.29 Scientific research.

Nothing is this part is intended to inhibit or prevent any scientific research which is conducted in the fishery management area by a scientific research vessel. The Secretary will acknowledge notification of scientific research involving groundfish and conducted by a scientific research vessel by issuing to the operator or master of that vessel a letter of acknowledgement, containing information on the purpose and scope (locations and schedules) of the activities. The Secretary will transmit copies of such letters to the Pacific Fishery Management Council, and to State and Federal administrative and enforcement agencies, to ensure that all concerned parties are aware of the research activities.

[FR Doc. 82-27291 Filed 9-30-82; 10:21 am]

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Proposed Rules

Federal Register
Vol. 47, No. 193
Tuesday, October 5, 1982

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Civil Service Retirement; Miscellaneous Amendments

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) proposes to amend its Retirement regulations to add certain revisions not previously incorporated in the regulations, correct certain omissions and to conform to changes in the law. The Age Discrimination in Employment Act (ADEA) Amendments of 1978 (Pub. L. 95–256) eliminated age 70 mandatory retirement for most Federal civilian employees. Public Law 94–126 grants 100% credit for pre-1969 National Guard technician service to certain technicians who perform service on or after January 1, 1969. This law also requires OPM to reduce the monthly annuity which includes creditable pre-1969 National Guard technician service by that portion of any monthly State retirement benefit (including cost-of-living increases) to which the individual is (or upon proper application would be) entitled based on the same pre-1969 technician service.

Public Law 93–350 provided improved retirement benefits and set forth requirements for mandatory separation. The mandatory separation provisions affect reemployment of Federal law enforcement and firefighter personnel. The regulations are revised to reflect these changes and requirements. The revision and technical corrections of the regulations will improve OPM's administration of the Retirement Program.

DATE: Comments must be received on or before December 3, 1982.

ADDRESS: Comments should be addressed to Craig B. Pettibone, Assistant Director for Pay and Benefits Policy, Office of Personnel Management, P.O. Box 57, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: Jane Lohr, Program Analysis Branch, (202) 632–4634, on the Age Discrimination in Employment Act and provisions relating to law enforcement and firefighter personnel. Contact Lauretta Hall, Issuances and Instructions Branch, (202) 632–4684, on the other miscellaneous amendments.

SUPPLEMENTARY INFORMATION: 1. The Age Discrimination in Employment Act (ADEA) Amendments of 1978 (Pub. L. 95–256, effective September 30, 1978) amended the Civil Service Retirement Law to remove the mandatory separation requirement for Federal employees who become age 70 with 15 years of creditable Federal service.

Employees who are not affected by this law are: law enforcement officers, firefighters, air traffic controllers, employees of the Alaska Railroad, and U.S. citizens employed on the Isthmus of Panama by the Panama Canal Company or by the Canal Zone Government. These employees are still subject to mandatory separation (at ages lower than 70) when they meet age and service requirements for their particular positions.

Paragraph 831.501(a) would be revised to eliminate the reference to mandatory retirement and to reflect the proper documentation required for submission to OPM for optional retirement.

2. Public Law 94–126 (approved November 12, 1975) grants 100% (rather than 55%) credit for pre-1969 National Guard technician service to those technicians who perform service under section 709 of title 32, United States Code, on or after January 1, 1969.

This law also requires OPM to reduce the monthly annuity which includes creditable pre-1969 National Guard technician service by that portion of any monthly State retirement benefit to which the individual is (or upon proper application would be) entitled based on the same pre-1969 technician service.

Many states which pay retired National Guard technician pension benefits periodically add cost-of-living increases to these benefits. For this reason, civil service annuity cases must be monitored. Any increase in the State benefits requires a corresponding reduction in the civil service annuity.

Section 831.702 would be added to: (1) Require the reduction of civil service annuities under the circumstances described above, (2) require annuitants to provide OPM information, on request, concerning the status (or increase) of the State benefit, and (3) specify OPM's authority to request from State retirement systems appropriate data needed to make a proper determination and adjustment of an annuity benefit.

3. Section 4 of Pub. L. 93–350 requires the mandatory separation of a law enforcement officer or firefighter who is otherwise eligible for immediate retirement under section 8336(c)(1) of title 5 of the United States Code. These employees must be separated from service on the last day of the month in which they become age 55 or complete 20 years of service (if then over 55).

An exemption from this mandatory separation requirement may be granted when the head of an agency finds it in the public interest to postpone the automatic separation. Then, this exemption may extend only until the employee becomes 60 years of age.

Prior to mandatory separation, the employing office must notify the employee, in writing, of the date of separation at least 60 days in advance. Otherwise, action to mandatorily separate the employee is not effective without the consent of the employee, until the last day of the month in which the 60-day notice expires.

The mandatory retirement provision for law enforcement and firefighter personnel has been in effect since January 1, 1978.

A new paragraph (b) would be added in section 831.503 to outline the procedures for excepting a law enforcement officer or firefighter from mandatory separation at age 60. The current paragraphs (b) and (c) would be redesignated as (c) and (d).

4. OPM also proposes to make the following specific changes in Part 831:

a. In section 831.110, paragraphs (b), (c), (d), and (e) would be deleted to reflect the elimination of the reopening step in the reconsideration process. This change reflects the final reconsideration procedures published in the **Federal Register** on April 8, 1980. The designation (a) of the introductory paragraph would be removed.

b. Paragraph 831.201(a)(9) would be amended to change the title from Acting Postmaster to Officer in Charge. This change will conform to the change made by the U.S. Postal Service.

c. Paragraph 831.701(c) would be amended to: (1) clarify how annuity accrues for purposes of prorating an annuitant's initial cost-of-living increase, and (2) to reflect the new policy of allowing one day's accrual of annuity (for purposes of prorating a retiree's *initial* cost-of-living increase) for the 31st of the month in which an employee retires, if the employee retires on the 30th of a 31-day month. (Example: An employee retiring on December 30th will receive annuity payment for December 31st.) For all subsequent months (regardless of the number of days a month has), the retiree will be paid based on a 30-day month. (Section 8349(c) of title 5, United States Code requires the prorating of the initial cost-of-living increase.)

d. The spelling of the word "annuity" in § 831.803 would be corrected.

e. Paragraph 831.903(c)(1) would be amended to change "follow" to "follows".

f. Paragraph 831.904(c) would be amended to reflect the correct reference section from "8336(b)" to "8335(b)".

g. Paragraph 831.1002(c) would be renumbered as paragraph 831.1002(d).

A new paragraph 831.1002(c) would be added to indicate that survivor annuities which terminate (except by death) can, under certain conditions, be restored. (As in the case of a surviving spouse whose survivor annuity terminates due to remarriage before age 60, the survivor annuity may be restored upon termination of that remarriage.)

Without this addition to section 831.1002, one may be misled to believe that survivor annuities can begin and terminate only once.

h. The new paragraph 831.1002(d) (previously paragraph 831.1002(c)), would be amended to: (1) clarify how annuity accrues for purposes of prorating a surviving spouse's (based on the service of a deceased employee) initial cost-of-living increase, and (2) to reflect the new policy of allowng one day's accrual of annuity (for purposes of prorating the survivor's *initial* cost-of-living increase) for the 31st of the month if an employee dies in service on the 30th of a 31 day month. (Example: If an employee dies in service on December 30th, the eligible survivor will receive annuity payment for December 31st.) (Section 8340(c) of title, 5, United States Code, provides for prorating the initial cost-of-living adjustment.)

i. Paragraph 831.1705(a)(3) would be amended to exclude from gross annuity the premiums for additional optional and family optional life insurance for apportionment purposes. This change is necessary in order to give consideration to those persons having such coverage as provided by Public Law 96–427 (the Federal Employees' Group Life Insurance Act of 1980).

E.O. 12291, Federal Regulation

OPM has 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 these regulations will not have a significant economic impact on a substantial number of small entities because they affect mainly Federal employees and annuitants.

List of Subjects in 5 CFR Part 831

Administrative practice and procedure, Claims, Firefighters, Government employees, Handicapped, Law enforcement officers, Retirement.

Office of Personnel Management.

Donald J. Devine,

Director.

PART 831—RETIREMENT

* * * * *

Accordingly, OPM proposes to amend Part 831 of Title 5 of the Code of Federal Regulations as follows:

1. Table of sections for Subpart G at the beginning of Part 831 is revised to read as follows:

Subpart G—Computation of Annuities

Sec.
831.701 Effective dates of annuities.
831.702 Adjustment of annuities.
* * * * *

§ 831.110 [Amended]

2. In § 831.110, paragraphs (b), (c), (d), and (e) are removed and the designation "(a)" of the introductory paragraph is removed.

3. In § 831.201, paragraph (a)(9) is revised to read as follows:

§ 831.201 Exclusions from retirement coverage.

(a) * * *

(9) Officers in Charge, clerks in fourth-class post offices, substitute rural carriers, and special-delivery messengers at second-, third-, and fourth-class post offices.

* * * * *

4. In § 831.501, paragraph (a) is revised to read as follows:

§ 831.501 Time for filing applications.

(a) An employee or Member who is eligible for retirement may file an application for retirement with OPM within 30 days before, on, or any time after he/she reaches the requisite retirement age. When the department or agency contemplates reemployment, the individual, the department, or agency shall immediately submit to OPM the Application for Retirement with a photocopy of Standard Form 2806 (Individual Retirement Record) or a complete resume of the applicant's service history, salary, and retirement deductions, and Standard Form 2801–1 (Certified Summary of Federal Service), or its equivalent.

* * * * *

5. In § 831.503, paragraphs (b) and (c) are redesignated (c) and (d), respectively. A new paragraph (b) is added, and paragraph (c) is revised, to read as follows:

§ 831.503 Automatic separation; exemption.

* * * * *

(b)(1) The head of the agency, when in his/her judgment the public interest so requires, may exempt a law enforcement officer or firefighter from automatic separation until that employee becomes 60 years of age.

(2) The Secretary of Transportation and the Secretary of Defense, under such regulations as each may prescribe, may exempt an air traffic controller having exceptional skills and experience as a controller from automatic separation until that controller becomes 61 years of age.

(c) When a department or agency lacks authority and wishes to secure an exemption from automatic separation for one of its employees other than a Presidential appointee, beyond the age(s) provided by statute, i.e. age 60 for a law enforcement officer or firefighter, age 61 for an air traffic controller, and age 62 for an employee of the Alaska Railroad in Alaska or an employee who is a citizen of the United States employed on the Isthmus of Panama by the Panama Canal Commission, the department or agency head shall submit a recommendation to that effect to OPM.

(1) The recommendation shall contain:

(i) A statement that the employee is willing to remain in service;

(ii) A statement of facts tending to establish that his/her retention would be in the public interest;

(iii) The period for which the exemption is desired, which period may not exceed 1 year; and,

(iv) The reasons why the simpler method of retiring the employee and immediately reemploying him/her is not being used.

(2) The recommendation shall be accompanied by a medical certificate showing the physical fitness of the employee to perform his/her work.

* * * * *

6. In § 831.701, paragraph (c) is revised to read as follows;

§ 831.701 Effective dates of annuities.

* * * * *

(c) Annuity accrues on a daily basis, one-thirtieth of the monthly rate constituting the daily rate. Annuity does not accrue for the thirty-first day of any month, except in the initial month if the employee's annuity commences on the 31st of a 31-day month. For accrual purposes, the last day of a 28-day month constitutes 3 days (or the last day of a 29-day month constitutes 2 days).

7. A new § 831.702 is added to read as follows:

§ 831.702 Adjustment of annuities.

(a)(1) An annuity which includes creditable National Guard technician service performed prior to January 1, 1969, shall be reduced by the portion of any benefits under any State retirement system to which an annuitant is entitled (or on proper application would be entitled) for any month in which the annuitant is eligible for State benefits based on the same pre-1969 service.

(2) Any cost-of-living increases in the State benefit shall require a corresponding deduction in the civil service annuity.

(3) Any cost-of-living increase to a civil service annuity shall apply to the gross annuity before deduction for benefits under any State retirement system.

(b) In the adjudication of claims arising under subchapter III of Chapter 83 of title 5, United States Code, OPM shall take appropriate action to obtain the data that it considers necessary to assure the proper determination and deduction of annuity from state retirement systems and annuitants.

§ 831.803 [Amended]

8. In § 831.803 "annunity" is corrected to read "annuity".

9. In § 831.901, paragraphs (c) and (d) are revised to read as follows:

§ 831.901 Special provisions applicable.

* * * * *

(c) Section 8335(b), pertaining to mandatory separation;

(d) Section 8336(c)(1) pertaining to immediate retirement; and

* * * * *

10. In § 831.903, the introductory text of paragraph (c)(1) is revised to read as follows:

§ 831.903 Law enforcement officer.

(c) * * *

(1) Service in the position transferred to follows service in a law enforcement position without—

* * * * *

§ 8831.904 [Amended]

11. In § 831.904(c), section "8336(b)" is corrected to read section "8335(b)".

12. In § 831.905, paragraph (b)(1)(i) and the introductory text of paragraph (c) are revised to read as follows:

§ 831.905 Creditability-of-service determinations.

* * * * *

(b) * * *

(1)(i) The position in which the service was performed was approved by OPM under paragraph (a) of this section as being subject to section 8336(c)(1) of title 5, United States Code; or

* * * * *

(c) In the event an employee is separated mandatorily under section 8335(b) of title 5, United States Code, or is separated for optional retirement under section 8336(c)(1) of title 5, United States Code, and OPM finds that all or part of the minimum service required for entitlement to immediate annuity was in a position in which the employee was not a law enforcement officer or firefighter, such separation shall be considered erroneous. For service held by OPM to have been in a position in which the employee was not a law enforcement officer or firefighter, the employee may, upon proper application, be paid a refund, without interest, of

* * * * *

13. § 831.906 is added to read as follows:

§ 831.906 Reemployment of law enforcement and firefighter personnel.

An employee required to retire by 5 U.S.C. 8335(b) may be reemployed until age 60. The prohibition against the reemployment of firefighters and law enforcement personnel after age 60 applies only to those positions involved with the performance of actual firefighting or law enforcement duties as described in §§ 831.903(a) and 831.904(a).

14. In § 831.1002, paragraph (c) is redesignated as paragraph (d), a new paragraph (c) is added, and paragraph (d) is revised to read as follows:

§ 831.1002 Effective dates of survivor annuities.

* * * * *

(c) A survivor annuity which terminates for reasons other than death may be restored under conditions defined in section 8341(e)(2) and (g) of title 5, United States Code.

(d) Survivor annuity accrues on a daily basis, one-thirtieth of the monthly rate constituting the daily rate. Annuity does not accrue for the thirty-first day of any month, except in the initial month if the survivor's (of a deceased employee) annuity commences on the 31st of a 31-day month. For accrual purposes, the last day of a 28-day month constitutes 3 days (or the last day of a 29-day month constitutes 2 days).

15. In § 831.1705, paragraph (a)(3) is revised to read as follows:

§ 831.1705 Retirement benefits—amount, when payable.

(a) * * *

(3) Deducted for life insurance premiums pursuant to section 8714a(d), 8714b(d), and 8714c(d) of title 5, United States Code;

* * * * *

(5 U.S.C. 8347)

[FR Doc. 81-27340 Filed 10-4-82; 8:45 am]
BILLING CODE 6325-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 303

Applications, Requests, Submittals, and Notices of Acquisition of Control

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Federal Deposit Insurance Corporation's Board of Directors proposes to delegate authority, if certain criteria are met to approve (but not deny) routine merger transactions. The delegation is to the Director of the FDIC's Division of Bank Supervision and to the FDIC's regional directors. The FDIC expects that this action will reduce the time and costs of processing applications.

DATE: Comments must be submitted on or before December 6, 1982.

ADDRESS: Comments may be mailed to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550—17th Street, N.W., Washington, D.C. 20429.

FOR FURTHER INFORMATION CONTACT: Donald F. Pfeiffer, Supervising Examiner, Division of Bank Supervision, Federal Deposit Insurance Corporation, 550—17th Street, N.W., Washington, D.C. 20429, 202-389-4343.

SUPPLEMENTARY INFORMATION: Under section 18(c)(2) of the Federal Deposit Insurance Act [the "FDI Act," 12 U.S.C. Sec 1828(c)(2)], a bank insured by the FDIC must apply to the FDIC for permission to merge or consolidate with another insured bank, or acquire the assets of or assume the liability to pay any deposits in any other insured bank, if the surviving bank will be a State-chartered bank that is not a member of

the Federal Reserve System [a "State nonmember bank"].

The FDIC's Board of Directors ("Board") has already delegated the power to approve—but not deny—merger transactions that are mere corporate reorganizations or "phantom-bank mergers." See 12 CFR Sec. 303.11(a)(9). The delegation is to the Director of the Division of Bank Supervision ("DBS") and, where confirmed in writing by the Director of DBS, to the regional director of the FDIC region where the applicant bank is located. Transactions of this kind do not affect the structure of the banking market or the financial condition of the applicant bank. Accordingly the Board has been willing to let the Director of DBS and the regional directors approve them.

Now the FDIC proposes to delegate authority to approve (but not deny) merger transactions of a substantive but routine character. The delegation applies to transactions in which an insured bank merges or consolidates with another insured commercial bank, or acquires the assets of or assumes the liability to pay any deposits made in another insured commercial bank (herewith referred to without distinction as "merger transactions") The delegation is to the Director of its Division of Bank Supervision and, where confirmed in writing by the Director of DBS, to the regional director of the FDIC region where the applicant bank is located.

The delegation is effective only if the delegate determines that the conditions contained in Section 18(c)(5) of the FDI Act, 12 U.S.C. sec. 1828(c)(5), are satisfied, and also finds that the application meets the following criteria:

1. All parties to the merger transaction must be insured banks; but no party to the merger transaction may be a savings bank or a mutual savings bank.

2. Upon consummation of the merger transaction, the applicant (or, where the applicant is a foreign bank, its insured branch) may not have more than 15% of the individual, partnership, and corporate deposits held by banks (excluding deposits held by savings banks and mutual savings banks) in the relevant market.

3. Upon consummation of the merger transaction, the applicant (or where the applicant is a foreign bank, its insured branch) may not have more than $1 billion in assets.

4. If the applicant is a state bank, its capital ratio, upon consummation of the merger transaction, must conform to the "FDIC Statement of Policy on Capital Adequacy," 46 FR 62694 (1981). If the applicant is a foreign bank, its insured branch must be in compliance with 12 CFR Part 346 upon consummation of the merger transaction.

5. Upon consummation of the merger transaction, the applicant (or, where the applicant is a foreign bank, its insured branch) must warrant a composite rating of 2 or better under the Uniform Financial Institutions Rating System, 1 *Fed. Deposit Ins. Corp. (P–H)* 5079.

6. Upon consummation of the merger transaction the applicant (or, where the applicant is a foreign bank, its insured branch) must be in substantial compliance with state and federal laws, rules, and regulations.

7. Upon consummation of the merger transaction, the applicant (or, where the applicant is a foreign bank, its insured branch) must be in substantial compliance with the Community Reinvestment Act, 12 U.S.C. 2901 *et seq.*, and implementing regulations (12 CFR Part 345).

8. Upon consummation of the merger transaction, there must remain at least three banks (excluding savings banks or mutual savings banks) other than the applicant in the relevant market.

9. The delegate must review the reports on the competitive factors involved in the transaction provided by the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Attorney General. If the Attorney General determines that the transaction may have an adverse effect on competition, the delegation is not effective. If the FDIC does not receive an opinion from the Attorney General within 30 days, the delegate must ask the Washington Office of the FDIC's Legal Division to provide a formal opinion on the transaction's effect on competition. In that event the delegate may not approve the application until the Legal Division determines that the transaction will not affect competition adversely.

The FDIC believes that applications fitting these criteria will not adversely affect competition in the market, or the safety-and-soundness of the banks or the banking system, or the convenience and needs of the community within which the merger transaction is to take place.

The proposed delegation would save at least ten days in the approval process for an application, and often two weeks or more. The delegation would eliminate several levels of review. Perhaps most significantly, the delegation would conserve the resources of the FDIC's Board of Directors.The Board members would no longer be required to expend their time on routine questions, and would be freed to focus their attention on matters of greater weight and urgency.

The proposed delegation can be expected to benefit banks as well as the FDIC. The delegation would shorten the time banks would have to wait for approval. In addition, the delegation would give the FDIC greater flexibility to accommodate the parties' particular circumstances (*e.g.*, their accounting periods) where the 30-day waiting period might cause timing problems.

The FDIC Board of Directors dealt with 37 merger transactions from January 1, 1982, to May 31, 1982. Twenty-six involved commercial banks only. Of these, 15 would not have met one or more of the proposed criteria. The remaining 11 (or 42% of those involving commercial banks) could have been delegated to the Director of DBS and/or the regional directors under the proposed rule.

As an alternative, the FDIC might have proposed to delegate more authority to the Director of DBS and to the regional offices. In particular, the FDIC might have proposed to delegate the power to deny applications as well as to approve them, the power to approve merger transactions involving insured institutions other than commercial banks (*e.g.*, FDIC-insured mutual savings banks), or the power to approve transactions involving banks not insured by the FDIC. Matters like these raise issues that are not routine, however. The FDIC believes that the FDIC's Board of Directors should continue to review any such cases.

The FDIC might also have given the Director of DBS and the regional directors greater latitude by relaxing the criteria for approving merger transactions. The FDIC believes, however, that the criteria proposed here will keep the standard of approval uniform from case to case and from region to region.

The FDIC Board of Directors considers that the delegations are internal in nature, and will have no adverse effect on any insured bank. Any effect will be beneficial: the delegations reduce the time for processing applications. For these reasons, the FDIC Board of Directors hereby certifies that the proposed amendments, if promulgated, will not have a significant economic impact on a substantial number of small entities. Accordingly, the provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this regulation.

The FDIC Board of Directors also considers that the delegations will not

affect the record-keeping or reporting requirements imposed on insured banks, and will not affect any bank's competitive status. Accordingly, a cost/benefit anlaysis of the delegations (including a small-bank impact statement) is not required.

List of Subjects in 12 CFR Part 303

Administrative practice and procedure, Applications and forms, Authority delegations, Banks, banking, Branches, branching, Insurance, State nonmember banks.

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, AND NOTICES OF ACQUISITION OF CONTROL

In consideration of the foregoing, the FDIC proposes to amend Part 303 of Title 12 of the Code of Federal Regulations as follows:

1. The authority citation for 12 CFR Part 303 continues to read as follows:

Authority: Secs. 2(5), 2(6), 2(7)(j), 2(8), 2(9) "Seventh" and "Tenth"), 2(18), 2(19), Pub. L. No. 797, 64 Stat. 876, 881, 891, 893 as amended by Pub. L. No. 86-463, 74 Stat. 129; sec. 2, Pub. L. No. 87-827, 76 Stat. 953; Pub. L. No. 88-593, 78 Stat. 940; Pub. L. No. 89-79, 79 Stat. 244; sec. 1, Pub. L. No. 89-356, 80 Stat. 7; sec. 12(c), Pub. L. No. 89-445, 80 Stat. 242; sec. 3, Pub. L. No. 89-597, 80 Stat. 824; title II, secs. 201, 205, Pub. L. No. 89-695, 80 Stat. 1055; sec. 2(b), Pub. L. No. 90-505, 82 Stat. 856; secs. 6(c)(7), (12), (13), Pub. L. No. 95-369, 92 Stat. 616-620; title III, secs. 306, 309 and title VI, secs. 602, Pub. L. No. 95-630, 92 Stat. 3677, 3683 (12 U.S.C. 1815, 1816, 1817(j), 1818, 1819 "Seventh" and "Tenth," 1828 1829); title I, sec. 108, Pub. L. No. 90-321, 82 Stat. 150 as amended by title IV, sec. 403, Pub. L. No. 93-495, 88 Stat. 1517 and title VI, sec. 608, Pub. L. No. 96-221, 94 Stat. 171 (15 U.S.C. 1607).

2. § 303.11 is amended by adding a new paragraph (a)(17) as follows:

§ 303.11 Delegation of authority to act on certain applications and on notices of acquisition of control.

(a) * * *

(17) Applications for permission to merge or consolidate with any other insured bank or, either directly or indirectly, to acquire the assets of, or assume the liability to pay any deposits made in, any other insured bank or insured branch of a foreign bank. This authority extends only to the approval and not to the denial of such applications.

* * * * *

3. Section 303.12 is amended by adding paragraph (e) as follows:

§ 303.12 Applications where authority is not delegated.

* * * * *

(e) *Conditions precedent to delegation of authority to approve applications for permission to merge or consolidate with any other insured bank or, either directly or indirectly, to acquire the assets of, or assume the liability to pay any deposits made in, any other insured bank or insured branch of a foreign bank.* [Important: The requirements set forth in this paragraph (e) are procedural in nature only and should not be construed as standards or criteria which will be used in determining whether a specific application will be approved or denied.] Authority to approve applications for permission to merge or consolidate with another insured bank or, either directly or indirectly, to acquire the assets of, or assume the liability to pay any deposits in, any other insured bank (herein referred to as "merger transactions") is delegated pursuant to § 303.11(a)(17) only where the conditions set forth in section 18(c)(5) of the Federal Deposit Insurance Act, 12 U.S.C. 1828(c)(5), are satisfied and where the following criteria are met:

(1) All parties to the merger transaction must be insured banks; but no party to the merger transaction may be a savings bank or a mutual savings bank.

(2) Upon consummation of the merger transaction, the applicant (or, where the applicant is a foreign bank, its insured branch) may not have more than 15% of the individual, partnership, and corporate deposits held by banks (excluding deposits held by savings banks and mutual savings banks) in the relevant market.

(3) Upon consummation of the merger transaction, the applicant (or, where the applicant is a foreign bank, its insured branch) may not have more than $1 billion in assets.

(4) If the applicant is a state bank, its capital ratio, upon consummation of the merger transaction, must conform to the "FDIC Statement of Policy on Capital Adequacy," 46 FR 62694 (1981). If the applicant is a foreign bank, its insured branch must be in compliance with 12 CFR Part 346 upon consummation of the merger transaction.

(5) The applicant (or, where the applicant is a foreign bank, its insured branch) must warrant a composite rating of 2 or better under the Uniform Financial Institutions Rating System, see 1 *Fed. Deposit Ins. Corp. (P-H)* 5079, upon consummation of the merger transaction.

(6) Upon consummation of the merger transaction, the applicant (or, where the applicant is a foreign bank, its insured branch) must be in substantial compliance with state and federal laws, rules, and regulations.

(7) Upon consummation of the merger transaction, the applicant (or, where the applicant is a foreign bank, its insured branch) must be in substantial compliance with the Community Reinvestment Act, 12 U.S.C. 2901 *et seq.* and implementing regulations, 12 CFR Part 345.

(8) Upon consummation of the merger transaction, there must remain at least three banks (excluding savings banks or mutual savings banks) other than the applicant in the relevant market.

(9) The delegate shall review any reports on the competitive factors involved in the merger transaction that the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Attorney General may provide in response to a request for such reports by the Corporation. If the Attorney General determines that the merger transaction may have an adverse effect on competition, the delegation provided herein shall be ineffective. If the Corporation does not receive an opinion from the Attorney General within 30 days of the date on which the Corporation has requested the opinion, the delegate shall request the Washington Office of the FDIC's Legal Division to provide a formal opinion on the question whether the merger transaction may have an adverse effect on competition. If the delegate has requested the Corporation's Legal Division to provide a formal opinion in accordance with this requirement, the delegate shall not approve the application until the Legal Divison has issued an opinion stating that the merger transaction will have no significant adverse effect on competition.

By order of the Board of Directors, September 27, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 82-27305 Filed 10-4-82; 8:45 am]

BILLING CODE 6714-01-M

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12 CFR Part 337

Unsafe and Unsound Banking Practices; Withdrawal of Proposed Accrual Accounting Recordkeeping Rule

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a proposed amendment to 12 CFR Part 337 which would have required insured state nonmember commercial and savings banks to employ accrual recordkeeping practices. This action is taken because it is the policy of the Board of Directors of the FDIC to formally withdraw proposed regulations on which it does not take other action. The intended effect of this notice is to inform the public that the FDIC has withdrawn the accrual recordkeeping rule proposed earlier.

FOR FURTHER INFORMATION CONTACT: Felicite Macfarlane, Planning and Program Development Specialist, Federal Deposit Insurance Corporation, Washington, D.C. 20429, telephone 202/389-4141.

SUPPLEMENTARY INFORMATION: The Corporation hereby gives notice that it has withdrawn a proposal (47 FR 17264, April 21, 1982) to amend 12 CFR Part 337 to require that banks maintain their books and records of account on the accrual basis of accounting. The Corporation proposed the amendment to follow a recommendation of the Federal Financial Institution Examination Council.

FDIC received 133 comment letters. An analysis follows of the 133 comment letters received on FDIC's proposed regulation requiring accrual recordkeeping (published in the April 21, 1982 **Federal Register**):

Writer category	Number of writers
American Bankers Association (ABA)	1
Independent Bankers Association of America (IBAA)	1
U.S. Small Business Administration (SBA)	1
State agencies	3
U.S. Senators and Congressmen	4
Bankers	116
State bankers associations	3
CPA firms	2
Law firms	2
	133

The three states, the two CPA firms and nine other writers favored the proposal. There were 115 letters in opposition to the proposed rulemaking. The principal issues raised in these letters included commentary that alleged (1) a negative cost/benefit relationship, (2) an inadequate lead time for implementation, (3) an underestimate of the costs involved in the proposal, and (4) the opinion that the accrual method of accounting was neither more accurate nor preferable to the cash basis of accounting for the affected institutions.

Having considered all available information and the comments submitted, the Corporation has determined at this time to formally withdraw this proposed regulation. Nevertheless, the FDIC believes that the accrual basis of accounting is the preferable method for maintaining a bank's books and records and strongly encourages its adoption by all banks. Moreover, banks are reminded that the withdrawal of this proposed regulation does not affect the requirement that all insured banks begin reporting Call Report information on an accrual basis. The new accrual basis Call Report requirement is effective as follows:

Banks with $10 million or more in assets as of December 31, 1981 begin filing accrual basis Call Reports in 1983. The Reports of Income and Condition filed as of March 31, 1983 are the first such reports. As of 1985, all banks regardless of size prepare Call Reports on an accrual basis.

By order of the Board of Directors, dated September 27, 1982.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 81-27313 Filed 10-4-82; 8:45 am]

BILLING CODE 6714-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 326

[PDR-81; Procedural Regulations Docket 40916]

Terminations, Suspensions, and Reductions of Service and Procedures for Bumping Subsidized Air Carriers From Eligible Points

Correction

In FR Doc. 82-23573 beginning on page 37914 in the issue of Friday, August 27, 1982, make the following correction:

On page 37918, first column, in § 326.3, paragraphs (b) and (c) contained errors and should have read as follows:

§ 326.3 Application to bump an incumbent carrier.

* * * * *

(b) If the the incumbent carrier is receiving its subsidy under section 406 of the Act, the application may be filed at any time after January 1, 1983.

(c) If the incumbent carrier is receiving its subsidy under section 419 of the Act, the application may not be filed until the incumbent carrier has been serving the eligible point for at least 2 years.

* * * * *

BILLING CODE: 1505-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-135 (West Virginia—3)]

High-Cost Gas Produced From Tight Formations; Notice of Proposed Rulemaking

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

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

DATE: Comments on the proposed rule are due on November 15, 1982.

Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on October 15, 1982.

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

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8511, or Walter W. Lawson, (202) 357-8556.

SUPPLEMENTARY INFORMATION:

Issued September 30, 1982.

In the matter of High-Cost Gas Produced from Tight Formations; Docket No RM79-76-135 (West Virginia—3); Proposed rulemaking by Director, OPPR.

I. Background

On July 30, 1982, the State of West Virgina Office of Oil & Gas (West Virginia) submitted to the Commission a recommendation, in accordance with § 217.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that the stratigraphic interval containing the Pocono Group, the Hampshire Formation, the Chemung Group, and the Brallier Formation located in Barbour, Doddridge, Gilmer, Harrison, Lewis, Upshur and portions of Randolph Counties, West Virginia, be designated as a tight formation. Pursuant to § 217.703(c)(4) of the regulations, a Notice of Proposed Rulemaking is hereby issued to determine whether West Virginia's recommendation that the Pocono Group, the Hampshire Formation, the Chemung Group, and the Brallier Formation be designated as a tight formation should be adopted. West Virginia's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

The recommended formation lies within Barbour, Doddridge, Gilmer, Harrison, Lewis, Upshur and portions of Randolph Counties, West Virginia. (A more detailed description of the recommended area and the excluded areas is contained in the recommendation on file with the Commission.)

The recommended interval contains the Pocono Group of Mississippian age and the Hampshire Formation, Chemung Group, and Brallier Formation of Devonian age. This interval represents an interbedded sequence of Mississippian sandstones and shales deposited during a marine environment and an interbedded sequence of Devonian deltaic sandstones and shales associated with marine regression. The designated interval is overlain by the Greenbrier Group of Mississippian age (which may be called "Big Lime" by drillers) and is underlain by the Harrell Shale of Devonian age. The average depth to the top of the recommended interval is log measured at 1,691 feet and the average depth to the top of the Devonian interval is log measured at 2,009 feet. The average thickness of the entire interval is 4,000 feet.

The Pocono Group contains shallow marine siltstones and sandstones, which are light gray to greenish gray, along with small amounts of clay. The potentially productive sandstones in this environment are termed "Big Injun," "Squaw," "Weir," and "Berea" by drillers.

The Hampshire Formation represents the top of the deltaic sequence and contains coarse, reddish to maroon sandstones with very little shale content. The potentially productive sandstones in this environment are termed "Gantz," "Gantz A," "Fifty-Foot," "Thirty-Foot," "Gordon Stray," "Gordon," "Fourth," "Fourth A," "Fifth," "Lower Fifth," "Bayard," and "Lower Bayard" by drillers.

The Chemung Group represents the delta front environment and contains sandstones and siltstones with a small amount of clay. Color ranges from brown in the lower part to light gray in the upper part. The potentially productive sandstones in this environment are termed "Elizabeth," "Warren," "Upper Speechley," "Speechley," "Balltown," "Bradford," "Riley," "Benson," "Leopold," "Cedar Creek," "Bluestone Creek," and "Alexander" by drillers.

The Brallier Formation represents the pro-delta environment and contains predominately shales interbedded with thin siltstones and very fine-grained sandstones. These sandstones and siltstones are characteristically brown in color. The potentially productive sandstones in this environment are termed "Elk(s)," "Haverty," "Fox," and "Sycamore" by drillers.

III. Discussion of Recommendation

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

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

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

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

West Virginia further asserts that existing State and Federal regulations assure that development of this formation will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80-68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by West Virginia that the Pocono Group, the Hampshire Formation, the Chemung Group, and the Brallier Formation, as described and delineated in West Virginia's recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before November 15, 1982. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76-135 (West Virginia—3), and should give reasons, include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing of a desire to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than October 15, 1982.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Natural Gas Policy Act of 1978, 15 U.S C. 3301-3432)

PART 271 [AMENDED]

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

Kenneth A. Williams

Director, Office of Pipeline and Producer Regulation.

Section 271.703(d) is amended by adding new subparagraph (142) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* * * *

(109) through (141) [Reserved]

(142) *The Pocono Group, Hampshire Formation, Chemung Group and the Brallier Formation in West Virginia.* RM79–76–135 (West Virginia—3).

(i) *Delineation of formation.* The Pocono Group, Hampshire Formation, Chemung Group, and the Brallier Formation are found in Barbour, Doddridge, Gilmer, Harrison, Lewis, Upshur and portions of Randolph Counties, West Virginia with certain specified exclusions as outlined on the maps on file with the Commission. The productive sandstones within this interval are termed "Big Injun," "Squaw," "Weir," "Berea," "Gantz," "Gantz A," "Fifty-Foot," "Thirty-Foot," "Gordon Stray," "Gordon," "Fourth," "Fourth A," "Fifth," "Lower Fifth," "Bayard," "Lower Bayard," "Elizabeth," "Warren," "Upper Speechley," "Speechley," "Balltown," "Bradford," "Riley," "Benson," "Leopold," "Cedar Creek," "Bluestone Creek," "Alexander," "Elk(s)," "Haverty," "Fox,"and "Sycamore" by drillers. The designated interval is overlain by the Greenbrier Group of Mississippian age and is underlain by the Harrell Shale of Devonian age.

(ii) *Depth.* The average depth to the top of the Pocono Group is log measured at 1,691 feet and the average depth to the top of the Devonian interval is log measured at 2,009 feet. The average thickness of the entire interval is 4,000 feet.

[FR Doc. 82–27411 Filed 10–4–82; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Parole, Recommitting, and Supervising Federal Prisoners

Correction

In FR Doc. 82–23022 appearing on page 36657 in the issue of Monday, August 23, 1982, make the following correction:

In the **SUMMARY** paragraph, 11th line, "(<6=9 months)" should have read "(< = 9 months)".

BILLING CODE: 1505–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–6333]

National Flood Insurance Program; Proposed Flood Elevation Determination

Correction

In FR Doc. 82–14586 appearing on page 24357 of the issue of Friday, June 4, 1982, make the following correction.

On page 24360, the following entry was inadvertently ommitted:

State	City/town/ county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feed (NGVD)
Indiana.....	(Uninc.) Knox County.	Snapp Creek.	At mouth.....	427*
*	*	*	*	*

BILLING CODE 1505–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-8)]

Exemption From Regulation—Boxcar Traffic

AGENCY: Interstate Commerce Commission.

ACTION: Notice of oral argument on proposed exemption.

SUMMARY: This proceeding involves the possible full or partial exemption from regulation of all retail movements in boxcars. Because of its importance, oral argument will be heard on November 23, 1982.

DATES: The oral argument will be heard at 1:00 p.m. on November 23, 1982, at the place specified below. Notification by letter or telephone of participation in the oral argument must be received by November 5, 1982.

ADDRESS: The oral argument will be heard at: Howard University School of Law, Houston Hall, First Floor, 2900 Van Ness Street, NW., Washington, D.C. (Public parking is not available in the area. However, public transportation is available. For bus or subway routes, call contact person listed below.)

If you desire to participate, please inform: James H. Bayne, Assistant Secretary, Interstate Commerce Commission, Room 2215, 12th Street & Constitution Avenue NW., Washington, D.C.20423.

FOR FURTHER INFORMATION CONTACT: James H. Bayne, (202) 275–7429.

SUPPLEMENTARY INFORMATION: A notice of proposed exemption was published January 28, 1982 (47 FR 4100) and a revised notice was published June 25, 1982 (47 FR 27573). Participation in oral argument is not limited to parties who filed written comments in response to those notices.

Parties wishing to appear at oral argument are requested to inform the Secretary's Office in advance of the specific topics they will address. When an organization or individual notifies us that it wishes to make an oral presentation, it should also indicate a telephone number, whether the appearance is in support of or in opposition to the exemption, and the amount of time sought. Those with similar interests should designate a single spokesman to advance their views. A schedule of appearance and presentation times will be made available before the argument.

Decided: September 27, 1982.

By the Commission, Chairman Taylor.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–27318 Filed 10–4–82; 8:45 am]

BILLING CODE 7035–01–M

Notices

Federal Register
Vol. 47, No. 193
Tuesday, October 5, 1982

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

Federal Grain Inspection Service

Federal Grain Inspection Service Advisory Committee; Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.

Date: October 20, 1982.

Place: U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2096 South Building, Washington, D.C. 202500

Time: 8:30 a.m.

Purpose: To enable the members to discuss and provide advice to the Administrator of the Federal Grain Inspection Service with respect to the efficient and economical implementation of the U.S. Grain Standards Act of 1976, in order to assure the normal movement of grain in an orderly and timely manner.

The agenda includes (1) user fees and retained earnings, (2) a subcommittee presentation on wheat standards, and (3) other matters.

The meeting will be open to the public, but space and facilities are limited. Public participation will be limited to written statements submitted before or at the meeting unless their participation is otherwise requested by the Committee Chairman. Persons other than members, who wish to address the Committee at the meeting, should contact Dr. Kenneth A. Gilles, Administrator, FGIS, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 382–0219.

Dated: September 29, 1982.

Kenneth A. Gilles,

Administrator.

[FR Doc. 82-27403 Filed 10-4-82; 8:45 am]

BILLING CODE 3410-EN-M

Forest Service

Pacific Crest National Scenic Trail Advisory Council; Meeting

The Pacific Crest National Scenic Trail Advisory Council will meet on November 4 and 5, 1982, at the Hilton Inn in Bakersfield, California. The meeting will begin on November 4, at 8 a.m. followed at 10 a.m. with a field trip to view the Pacific Crest Trail, trail facilities, and rights-of-way issues linked with the trail. The business session will continue at 8 a.m. on November 5 at the Hilton.

The purpose of the meeting is to provide orientation to the Council members and to receive Council recommendations. The meeting will include a review of trail completion status, review of trail relocations, recommendations on the public/private PCT information, supplier role, discussion of potential volunteer support organizations to assist in completion and maintenance of the trail, and consideration of new uses on the trail.

The meeting will be open to the public. Persons who wish additional information should contact Dick Benjamin, Recreation Staff Director, Pacific Southwest Region, Forest Service, 630 Sansome Street, San Francisco, California, 94111. Phone (415) 556–6983.

Dated: September 27, 1982.

Zane G. Smith, Jr.,

Regional Forester, Pacific Southwest Region.

[FR Doc. 82-27328 Filed 10-4-82; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Bluewater Lake State Park Critical Area Treatment, New Mexico

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Bluewater Lake State Park Critical Area Treatment Watershed, Cibola-McKinley Counties, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ray T. Margo, Jr., State Conservationist, Soil Conservation Service, 517 Gold Avenue SW, Albuquerque, NM 87103, telephone (505) 766–3277.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally-assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Ray T. Margo, Jr., State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns erosion control. The planned works of improvement include excluding livestock, installing vehicular barriers, and erosion control on 23 acres.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Edwin Swenson.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Dated: September 22, 1982.

(Catalog of Federal Domestic Assistance Program No. 10.904, Resource Conservation and Development. Office of Management and Budget Circular A–95 regarding state and local clearinghouse review of federal and federally-assisted programs and projects is applicable.)

Ray T. Margo, Jr.,

State Conservationist.

[FR Doc. 82-27191 Filed 10-4-82; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

University of California at Los Angeles; Decision on Application For Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 AM and 5:00 PM in Room 2097, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 82–00228. Applicant: University of California at Los Angeles, Electrical Engineering Department, 7702 Boelter Hall, Los Angeles, CA 90024. Instrument: Carcinotron Electronic Tube. Manufacturer: Thomson-CSF, Groupement Tube Electroniques, France. Intended use or instrument: See Notice on page 29582 in the **Federal Register** of July 7, 1982.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, was being manufactured in the United States at the time the foreign instrument was ordered (March 14, 1982). Reasons: The foreign instrument provides a center frequency of 370–404 gigahertz. The National Bureau of Standards advises in its memorandum dated August 12, 1982 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which was being manufactured in the United States at the time the foreign instrument was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 82–27331 Filed 10–4–82; 8:45 am]

BILLING CODE 3510–25–M

Electronic Instrumentation Technical Advisory Committee; Closed Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Electronic Instrumentation Technical Advisory Committee was initially established on October 23, 1973, and rechartered on September 18, 1981 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical specifications and policy issues relating to those specifications which are of concern to the Department, (B) worldwide availability of products and systems, including quantity and quality, and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to electronic instrumentation, or technology, (D) exports of the aforementioned commodities subject to unilateral and multilateral controls in which the United States participates including proposed revisions of any such controls.

TIME AND PLACE: October 29, 1982, at 9:30 a.m. The meeting will take place at the Main Commerce Building, Room 6802, 14th Street and Constitution Avenue, NW. Washington, D.C. The meeting will conclude on October 21, in Room 6802, Main Commerce Building.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 29, 1981, pursuant to Aection 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Facility, Room 5317, U.S. Department of Commerce, telephone: (202) 377–4217.

FOR FURTHER INFORMATION CONTACT: Mrs. Margaret A. Cornejo, Committee Control Officer, Office of Export Administration, Room 2613, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: (202) 377–2583.

Dated: September 29, 1982.

Richard Isadore,

Acting Director, Office of Export Administration.

[FR Doc. 82–27330 Filed 10–4–82; 8:45 am]

BILLING CODE 3510–25–M

Consolidated Decision on Applications for Duty-Free Entry of Fluoresence Lifetime Fluorometer Systems

The following is a consolidated decision on applications for duty-free entry of fluoresence lifetime fluorometer systems pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 879) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 AM and 5:00 PM in Room 2097, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 82–00030. Applicant: Solar Energy Research Institute, 1617 Cole Boulevard, Golden, CO 80401. Instrument: Fluorescence Lifetime Instrument, Model 3000. Manufacturer: Photochemical Research Associates, Inc., Canada. Intended use of instrument: See Notice on page 60044 in the **Federal Register** of December 8, 1981. Instrument ordered: April 30, 1981. Advice submitted by: Department of Health and Human Services: March 17, 1982.

Docket No. 82–00091. Applicant: University of Illinois at Chicago Circle, Department of Chemistry, Box 4348, Chicago, Ill. 60680. Instrument: Nanosecond Fluorometer System Manufacturer: Photochemical Research Assoc., Inc., Canada. Intended use of

instrument: See Notice on page 6681 in the Federal Register of February 16, 1982. Application received by Commissioner of Customs: January 11, 1982. Advice submitted by: Department of Health and Human Services: May 26, 1982.

Docket No. 82–00117. Applicant: The University of Texas Health Science Center at San Antonio, Department of Biochemistry, 7703 Floyd Curl Drive, San Antonio, TX 78284. Instrument: Nanosecond Fluorometer System 2000. Manufacturer: Photochemical Research Associates, Canada. Intended Use of Instrument: See Notice on page 13393 in the Federal Register of March 30, 1982. Application received by Commissioner of Customs: February 18, 1982. Advice submitted by: Department of Health and Human Services: May 26, 1982.

Docket No. 82–00123. Applicant: Leland Stanford Junior University, Department of Chemical Engineering, Stanford CA 94305. Instrument: Nanosecond Fluorometer System 3000. Manufacturer: Photochemical Research Associates, Canada. Intended use of instrument: See notice on page 15819 in the Federal Register of April 13, 1982. Instrument ordered: September 9, 1981. Advice submitted by: Department of Health and Human Services: May 26, 1982.

Comments: No comments have been received with respect to any of the foregoing applications. Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign instruments, for such purposes as these instruments are intended to be used, was being manufactured in the United States either at the time of order of each instrument described above or at the time the U.S. Customs received the application. Reasons: Each foreign instrument described above provides a thyratron triggered pulsed light source with intensity adjustable for the single photon counting method of detection. The Department of Health and Human Services advises in its respectively cited memoranda that (1) the capability of each foreign instrument cited above is pertinent to the purposes for which each instrument is intended to be used and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to any of the foreign instruments to which the foregoing applications relate for such purposes as these instruments are intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign instruments to which the foregoing applications relate, for such purposes as these instruments are intended to be used, which was being manufactured in the United States at the time of order for each instrument or at the time of receipt of the application by the U.S. Customs Service.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 82-27333 Filed 10-4-82; 8:45 am]

BILLING CODE 3510-25-M

Electric Power Research Institute; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 AM and 5:00 PM in Room 2097, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 81–00373. Applicant: Electric Power Research Institute, Inc., 3412 Hillview Avenue, P.O. Box 10412, Palo Alto, CA 94303. Instrument: UNIWEMA 400 Machine. Manufacturer: Kabelmetal of Hanover, West Germany. Intended use of instrument: See Notice on page 50815 in the Federal Register of October 15, 1981.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, is being manufactured in the United States. Reason: The foreign instrument provides the capability of producing flexible, gas-insulated, corrugated metal enclosed electrical transmission lines in various sizes and lengths, which are to be used in studies relating to the use and manufacture of such lines. The National Bureau of Standards (NBS) advises in its memorandum dated June 15, 1982 that the instrument is unique in its purpose and not available from a domestic source.

The Department of Commerce knows of no domestic manufacturer willing and able to produce an instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, when the foreign instrument was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 82-27334 Filed 10-4-82; 8:45 am]

BILLING CODE 3510-25-M

[A-423-074]

Perchlorethylene From Belgium; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of antidumping finding.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on perchlorethylene from Belgium. The review covers the only known exporter of this merchandise to the United States, Solvay & CIE, and the period May 1, 1981 through April 30, 1982. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

As a result of the review, the Department has preliminarily determined to require cash deposits of estimated antidumping duties equal to the margin calculated on the last known shipments. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 5, 1982.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBoise or Susan Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202–377–3601).

SUPPLEMENTARY INFORMATION:

Background

On November 9, 1981, the Department of Commerce ("the Department") published in the Federal Register (46 FR 55297) the final results of its last administrative review of the antidumping finding on perchlorethylene from Belgium (44 FR 29045–6, May 19, 1979) and announced its intent to conduct the next administrative review by the end of May 1983. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of perchlorethylene, including technical grade and purified grade perchlorethylene. Perchlorethylene is a clear water-white liquid at ordinary temperature with a sweet odor and is completely capable of being mixed with most organic liquids. It is a chlorinated solvent used mainly for dry cleaning of clothing, but is also used in other applications such as vapor degreasing of metals. Perchlorethylene is currently classifiable under item 429.3400 of the Tariff Schedules of the United States Annotated (TSUSA).

The Department knows of only one exporter of Belgian perchlorethylene to the United States. That firm is Solvay & CIE. The review covers the period May 1, 1981 through April 30, 1982. There were no known shipments to the United States during the period and there are no known unliquidated entries.

Preliminary Results of the Review

As provided for in § 353.48(b) of the Commerce Regulations, we preliminarily determine that a cash deposit of estimated antidumping duties of 150 percent, based upon the margin calculated on the last known shipments by Solvay & CIE, shall be required on all shipments of Belgian perchlorethylene entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

September 27, 1982.

[FR Doc. 82-27337 Filed 10-4-82; 8:45 am]

BILLING CODE 3510-25-M

[A-588-087]

Portable Electric Typewriters From Japan; Preliminary Results of Administrative Review of Antidumpting Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Antidumping Duty Order.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping duty order on portable electric typewriters from Japan. This review covers three of the five known exporters of this merchandise to the United States, Brother Industries Ltd., Silver Seiko Ltd., and Nakajima All Co., Ltd., and varying periods through 1980 and 1981. The review indicates a *de minimis* margin of 0.35% for Nakajima All and margins of 3.41% and 1.54% for Silver Seiko and Brother Industries, respectively. As a result of this review the Department has preliminarily determined to assess dumping duties equal to the calculated differences between foreign market value and United States price on shipments occurring during the covered periods. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 5, 1982.

FOR FURTHER INFORMATION CONTACT: Susan M. Crawford or Robert Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-5255).

SUPPLEMENTARY INFORMATION:

Background

On May 9, 1980, the Department of Commerce ("the Department") published in the **Federal Register** (45 FR 30618-19) an antidumping duty order with respect to portable electric typewriters from Japan. Pursuant to section 736(c) of the Tariff Act of 1930 ("the Tariff Act"), the Department published an "Early Determination of Antidumping Duties" on August 13, 1980 (45 FR 53853-56), with respect to two exporters to the United States, Brother Industries Ltd. and Silver Seiko Ltd. On August 2, 1982, the Department published in the **Federal Register** (47 FR 33306-08) the final results of its first administrative review of this order with respect to a third exporter, Nakajima All Co., Ltd., and announced that it was conducting its next administrative review. As required by section 751 of the Tariff Act, the Department has now conducted an administrative review for these three of the five known exporters. On July 23, 1982, the Department published in the **Federal Register** (47 FR 31913-14) the preliminary results of its administrative review of the remaining two exporters, Tokyo Juki Industrial Co., Ltd., and Towa Sankiden Corporation.

Scope of the Review

Imports covered by this review are shipments of portable electric typewriters from Japan. The Department defines such merchandise as all typewriters currently classifiable under item 676.0510 of the Tariff Schedules of the United States Annotated ("TSUSA") and some currently classifiable under TSUSA item 676.0540, depending on the individual characteristics of the typewriters. The characteristics we consider include, but are not limited to, the dimensions, weight, presence of a carrying case, type of market, and method of distribution.

This review covers three of the five known exporters of Japanese portable electric typewriters to the United States and the following periods:

Brother Industries Ltd., 4/21/80 through 5/20/81

Nakajima All Co., Ltd., 5/01/80 through 4/30/81

Silver Seiko Ltd., 4/01/80 through 3/31/81

United States Price

In calculating United States price, the Department used purchase price or exporter's sales price, both as defined in section 772 of the Tariff Act, as appropriate. Purchase price was based on the packed FOB or CIF price to an unrelated purchaser in the United States. Exporter's sales price was based on the packed delivered price to the first unrelated purchaser in the United States. Where applicable, deductions were made for ocean freight, insurance, U.S. and foreign inland freight, brokerage fees, handling charges, discounts, commissions to unrelated parties, and selling expenses, in accordance with § 353.10 of the Commerce Regulations. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price or the price to third countries (W. Germany, Canada, Panama) when sufficient sales did not exist in the home market, as defined in section 773 of the Tariff Act. The foreign market values were adjusted, where applicable, for inland freight and differences in credit costs and direct selling expenses, in accordance with § 353.15 of the

Commerce Regulations. When comparing with ESP transactions, we first made a commission offset adjustment to home market price in accordance with § 353.15(c) of the Commerce Regulations, and then made an ESP offset adjustment for actual indirect selling expenses incurred in the home market up to the amount of in direct selling expenses incurred in the United States, in accordance with the same section. Further adjustments were made for differences in merchandise, in accordance with § 353.16 of the Commerce Regulations. We denied a claim for a level of trade adjustment since there is no evidence that the amounts claimed are due to differences in level of trade. We also denied a claim for a production run adjustment because it was insufficiently justified. No other adjustments were claimed or allowed.

The Department received and verified cost of production information submitted by Nakajima All in response to an allegation by the petitioner of sales to third countries below the cost of production. A review of this information revealed that there were no sales below the cost of production during the review period.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Exporter	Time period	Margin (percent)
Brother Industries Ltd	4/21/80-5/20/81	1.54
Nakajima All Co., Ltd	5/01/80-4/30/81	0.35
Silver Seiko Ltd	4/01/80-3/31/81	3.41

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of its administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the U.S. Customs Service shall assess, dumping duties on all appropriate entries made with purchase dates or export dates during the time perods involved. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue assessment instructions on each exporter directly to the Customs Service.

Further, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based upon the margins calculated above shall be required on all shipments of portable electric typewriters from these firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results. Because the weighted-average margin for Nakajima All is less than 0.50 percent and therefore *de minimis*, the Department shall not require cash deposits on its shipments. These deposit requirements, and the waiver for Nakajima All, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

September 27, 1982.

[FR Doc. 82-27336 Filed 10-4-82; 8:45 am]

BILLING CODE 3510-25-M

Pressure Sensitive Plastic Tape From Italy; Preliminary Results of Administrative Review of Antidumping Finding and Tentative Determination To Revoke in Part

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of antidumping finding and tentative determination to revoke in part.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on pressure sensitive plastic tape from Italy. The review covers 8 of the 13 known manufacturers and exporters of this merchandise to the United States and varying time periods up to September 30, 1980. This review indicates the existence of dumping margins in particular periods for certain exporters.

As a result of the review, the Department has preliminarily determined to assess dumping duties for individual exporters equal to the calculated differences between United States price and foreign market value on each of their shipments occurring during the periods of review. Where company-supplied information was inadequate or no information was received, we used the best information available.

The Department has also tentatively determined to revoke the finding with respect to one of the 8 firms, Autoadesivitalia, S.p.A. For this firm, all sales were made at not less than fair value during the period May 11, 1978 through September 30, 1980.

EFFECTIVE DATE: October 5, 1982.

FOR FURTHER INFORMATION CONTACT: Stuart Keitz or Robert Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-1769/5255).

SUPPLEMENTARY INFORMATION:

Background

On October 21, 1977, a dumping finding with respect to pressure sensitive plastic tape from Italy was published in the **Federal Register** as Treasury Decision 77-258 (42 FR 56110). On January 1, 1980, the provisions of title I of the Trade Agreements Act of 1979 became effective. Title I replaced the provisions of the Antidumping Act of 1921 ("the 1921 Act") with a new title VII to the Tariff Act of 1930 ("the Tariff Act"). On January 2, 1980, the authority for administering the antidumping duty law was transferred from the Department of the Treasury to the Department of Commerce ("the Department"). The Department published in the **Federal Register** of March 28, 1980 (45 FR 20511-20512) a notice of intent to conduct an administrative review of all outstanding dumping findings. As required by section 751 of the Tariff Act, the Department has now conducted an administrative review of the finding on pressure sensitive plastic tape from Italy. The substantive provisions of the 1921 Act and the appropriate Customs Service regulations apply to all unliquidated entries made prior to January 1, 1980.

Scope of the Review

Imports covered by the review are shipments of pressure sensitive plastic tape measuring over one and three eighths inches in width and not exceeding four mils in thickness, currently classifiable under items 790.5530, 790.5545, and 790.5555 of the Tariff Schedules of the United States Annotated (TSUSA). The Department knows of a total of 13 Italian firms engaged in the manufacture and exportation of pressure sensitive plastic tape to the United States. This review covers 8 of them. The applicable periods

of review for each firm are indicated in the *Preliminary Results of the Review*. Of the remaining firms, the Department has recently discovered additional facts about one firm, Vibac, S.p.A., which necessitate gathering supplemental information. The existence of the other firms has only recently been discovered by the Department. All of these firms will be included in the next administrative review.

The issue of the Department's obligation to conduct an administrative review of entries, unliquidated as of January 1, 1980 and covered by previously issued assessment instructions ("master lists"), is under review. Liquidation has been suspended pending disposition of the issue.

Three firms failed to respond to our questionnaire. For these non-responsive exporters we used the best information available to determine the assessment and estimated duty deposit rates. For the non-responsive firms, not investigated during the original fair value investigation, we used the highest current rate for responding firms.

United States Price

In calculating United States price the Department used purchase price or exporter's sales price, as defined in section 772 of the Tariff Act or sections 203 and 204 of the 1921 Act, as appropriate.

Purchase price was based on the packed, CIF or delivered price to an unrelated purchaser in the United States. Where appropriate, deductions were made for U.S. inland freight and insurance, handling, duty, ocean freight, marine insurance, Italian inland freight and insurance, cash discounts, and actual selling expenses as an offset to commissions to unrelated parties in the home market, in accordance with § 353.15(c) of the Commerce Regulations and § 153.10 of the Customs Regulations. No other adjustments were claimed or allowed.

Exporter's sales price was based on the packed, delivered price to the first unrelated purchaser in the United States. Where appropriate, deductions were made for ocean freight, marine insurance, Italian and U.S. inland freight and insurance, cash discounts, commissions to unrelated parties, duty, customs clearance fees and selling expenses, in accordance with § 353.10 of the Commerce Regulations. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act or section 205 of the 1921 Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis of comparison.

We calculated separate foreign market values for comparison to purchase price and to exporter's sales price.

For purchase price comparisons we used the packed delivered price with deductions, where appropriate, for cash discounts, inland freight, insurance and commissions to unrelated parties. Adjustments were made for differences in circumstances of sale and in packing, where applicable. One firm claimed an adjustment for inventory warehousing costs. The claim was denied because inventory warehousing is incurred prior to sale of the merchandise and, as such, is considered a general expense rather than an expense directly related to the sales under consideration. For another firm, which had home market sales on both a C.I.F. and an ex-factory basis, an adjustment was not made for the cost of freight and insurance, because the firm could not identify which sales had been made on which basis.

For exporter's sales price comparisons we used the packed delivered price with adjustments, where appropriate, for cash discounts, inland freight, insurance, commissions to unrelated parties, actual selling expenses up to the amount of selling expenses incurred in the U.S., in accordance with § 353.15(c) of the Commerce Regulations and § 153.10 of the Customs Regulations, and differences in credit terms. Additions were made to adjust for differences in packing, where applicable.

Three of the five responding firms claimed adjustments for differences in level of trade in U.S. and home market sales. Because sales in the U.S. are few and large, while Italian sales are many and small, they argued that direct comparison of U.S. and home market sales is inequitable. They asked for adjustments in price based on greater selling expenses in the home market. Differences in selling expenses are not necessarily associated with differences in level of trade. When they are directly related to sales they are traditionally treated by the Department as circumstances of sale in accordance with § 353.15(a) of the Commerce Regulations. Selling expenses not directly related to sales may be used as an ESP offset or as an offset to commissions when commissions exist in one market and not the other, in accordance with § 353.15(c) of the Commerce Regulations. We have accorded such treatment here to selling expenses, where appropriate. Therefore, we have not allowed the claim for a level of trade adjustment.

A claim was made by one firm that an adjustment should be made to foreign market value for the differences in the quantities sold in the U.S. and home markets. However, the firm did not demonstrate that the claimed adjustment was justified on the basis of the criteria set forth in § 353.14 of the Commerce Regulations for quantity discounts. Therefore, we have not allowed the claim for an adjustment based on differences in quantities sold.

Claims were made for adjustments for differences in circumstances of sale. One firm claimed an adjustment based on differences in advertising costs. This claim was disallowed because the firm failed to quantify those advertising costs which were attributable to a later sale of the merchandise by the purchaser, as required by § 353.15(b) of the Commerce Regulations. A claim was also made for an adjustment based on higher credit costs for home market sales. This claim was disallowed because the firm failed to provide information to demonstrate the differences in credit costs.

Claims were made for adjustments based on differences in the merchandise being compared. One firm claimed that higher quality materials were generally used in merchandise produced for home market customers. The claim was disallowed because the differences in materials were not quantified or supported. One firm also claimed that some rolls sold to home market customers are less expensive to produce than those sold to U.S. customers due to size differences. This claim has been allowed to the extent it has been supported by evidence of the cost differential. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Italian exporter	Time period	Weighted-average margin (percent)
Autoadesivitalia, S.p.A.	05/11/78-09/30/80	0
Boston S.p.A.	01/01/79-09/30/80	8.53
Comet S.A.R.A. S.p.A.	07/01/78-09/30/80	2.79
Cosmonastri, S.p.A.	02/18/77-09/30/80	12.66
Manuli Autoadesivi S.p.A.	04/01/79-09/30/80	3.99
N.A.R. S.p.A.	07/01/79-09/30/80	12.66
Nazionale Imballaggi	02/18/77-09/30/80	12.66
S.M.A.C., S.p.A.	09/01/79-09/30/80	12.66

The Department has concluded that, for the period May 11, 1978 through September 30, 1980, all sales by

Autoadesivitalia S.p.A. were made at not less than fair value. As provided for in § 353.54(e) of the Commerce Regulations, Autoadesivitalia has agreed in writing to an immediate suspension of liquidation and reinstatement of the finding if circumstances develop which indicate that pressure sensitive plastic tape, produced by that firm and thereafter imported into the United States, is being sold by that firm at less than fair value.

Tentative Determination

As a result of our review we tentatively determine to revoke the finding on pressure sensitive plastic tape from Italy with respect to Autoadesivitalia, S.p.A. If this revocation is made final it will apply to unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Intereted parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or on the first workday thereafter. Any request for an administrative protective order must be made within 5 days of the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the U.S. Customs Service shall assess, dumping duties on all appropriate entries with purchase dates or export dates during the time periods involved. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue assessment instructions on each exporter directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations a cash deposit of estimated antidumping duties based upon the margins calculated above shall be required on all shipments from these firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results. For any shipment from a new exporter not covered in this administrative review, unrelated to any covered firm, a cash deposit shall be required at the highest rate for responding firms with shipments during the most recent period. The deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This administrative review, tentative determination to revoke in part, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

September 27, 1982.

[FR Doc. 82-27335 Filed 10-4-82 8:45 am]

BILLING CODE 3510-25-M

Washington University; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 AM and 5:00 PM in Room 2097, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 82-00214. Applicant: Washington University, Lindell and Skinker, St. Louis, MO 63130. Instrument: Servo-control Electronics. Manufacturer: Queensgate Instruments Ltd., United Kingdom. Intended Use of Instrument: See Notice on Page 29580 in the **Federal Register** of July 7, 1982.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States. Reasons: This application relates to a compatible accessory for an instrument that has been previously imported for the use of the applicant institution. The instrument is being manufactured by the manufacturer which produced the instrument with which it is intended to be used. We are advised by the National Bureau of Standards (NBS) in its memorandum dated August 25, 1982 that the accessory is pertinent to the applicant's intended uses and that it knows of no comparable domestic instrument.

The Department of Commerce knows of no similar accessory being manufactured in the United States, which is interchangeable with or can be readily adapted to the instrument with which the foreign accessory is intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific materials)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 82-27332 Filed 10-4-82; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

[Docket No. 2908-185]

Announcement of Plans To Propose a Federal Information Processing Standard for a High Speed Channel Interface

Under the provisions of Pub. L. 89-306 (79 Stat. 1127; 40 U.S.C. 759(f)) and Executive Order 11717 (38 FR 12315, dated May 11, 1973), the Secretary of Commerce (Secretary) is authorized to establish uniform automatic data processing standards. On February 16, 1979, notice was given in the **Federal Register** (44 FR 10098-10101) that the Secretary had approved an input/output (I/O) Federal Information Processing Standard (FIPS), I/O Channel Interface, designated Federal Information Processing Standard Publication (FIPS PUB) 60 (which has been redesignated 60-1). This standard was also a subject of corrections and revisions announced in the **Federal Register** on August 27, 1979 (44 FR 50079-50080), August 31, 1979 (44 FR 51294), and on December 3, 1979 (44 FR 69317).

The purpose of this notice is to give early notification of NBS preliminary plans to propose a new FIPS for a high speed channel interface, based upon the work of American National Standards Institute (ANSI) X3 task group X3T9.5. The X3T9.5 standards proposal is termed the Local Distributed Data Interface (LDDI). Three separate standards are under development which generally follow the organization of the ISO Reference Model for Open Systems Interconnection, ISO/dp 7498: (1) a Data Link Layer Protocol standard, (2) a Physical Layer Protocol standard, and (3) a Physical Medium Interface standard.

These three LDDI draft standards together address approximately the same functions as FIPS 60-1, and offer a number of advantages over existing I/O channels which conform to FIPS 60-1 including higher data transfer rate (50 Mbits/sec versus 24 Mbits/sec) and longer distances (1 Km versus approximately 120 m). The LDDI also allows any port to transfer information

directly to any other port (FIPS 60–1 channels allow communication only between a single master and one of several slave units). The draft proposed LDDI standards employ broadband bit serial transmission of data at 50 Mbits/sec over a single coaxial cable, and utilize a prioritized Carrier Sense Multiple Access protocol.

It is anticipated that the three LDDI draft proposed standards will be proposed for Federal use as an allowed alternative to FIPS 60–1, whenever the use of I/O channels conforming to FIPS 60–1 would otherwise be required to attach magnetic disk and tape subsystems to Federal computer systems.

The National Bureau of Standards solicits comments on these plans and upon the text of the draft standards. This notice is not a formal proposal of a new Federal Information Processing Standard. In the event that NBS decides to formally propose Federal Information Processing Standards for the LDDI, another Federal Register announcement will be made soliciting comments on the specific proposed standards.

Through arrangements with ANSI, interested parties may obtain copies of the three draft LDDI standards from, and may submit comments in writing to, the Director, ICST, ATTN: LDDI comments, National Bureau of Standards, Washington, D.C. 20234. To receive full consideration, comments should be received on or before February 2, 1982.

For further information, contact Mr. William E. Burr, System Components Division, Center for Computer Systems Engineering, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, telephone: (301) 921–3723.

Dated: September 29, 1982.

Ernest Ambler,

Director.

[FR Doc. 82–27399 Filed 10–4–82; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Comments on Foreign Fishing Applications

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Opportunity for Public Comments on Foreign Fishing Applications Received by the Mid-Atlantic Fishery Management Council.

SUMMARY: The Mid-Atlantic Fishery Management Council was established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265). As required by the Act, Section 204(b)(5), the Council announces that the public may comment on any and all foreign fishing applications received by the Council on or before November 1, 1982.

The Council's staff will be available between 9 a.m. and noon on November 1, 1982, to receive comments, which may be made in person at the Council's Headquarters Office, Federal Building, Room 2115, 300 South New Street, Dover, Delaware, between the above-stated hours. In addition, written comments must be mailed in time to be received and reviewed by the Council, on November 1, 1982.

FOR FURTHER INFORMATION CONTACT: Mid-Atlantic Fishery Management Council, Room 2115—Federal Building, 300 South New Street, Dover, Delaware 19901. Telephone: (302) 674–2331.

Dated: September 30, 1982.

Jack L. Falls,

Chief, Administrative Support Staff, National Marine Fisheries Service.

[FR Doc. 81–27376 Filed 10–4–82; 8:45 am]

BILLING CODE 3510–22–M

Proposed Modification to Marine Mammal Permit No. 209

Notice is hereby given that Dr. Albert W. Erickson, College of Ocean and Fishery Sciences, University of Washington, Seattle, Washington 98195 has requested a modification of Permit No. 209 issued on October 5, 1977 (42 FR 55630) under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

The Permit Holder is requesting to take by potential harassment an unlimited number of crabeater, Weddell, Ross, and leopard seals, Antarctic fur seal and southern elephant seals. The animals may be harassed by overflights or helicopters while conducting aerial pinniped survey in several areas of the Antarctic ice pack.

Concurrent with the publication of this Notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the modification to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235 on or before November 1, 1982. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in the modification are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.

and

Regional Director, National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115

Dated: September 29, 1982.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 82–27374 Filed 10–4–82; 8:45 am]

BILLING CODE 3510–22–M

COMMODITY FUTURES TRADING COMMISSION

Proposed Amendment to New Orleans Commodity Exchange Rule 1102.08

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed amendment to contract market rule.

SUMMARY: The New Orleans Commodity Exchange ("NOCE" or "Exchange") has submitted a proposal to amend Rule 1102.08 of the rough rice futures contract which would eliminate the maximum warehouse load-out charge to the buyer established by the Exchange for all warehouses and would provide instead that the maximum load-out charge be such charge as has been filed with the Exchange by each warehouse. The Commodity Futures Trading Commission ("Commission") has determined that the proposal is of major economic significance and that, accordingly, publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent

with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before November 4, 1982.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Reference should be made to the New Orleans Commodity Exchange, Rule 1102.08.

FOR FURTHER INFORMATION CONTACT: Robert Clark, Division of Economics and Education, Commodity Futures Trading Commission, 2033, K Street, N.W., Washington, D.C. (202) 254–7303.

SUPPLEMENTARY INFORMATION: The proposed amendment to Rule 1102.08 would eliminate the maximum warehouse load-out charge to the buyer established by the Exchange for all warehouses, currently 8 cents per hundredweight. The amendment would provide instead that the maximum load-out charge be such charge as has been filed with the Exchange by each warehouse in accordance with existing rule 700.01, which requires a filing when regularity is sought or 60 days in advance of the effective date of any proposed changes. Existing Rule 700.01 also requires that warehouse receipts shall not, because of load-out chargas and other characteristics, adversely affect the value of the commodity delivered or impair the efficiency of futures trading in the particular commodity. According to the Exchange, these requirements of existing Rule 700.01 would enable it to protect the efficiency of the marketplace without an Exchange-specified maximum load-out charge by refusing or withdrawing regularity if proposed maximum charges of individual warehouses were abnormal or exorbitant.

The NOCE believes the amendment is necessary to enable regular warehouses to conform their load-out charges for Exchange deliveries with their charges for handling non-Exchange deliveries, particularly with respect to Commodity Credit Corporation transactions. The Exchange stated that with current commercial tariffs ranging primarily from 9¢ to 12¢, it has become difficult for warehouses to adhere to the 8¢ maximum load-out charge currently provided by Rule 1102.08. The Exchange concluded that the best solution, in order to avoid continuous amendment of the contract, would be to eliminate a maximum fixed load-out charge for all warehouses and adopt the proposed amendment.

The proposed amendment to NOCE Rule 1102.08 would become effective immediately after Commission approval for all subsequent contract months as they are listed for trading, and for all months currently trading in which there is no open interest at the time of or any time after approval. Current positions would not be affected by the proposed rule change.

In accordance with Section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 7a(12) (Supp. IV 1980), the Commission has determined that the proposed amendment to Rule 1102.08 is of major economic significance. Accordingly, Rule 1102.08 is printed below, using bracketing to indicate deletions and *underlining* to indicate additions:

1102.08 Delivery and Loading Out

Delivery shall be made on the basis of the actual weight of rough rice loaded into rail cars or trucks. A load-out charge [of not more than $.08 per hundredweight] *not to exceed the tariff as filed with the Exchange in accordance with Rule 700.01(h)* shall be paid by the buyer to cover loading and weighing. Load-outs shall be made within three business days following the day on which loading instructions are given to the warehouseman; provided, however, that the withdrawing party has within that period furnished cars or trucks to receive the rice.

Other materials submitted by the NOCE in support of the proposed rules may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1981)). Requests for copies of such materials should be made to the FOIA, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should sent such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, by November 4, 1982. Such comment letters will be publicly available except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9.

Issued in Washington, D.C., on September 30, 1982.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 82-27316 Filed 10-4-82; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Schedule for Awarding Bonuses

Notice is hereby given that the Department of the Air Force will be paying Senior Executive Service bonuses no earlier than 14 days from this date.

For further information, contact the Senior Executive Service Management Office at (703) 695–5989.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 82-27397 Filed 10-4-82; 8:45 am]

BILLING CODE 3919-01-M

DEFENSE COMMUNICATIONS AGENCY

National Security Telecommunications, Advisory Committee; Closed Meeting

A meeting of the Resource Enhancements Working Group of the National Security Telecommunications Advisory Committee will be held at 8:45 a.m. on Wednesday, October 6, 1982 in the Westgate Building of the MITRE Corporation, 1820 Dolley Madison Boulevard, McLean, Virginia. The meeting is devoted to the discussion of automated information processing as it relates to national security communications. The meeting discusses classified information and therefore will be closed to the public in the interest of National Defense. The agenda is as follows:

A. Automated Information Processing and National Security

B. Automated Information Processing Survivability—Government Concerns

C. Automated Information Processing Survivability—Industry View

D. Automated Information Processing Survivability Issues

E. National Security Automated Information Processing Issues

Any person desiring information about the meeting may telephone (Area Code 202–692–9274) or write the Manager of the National Communications System, 8th Street and South Courthouse Road, Arlington, Virginia 22204.

James D. Blair,

Maj. U.S. Air Force, NCS Joint Secretariat.

[FR Doc. 82-27317 Filed 10-4-82; 8:45 am]

BILLING CODE 3610-05-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

PLUS Program; Reduction of Applicable Interest Rate on New Loans

AGENCY: Education Department.

ACTION: Notice of reduction of the applicable interest rate on new loans.

The Assistant Secretary for Postsecondary Education gives notice to lenders that participate in the PLUS program that the applicable interest rate of all PLUS loans *disbursed* on or after the first day of the first month following the date of publication of this Notice will be 12 percent. Section 427A(c)(1) of the Higher Education Act of 1965, as amended, sets the interest rate on PLUS program loans at 14 percent. However, section 427A(c)(2) of the Act requires that the applicable rate of interest on new loans be 12 percent if the average of the bond equivalent rates of 91-day Treasury bills auctioned over any 12-month period beginnng on or after October 1, 1981 is equal to, or less than, 14 percent.

This average of the bond equivalent rates of 91-day Treasury bills for the 12-month period ending September 30, 1982, was less than 14 percent. Therefore, the Assistant Secretary announces that the interest rate on all PLUS loans *disbursed* on or after November 1, 1982, will be 12 percent.

The Education Amendments of 1980 added provisions to Part B of Title IV of the Higher Education Act of 1965, authorizing the Federal Government to insure or reinsure loans made to parents of dependent undergraduate students. This program was named the PLUS program. The Postsecondary Student Assistance Amendments of 1981 further extended borrower eligibility under the PLUS program to include independent undergraduate students and graduate or professional students. The Act mandates that unless otherwise specified, PLUS loans have the same terms, conditions and benefits as those governing loans to students under the Guaranteed Student Loan Program.

(20 U.S.C. 1077a)

Applicable Regulations: The following regulations are applicable to this program:

PLUS Program regulations—34 CFR Part 683.

The final regulations governing this program were published in the **Federal Register** of April 21, 1982 (47 FR 17200).

FOR FURTHER INFORMATION CONTACT: For further information contact Gwen Dockett or Larry Oxendine, Policy Section, Guaranteed Student Loan Branch, Division of Policy and Program Development, Office of Student Financial Assistance, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone number (202) 245-2475.

(Catalog of Federal Domestic Assistance No. 84.032 PLUS Program)

Dated: September 24, 1982.

Margaret J. Seagears,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 82-27361 Filed 10-4-82; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Apco Oil Corp.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of action taken on consent order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces that it has adopted a Consent Order with the Apco Liquidating Trust, as successor to the Apco Oil Corporation, as a final order of the Department.

EFFECTIVE DATE: October 5, 1982.

FOR FURTHER INFORMATION CONTACT: John W. Sturges, Director, Tulsa Office, Economic Regulatory Administration, U.S. Department of Energy, 440 South Houston, Room 306, Tulsa, Oklahoma 74127. Phone: (918) 581-7781.

SUPPLEMENTARY INFORMATION: On August 24, 1982, Vol. 47, FR 36885, the ERA published a notice in the **Federal Register** that it had executed a proposed Consent Order with the Apco Liquidating Trust, as successor to the Apco Oil Corporation on August 12, 1982, which would not become effective sooner than 30 days after publication of that notice. Pursuant to 10 CFR 205.199J(c), interested persons were invited to submit comments concerning the terms and conditions of the proposed Consent Order.

The Consent Order requires the total payment of $1,000,000.00 for the period January 1, 1973 through January 27, 1981, which will be paid to the DOE for ultimate disposition. The Consent Order resolves certain potential civil liability arising out of the Mandatory Petroleum Allocation and Price Regulations and other regulations involving transactions of covered products.

Six comments were received in the month of September 1982. Five comments generally proposed a distribution scheme whereby refunds collected by this Consent Order and other Consent Orders should be distributed to the states on a pro-rata basis to be spent by the states. The aforementioned refunds should, the comments suggest, be deposited in dedicated revenue funds established by state legislatures and spent on accepted projects or programs related to energy which would include highway and bridge maintenance, public transportation, grant programs for weatherization, and energy conservation. One comment from the Association of American Railroads urged the use of Subpart V and a volumetric distribution method if overcharged customers cannot otherwise be identified.

The proposed Consent Order is finalized without modification. The proposed Consent Order was not modified as suggested by the comments because the comments did not contest the validity of the Consent Order but addressed only the question of the ultimate disposition of those funds. In accordance with the terms of paragraph 402 of the Consent Order, ERA will petition DOE's Office of Hearings and Appeals to implement special refund procedures pursuant to 10 CFR Part 205, Subpart V of DOE's regulations to distribute the funds to be paid under this Consent Order.

The proposed Consent Order, therefore was made final and effective on the date of publication in the **Federal Register.**

James E. Pohl,

Deputy Director, Litigation and Settlement, Tulsa Office, Economic Regulatory Administration.

[FR Doc. 82-27365 Filed 10-4-82; 8:45 am]

BILLING CODE 6450-01-M

Columbia Gas System, Inc.; Proposed Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed consent order and opportunity for comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order with Columbia Gas System, Inc. (Columbia) and provides an opportunity for public comment on the terms and conditions of the proposed Consent Order.

DATE: Comments by November 4, 1982.

ADDRESS: Send comments to: David H. Jackson, Director, Kansas City Office, Economic Regulatory Administration,

324 East 11th Street, Kansas City, Missouri 64106–2466.

FOR FURTHER INFORMATION CONTACT: David H. Jackson, Director, Kansas City Office, Economic Regulatory Administration, 324 East 11th Street, Kansas City, Missouri 64106–2466; telephone number (816) 374–2092. Copies of the Consent Order may be obtained free of charge by writing or calling this office.

SUPPLEMENTARY INFORMATION: On September 24, 1982, the ERA executed a proposed Consent Order with Columbia Gas System, Inc. of Wilmington, Delaware. Under 10 CFR 205.199J(b), a proposed Consent Order which involves the sum of $500,000 or more, excluding interest and penalties, becomes effective no sooner than thirty days after publication of a notice in the **Federal Register** requesting comments concerning the proposed Consent Order. Although the DOE has signed and tentatively accepted the proposed Consent Order, the DOE may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate a modification of the Consent Order or issue the Consent Order as signed.

I. The Consent Order

Columbia Gas System, Inc., with its home office located in Wilmington, Delaware, is a firm engaged in the sale of natural gas liquids (NGL) and natural gas liquids (NGL) and natural gas liquid products (NGLP) through its subsidiaries Columbia Hydrocarbon Corporation and Columbia Gas Transmission Corporation, and was subject to the Mandatory Petroleum Allocation and Price Regulations at 10 CFR Parts 210, 211, 212 during the period covered by this Consent Order. To resolve certain potential civil liability arising out of the Mandatory Petroleum Allocation and Price Regulations and related regulations, 10 CFR Parts 205, 210, 211, 212 in connection with Columbia's transactions involving NGL and NGLP during the period September 1, 1973 through January 27, 1981, the DOE and Columbia enter into a Consent Order, the significant terms of which are as follows.

A. This Consent Order encompasses all sales during the period September 1, 1973 through January 27, 1981 of NGL and NGLP by Columbia's subsidiary Columbia Hydrocarbon Corporation and of NGL and NGLP by Columbia's subsidiary Columbia Gas Transmission Corporation which were extracted and fractionated at its gas plants at Kenova and Cobb, West Virginia (the matters covered by the Consent Order).

B. As a result of its audit, ERA had alleged that Columbia sold NGL and NGLP at prices in excess of the maximum lawful selling prices, in violation of 6 CFR 150.355 and 150.358 and 10 CFR 212.82, 212.83, 212.143 and 212.163. Columbia disputed these allegations.

C. Execution of the Consent Order constitutes neither an admission by Columbia nor a finding by DOE of any violation by Columbia of any statute or regulation.

II. Refunds and Civil Penalty

A. Disposition of Refunds

Under this Consent Order, Columbia will refund the sum of $800,000, which includes interest, to customers listed in Attachment A of the Consent Order within ninety (90) days of the effective date of the Consent Order. Any undeliverable refunds are to be remitted to the DOE for deposit in the U.S. Treasury as miscellaneous receipts. Upon full satisfaction of the terms and conditions of this Consent Order the DOE releases Columbia from any civil claims that the DOE may have arising out of the matters covered by the Consent Order.

B. Civil Penalty

In addition, Columbia agrees to pay the sum of $5,000 in compromise of civil penalties relating to the matters covered by the Consent Order.

III. Submission of Written Comments

Interested persons are invited to submit written comments concerning the terms and conditions of this Consent Order to the address given above. Comments should be identified on the outside of the envelope and on the documents submitted with the designation "Comment on Columbia Gas System, Inc. Consent Order." The DOE will consider all comments it receives by 4:30 p.m., local time, on (30 days after the date of publication of this notice). Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedure in 10 CFR 205.9(f).

Issued in Kansas City on the 24th day of September 1982.

David H. Jackson,

Director, Kansas City Office, Economic Regulatory Administration.

[FR Doc. 82–27369 Filed 10–4–82; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 82–12–LNG]

Natural Gas Imports; Trunkline LNG Company's Authorization To Import Liquefied Natural Gas from Algeria

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of conference.

SUMMARY: Notice is hereby given that the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) will hold a public conference on October 14, 1982, beginning at 10:00 a.m., c.d.t., in Room 400, City Hall, 419 Fulton Street, Peoria, Illinois with Trunkline LNG Company (TLC) and other interested parties with respect to TLC's importation of liquefied natural gas (LNG) from Algeria. The purpose of the conference is to permit interested parties to comment on various complaints and petitions recently filed with the ERA regarding TLC's import authorization and TLC's subsequent response to the complaints. The ERA is seeking views on whether it should initiate a "proceeding" to review TLC's import authorization; and, if so, what issues it should address, what kind of evidence it should gather, and what kind of procedures and timetable for action it should adopt.

This conference will afford interested parties the opportunity to present their views to the ERA on these matters and also permit an exchange of views among interested parties.

DATES: The conference will be held on October 14, 1982. Requests to speak must be made by close-of-business on October 12, 1982. Written comments may be submitted in lieu of an oral presentation. These written comments will be due by close-of-business on October 15, 1982.

FOR FURTHER INFORMATION CONTACT:

John Glynn (Office of Fuels Programs, Natural Gas Branch), Economic Regulatory Administration, 12th and Pennsylvania Avenue, NW., Federal Building, Room 6144, (RG–631), Washington, D.C. 20461 (202) 633–9296

Merrill F. Hathaway, Jr. (Office of General Counsel, Natural Gas and Mineral Leasing), 1000 Independence Avenue, SW., Forrestal Building, Room 6E–042, Washington, D.C. 20585 (202) 252–4467

Jack Vandenberg (Public Affairs), Economic Regulatory Administration, 12th and Pennsylvania Avenue, NW., Federal Building, Room 7120, Washington, D.C. 20461 (202) 633–8755.

SUPPLEMENTARY INFORMATION:

Background

The Federal Power Commission (FPC), the ERA's predecessor with respect to responsibilities under section 3 of the Natural Gas Act, issued Opinions Nos. 796 and 796–A (CP 74–138, *et al.*) on April 29, 1977, and June 30, 1977, respectively, authorizing TLC, a subsidiary of Panhandle Eastern Corporation, to import approximately 168 billion cubic feet (Bcf) annually of Algerian LNG for twenty years and to build the necessary facilities for receiving this import. TLC and Societe Nationale Sonatrach (Sonatrach), the national oil and gas company of Algeria, agreed that the "First Regular Delivery" of LNG would take place during the first quarter of calendar year 1980. However, Sonatrach reported technical difficulties connected with its facilities and delayed any shipments of LNG. On July 1, 1982,TLC initiated arbitration proceedings with the International Chamber of Commerce in Paris, France to require contract performance by Sonatrach.

On August 9, 1982, TLC announced in a news release that it had received shipping schedules from Sonatrach providing for the first two shipments of LNG in late September and mid-October, with plans for a gradual buildup of shipments to contract levels. TLC also stated that it had agreed to a modification of the escalation formula governing the future price of LNG, F.O.B. Algeria. Instead of price adjustment based on a price index related to No. 2 and No. 6 fuel oils at New York Harbor, the future escalation formula would be based on the official posted export prices of five crude oils.[1]

TLC stated that it would begin selling the regasified LNG to Trunkline Gas Company at $7.18 per MMBtu, subject to refund. This rate would remain effective for six months or until first regular deliveries occur, changing at such time to a cost of service rate. TLC, in its news release, also announced that it was withdrawing its request for arbitration which had been filed with the International Chamber of Commerce.

Filing Before the ERA

Although TLC has not filed an application to amend its LNG import authorization, several parties have filed protests, petitions, complaints, motions and requests pertaining to the original contract and FPC import authorization, as well as to the recently announced contract modifications.[2]

Pursuant to Section 1.6 of our procedural regulations [3] the ERA forwarded the filed complaints to TLC for a response by close-of-business, September 27, 1982. Section 1.9 states that answers to petitions shall be filed within 30 days after the date of service.

Several parties that filed with the ERA alleged that TLC and Sonatrach have illegally renegotiated the sales price of future LNG imports. Article 24 of the current gas purchase contract prohibits the renegotiation of the sales price until after the date of the "First Regular Delivery" (defined in the contract as the first day of the first month during which the quantity of LNG exceeds or is equal to one-twelfth of the annual contract quantity). These parties assert that the purported contract violation abrogates the existing import authorization and that the ERA should require TLC to file an application requesting an amendment of its existing authorization to conform with the terms of the modified sales contract.

Several parties that filed with the ERA cited "changed circumstances" as the reason for their requests. They claim that since the 1977 FPC authorization there have been significant changes in the facts underlying the authorization of this import. Because of these changes, they allege that the import no longer meets the statutory test in section 3 of the Natural Gas Act because the import is not "* * * consistent with the public interest." The parties argue that events have shown that Algeria is not a reliable source of LNG supply, that the price is unreasonable, and that there is no longer a need for the gas.

TLC's September 27 Response

On September 27, 1982, TLC filed a respose to the complaints filed by the Michigan Consolidated Gas Company, the Association of Businesses Advocating Tariff Equity, and the Laclede Gas Company.

In response to the complainants' request that the ERA revoke, rescind, or suspend TLC's import authorization, TLC contends that there is no statutory, policy, or legal basis for the requested action. TLC aserts that the complainants have not addressed the statutory authority, legal precendent, or judicial pronouncement that would allow the ERA to terminate an existing import authorization.

TLC also expressed concern about the effect such action would have on "* * * a long-term project created by private industry, supported by these complainants and their allies, and sanctioned and fostered by the United States Government, merely because of temporary economic conditions which are affecting the availability of energy today." TLC includes an appendix of statements by many of the complainants and petitioners supporting the project to import Algerian LNG made during the earlier authorization proceedings before the FPC.

TLC claims that the complainants have made erroneous assertions with respect to violations of TLC's sales agreement with Sonatrach and that the current LNG shipments are being delivered under the 1975 contract, and in accordance with existing import authorization. TLC asserts that the amended pricing clause would only become effective "* * * following achievement of full deliveries and upon the obtaining of government approvals,

[1] In its news release, TLC stated that the new formula would have the effect of adjusting the price by approximately 17 cents per million British thermal units (MMBtu) for each $1 per barrel change in the average price of five crudes, whereas the existing escalation formula results in a change of the F. O. B. price by approximately 10 cents per $1 per barrel change in the fuel oil prices.

[2] August 27, 1982 petition for order to show cause and/or expedited declaratory relief of State of Michigan and Michigan Public Service Commission; August 27, 1982 complaint, request for hearing, and petition for declaratory order on an expedited basis or for order to show cause of Michigan Consolidated Gas Company; August 30, 1982 complaint and request for the issuance of an expedited order to show cause of the Assocation of Businesses Advocating Tariff Equity; September 2, 1982 petition of Consumers Power Company for order to show cause why order approving the importation of liquefied natural gas should not be vacated and for order suspending license pending expedited hearing; September 10, 1982 joint petition (Congressmen Robert H. Michel and Paul Findley, Illinois Commerce Commission, Associated Natural Gas Company, Battle Creek Gas Company, Central Illinois Light Company, Central Illinois Public Service Company, Citizens Gas Fuel Company, Michigan Gas Utilities Company, Missouri Utilities Company, Ohio Gas Company, Richmond Gas Corporation, Southeastern Michigan Gas Company and The Toledo Edison Company) to reopen and revoke authorization for importation of liquefied natural gas from Algeria to the United States of America and motion for temporary suspension of such authorization pending the outcome of the proceedings; September 10, 1982 petition of Illinois Power Company for order to require the filing of an application for approval of modifications to contract regarding importation of liquefied natural gas and for order suspending import authorization pending expedited hearings; September 10, 1982 complaint of Laclede Gas Company and request for immediate suspension of import authorization pending expedited hearing; September 21, 1982 petition of Central Illinois Public Service Company to reopen and revoke authorization for importation of liquefied natural gas from Algeria to the United Stats of America and motion for temporary suspension of such authorization pending the outcome of the proceedings; and September 21, 1982 joint motion of petitioners to consolidate proceedings and to establish expedited procedures.

[3] The ERA follows the rules of practice and procedure of its predecessor agency, the FPC, contained in the Code of Federal Regulations, Title 18, Part 1, *et seq.* The ERA continues to follow the FPC regulations in existence at the time of enactment of the Department of Energy Organization Act of 1977. The Federal Energy Regulatory Commission's April 28, 1982 amendments to these regulations (47 FR 19014 May 3, 1982) are not applicable to the ERA's import and export proceedings.

the timing of which cannot now be predicted."

In response to those complaints that there is no longer a need for this gas supply because of "changed circumstances", TLC argues that such allegations are both self-serving and wrong. In addition, TLC states that any review of the complainants' assertions would require the ERA to grant the opportunity for discovery, submission of market data, and cross-examination at an evidentiary hearing.

Matters To Be Discussed at Conference

The EPA has decided to solicit public comment on TLC's authorization to import natural gas from Algeria and the various submissions filed before the ERA to assist in determining what action, if any, should be taken. Accordingly, the ERA has scheduled an informal conference, as described below, at which any interested party may express views and opinions concerning these matters. Any party that wishes to file written comments with the ERA in lieu of making an oral presentation may do so as described in the next section of this notice.

According to section 3 of the Natural Gas Act, the ERA must approve an import unless, after opportunity for hearing, it determines that the proposed "* * * importation will not be consistent with the public interest." The Administrator of the ERA applies the following criteria set forth in the Secretary of Energy's Delegation Order 0204–54: (1) The security of the gas supply; (2) the effect on U.S. balance of payments; (3) the price proposed to be charged at the point of importation; (4) the national and regional need for the gas; and (5) the consistency with any relevant DOE regulations or statements of policy. In view of the fact that an import authorization is largely based on these criteria, we request that those participating in the conference focus on them.

The ERA is particularly interested in responses to the following questions:

(1) Should the ERA initiate a proceeding related to TLC's authorization to import natural gas from Algeria?

(2) Should such a proceeding be joined with any proceeding to consider the request TLC may file for authorization under the amended contract?

(3) What legal issues should be designated in any such proceeding?

(4) What factual evidence should the ERA attempt to gather in any such proceeding? The ERA welcomes any relevant factual data that parties want to submit, particularly with respect to the supply, demand and price of the gas over the term of the existing authorization.

(5) How should the ERA conduct such a proceeding?

(6) What schedule or timetable would be appropriate for such a proceeding?

(7) May the ERA suspend TLC's existing authorization to import natural gas pending further proceedings?

Conference Procedures

The ERA is convening this conference pursuant to 18 CFR § 1.18 and paragraph 26 of DOE Delegation Order No. 0204–4. The presiding official will conduct the conference in a fashion that will facilitate the orderly presentation of interested parties' oral statements. All interested parties are encouraged to present their views; however, statements may be subject to time limitations if determined necessary by the presiding official.

Any party who wishes to ask a question at the conference may submit the question, in writing, to the presiding official, who will determine whether the question is relevant and whether time limitations permit it to be answered.

This conference will be open to the public. However, any party who wishes to make an oral statement at the conference must give notice thereof to the Chief, Natural Gas Branch, Office of Fuels Programs, Economic Regulatory Administration, RG–631, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461, (202) 633–9296, on or before October 12, 1982. This notice should indicate the person (with address and telephone number) to accept notification of the grant and the allotted time for the oral statement. Any party making an oral presentation should bring 50 copies of the statement to the conference. The ERA reserves the right to restrict the number of such persons to be heard, and to establish procedures governing the presentations.

Any party who wishes to file written comments with the ERA in lieu of an oral presentation must make such filing with the Chief, Natural Gas Branch, by October 15, 1982, at the above address. Any submission including information or data considered confidential by the party furnishing it must be so identified on the first page of the document. The party also should submit a copy of the document with the confidential material excluded. All comments (with confidential material excluded) received by the ERA will be available for public inspection in the Natural Gas Branch Docket Room, Room 6144, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

A transcript of the conference will be made and will be available for public review at the Natural Gas Branch Docket Room at the above address between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued at Washington, D.C. on October 1, 1982.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 82–27506 Filed 10–4–82; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 6596–000]

American Hydro Power Co.; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

September 30, 1982.

Take notice that on August 16, 1982, American Hydro Power Company (Applicant) filed an application, under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705, and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric Project No. 6596 would be located on the Patuxent River in the City of Laurel, in Prince George's and Howard Counties, Maryland. Correspondence with the Applicant should be directed to: Mr. Peter McGrath, American Hydro Power Company, Two Aldwyn Center, Villanova, Pennsylvania 19085.

Project Description—The proposed project would consist of: (1) The existing Duckett Dam, owned by the Washington Suburban Sanitary Commission (WSSC), 840 feet long and 136.4 feet high; (2) the Rocky Gorge Reservoir, with a surface area of 810 acres and a storage capacity of 19,641 acre-feet at a normal pool elevation of 285 feet m.s.l.; (3) an existing 10-inch diameter release line 25 feet long serving as a penstock; (4) one new 125-kW turbine/generator unit operating under a head of 115 feet and located within the dam in the undersluice walkway; (5) new, short, low-voltage transmission lines; and (6) appurtenant facilities.

The average annual generation of 1.09 million kWh would be sold to WSSC or to Baltimore Gas and Electric Company.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and

operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the Maryland Department of Natural Resources are requested, for the purposes set forth in Section 408 of the Act, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Applications—Any qualified license applicant desiring to file a competing application must file with the Commission, on or before November 22, 1982, either the competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application. Filing of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are dute. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rule 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before November 22, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27346 Filed 10-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6599-000]

B & G Maloof; Application for Preliminary Permit

September 29, 1982.

Take notice that B & G Maloof (Applicant) filed on August 16, 1982, an application for preliminary premit (pursuant to the Federal Power Act, 16 U.S.C. 791(a) 825(r)) for Project No. 6599 to be known as the Berry Shoals Dam Hydroelectric Project located on South Tyger River in Spartanburg County, South Carolina. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Glen Maloof, 63 John Street, Englewood Cliffs, New Jersey 07632.

Project Description—The proposed project would consist of: (1) An existing reservoir with a surface area of 9,000 acres and an estimated gross storage capacity of 744 acre-feet; (2) an existing stone masonry dam 46 feet high and 350 feet long; (3) the renovation of an existing 820-foot-long canal and gate structure; (4) the renovation of an existing powerhouse and the installation of two generator/turbine units with a total installed capacity of 2 MW; (5) a proposed transmission line less than one mile in length and interconnecting with Duke Power Company; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 4.7 GWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time studies would be made to determine the engineering, environmental, and economic feasibility of the project. In addition, historic and recreational aspects of the project would be determined, along with the consultation with Federal, state, and local agencies for information, comments and recommendations relevant to the project. The Applicant estimates that the cost of the studies would be $35,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must file with the Commission, on or before January 10, 1983, the competing application itself (see: 18 CFR 4.30 et seq. (1981)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to file such an application in response to this notice. A notice of intent to file an application for license or exemption must be filed to the Commission on or before December 9, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rule 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the

Commission's Rules May become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before December 9, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27347 Filed 10-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6621-000]

Cook Electric, Inc.; Application for Exemption for Small Hydroelectric Power Project of 5 MW or Less Capacity

September 30, 1982.

Take notice that on August 19, 1982, Cook Electric, Inc. (Applicant) filed an application under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705 and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric Project No. 6621 would be located on Big Sheep Creek near Joseph in Wallowa County, Oregon. Correspondence with the Applicant should be directed to: Mr. Dale Hatch, Cook Electric, Inc., P.O. Box 1071, Twin Falls, Idaho 83301.

Project Description—The proposed project would consist of: (1) An intake structure in the existing Wallowa Valley Improvement District Canal; (2) a 45-inch-diameter steel penstock; (3) a power house with a total installed capacaity of 1,660 kW; (4) a switchyard increasing the voltage to 13.8-kV; and (5) a 2,850-foot-long, 13.8-kV transmission line interconnecting with the proposed transmission line from Applicant's proposed Upper Little Sheep Power Project. The average annual output is estimated to be 5.51 million kWh.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the Oregon Department of Fish and Wildlife are requested, for the purposes set forth in Section 408 of the Act, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however specific terms and condition to be included as a conditions of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Application—Any qualified license applicant desiring to file a competing application must file with the Commission, on or before November 22, 1982 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or notice of intent to file such a license application. Filing of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

Comments, Protests, or Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of commission Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025-26 (1982). (In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party ot the proceeding. Any comments, protests, or motions to intervene must be filed on or before November 22, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27348 Filed 10-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6669-000]

Energenics Systems Inc.; Application for Preliminary Permit

September 29, 1982.

Take notice that Energenics Systems Inc. (Applicant) filed on September 1, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a) 825(r)) for Project No. 6669 to be known as the Pomme De Terre Lake Dam located on Pomme De Terre River in Hermitage, Hickory County, Missouri. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Granville J. Smith II, President, Energenics Systems Inc., 1717 K Street, N.W., Suite 706, Washington, D.C. 20006.

Project Description—The proposed project would utilize an existing U.S.

Army Corps of Engineers' dam and reservoir. Project No. 6669 would consist of: (1) A proposed penstock extending from an existing conduit to the proposed powerhouse; (2) a proposed powerhouse with a capacity of 8.7 MW; (3) transmission line; and (4) appurtenant facilities. Applicant estimates the annual energy output would be 18.9 GWh. Energy produced at the proposed project would be sold to Empire District Electric Power Company.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a term of 36 months. During this period, engineering, economic and environmental studies will be conducted to ascertain project feasibility and to support an application for a license to construct and operate the project. The estimated cost of those activities is $50,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must file with the Commission, on or before January 3, 1983, the competing application itself (see: 18 CFR 4.30 et seq. (1981)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to file such an application in response to this notice. A notice of intent to file an application for license or exemption must be filed to the Commission on or before December 6, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before December 6, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27341 Filed 10-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-207-000]

Florida Crushed Stone Co.; Amendment to Application for Commission Certification of Qualifying Status of a Cogeneration Facility

September 30, 1982.

On September 15, 1982, Florida Crushed Stone Company, P.O. Box 217, Leesburg, Florida 32748, filed with the Federal Energy Regulatory Commission (Commission) an amended application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's rules. The original application was filed on August 27, 1982, notice of which was published in the **Federal Register** on September 13, 1982.

According to the amendment, the electric power production capacity of the facility will be 134 megawatts, rather than 75 megawatts as stated in the original application. The amendment does not alter any other information set forth in the notice published on September 13, 1982.

In view of the changed facility capacity, the comment period specified in the original notice is extended by 10 days.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27342 Filed 10-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6681-000]

F & T Services Corp.; Application for Preliminary Permit

September 29, 1982.

Take notice that F & T Services Corporation (Applicant) filed on September 8, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for Project No. 6681 to be known as the Jonesville Project located on the Black River in Catahoula and Concordia Parishes, Louisiana. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. J.B. Lancaster, Jr., F & T Services Corporation, P.O. Box 64844, Baton Rouge, Louisiana 70896.

Project Description—The proposed project would utilize the U.S. Army Corps of Engineers' Jonesville Lock and Dam. The project would consist of a powerplant built adjacent to the dam including two to five bulb or tube-type turbine/generators having a total rated capacity from 25 to 75 MW. Average annual generation would range up to 385,000,000 kWh. Energy produced at the project would be sold to a local utility.

Proposed Scope of Studies Under Permit—Applicant seeks issuance of a preliminary permit for a period of three years, during which time it would perform surveys and geologic investigations, coordinate studies with the U.S. Army Corps of Engineers, determine the economic feasibility of the project, reach final agreement on sale of project power, secure financing commitments, consult with Federal, State, and local government agencies concerning the potential environmental effects of the project, and prepare an application for FERC license, including an environmental report. Applicant estimates the cost of studies under the permit would be less than $20,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must file with the Commission, on or before January 8, 1983, the competing application itself (see: 18 CFR 4.30 et seq. (1981)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption

from licensing, or a notice of intent to file such an application in response to this notice. A notice of intent to file an application for license or exemption must be filed with the Commission on or before December 6, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Motions to Intervene—Anyone may file comments, a protest, or a petition to intervene in accordance with the requirements of the Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before December 6, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27349 Filed 10-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6645-000]

General Energy Development, Inc.; Application for Preliminary Permit

September 30, 1982.

Take notice that General Energy Development, Inc. (Applicant) filed on August 27, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for Project No. 6645 to be known as the Coe-Eliot Project located on Coe Branch and Eliot Branch Streams within Mount Hood National Forest in Hood River County, Oregon. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Carl Rounds, 1885 W. Washington, Stayton, Oregon 97383.

Project Description—The proposed project would consist of: (1) Two 6-foot-high, 35-foot-long diversion structures; (2) two pipelines, 8,980-foot-long and 4,330-foot-long, connecting with; (3) a 1,750-foot-long penstock; (4) a surge tank; (5) a powerhouse to contain a single generating unit with a rated capacity of 2,750 kW, operating under a head of 362 feet; (6) a 11,584-foot-long transmission line to tie into an existing line. The estimated average annual energy output is 16,101,000 kWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months during which the applicant would conduct engineering, environmental and economic feasibility studies and prepare an application for an FERC license. The estimated cost for conducting these studies and preparing an application for an FERC license is $77,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must file with the Commission, on or before December 20, 1982, the competing application itself, or a notice of intent to file such an application (see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81–15, issued October 29, 1981, 46 FR 55245, November 9, 1981.)

The Commission will accept applications for license or exemption from licensing, or a notice of intent to file such an application in response to this notice. A notice of intent to file and application for license or exemption must be filed with the Commission on or before December 20, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Filing of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than February 18, 1983.

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of the Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before December 20, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 29426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27350 Filed 10-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6659-000]

General Energy Development, Inc.; Application for Preliminary Permit

September 29, 1982.

Take notice that General Energy Development, Inc. (Applicant) filed on August 31, 1982, an application for perliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for Project No. 6659 to be known as the Sardine Creek Hydroelectric Project located on Sardine Creek within Willamette National Forest in Marion County, Oregon. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Carl Rounds, 1885 W. Washington Ave., Stayton, Oregon 97383.

Project Description—The proposed project would consist of: (1) A 6-foot-high diversion structure; (2) a 7,920-foot-long penstock; (3) a surge tank; (4) a powerhouse to contain a single generating unit with a rated capacity of 1,720 kW, operating under a head of 527 feet; (5) a 1,220-foot-long transmission line to tie into an existing line. The estimated average annual energy output is 7,963,000 kWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months during which the applicant would conduct engineering, environmental and economic feasibility studies and prepare an application for an FERC license. The estimated cost for conducting these studies and preparing an application for an FERC license is $77,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must file with the Commission, on or before December 8, 1982, the competing application itself, or a notice of intent to file such an application [see: 18 CFR 4.30 et. seq. (1981); and Docket No. RM81–15, issued October 29, 1981, 46 FR 55245, November 9, 1981.]

The Commission will accept applications for license or exemption from licensing, or a notice of intent to file such an application in response to this notice. A notice of intent to file an application for license or exemption must be filed with the Commission on or before December 8, 1982, and should specify the type of application forth coming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et. seq. or 4.101 et. seq. (1981), as appropriate).

Filing of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than February 7, 1983.

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of the Rules 211 or 214, 18 CFR 385.211 or 385.214 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or motions to intervene must be filed on or before December 8, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27351 Filed 10-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4222-001]

Georgia-Pacific Corp.; Surrender of Preliminary Permit

October 1, 1982.

Take notice that Georgia-Pacific Corporation (GPC), Permittee for the Galbraith Creek Hydroelectric Project No. 4222, has requested that its preliminary permit for the project be terminated. The permit for the Galbraith Creek Hydroelectric Project was issued on August 28, 1981, and would have expired on July 31, 1983. The project would have been located on the East Fork and West Fork of Galbraith Creek and on an unnamed triubutary to the Middle Fork Noonsack River in Whatcom County, Washington.

GPC filed its request on September 8, 1982, and the surrender of the permit for Project No. 4222 is deemed accepted as of the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27343 Filed 10-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6675-000]

Michael Jennings and Larry O. Oftedahl; Application for Preliminary Permit

September 30, 1982.

Take notice that Michael Jennings and Larry O. Oftedahl (Applicant) filed on September 3, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r) for Project No. 6675 to be known as the Spruce Water Power Project located on Trout Creek, within the Gifford Pinchot National Forest, near Stabler, in Skamania County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Michael Jennings, Route 1, Box 221, Centerville, Washington 98613.

Project Description—The project would consist of: (1) An existing 27-foot-high, 184-foot-long stone arch dam owned by the U.S. Forest Service; (2) an existing reservoir with a storage capacity of approximately 120 acre-feet; (3) a proposed powerhouse at the base of the dam, containing one generating unit with a total capacity of 260 kW; (4) a proposed fish screen above and below the powerhouse; and (5) a proposed 100-foot-long transmission line. The Applicant estimates that the average

annual energy production would be 1.35 million kWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 24 months during which time it would conduct technical, environmental and economic studies; and prepare an FERC license application. No new roads would be needed for conducting these studies. The Applicant estimates that the cost of undertaking these studies would be $5,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must file with the Commission, on or before January 17, 1983, the competing application itself (see: 18 CFR 4.30 et. seq. (1981)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be filed with the Commission on or before December 20, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of the Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before December 20, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27352 Filed 10-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6374-000]

Thomas M. McMaster and Robert L. Schroder; Application for License (5 MW or Less)

September 29, 1982.

Take notice that Thomas M. McMaster and Robert L. Schroder (Applicant) filed on May 27, 1982, an application for license pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for construction and operation of a water power project to be known as the Upper Rocky Creek Water Power Project No. 6374. The project would be located on Sulpher and Rocky Creeks within the Mt. Baker-Snoqualmie National Forest in Whatcom County, Washington. Correspondence with the Applicant should be directed to: Mr. Thomas M. McMaster, P.O. Box 1252, Mt. Vernon, Washington 98273.

Project Description—The proposed project would consist of: (1) A 5-foot-high concrete diversion structure at elevation 1,650 feet m.s.l. on Sulpher Creek, diverting water into; (2) a 42-inch-diameter concrete pipe discharging into Rocky Creek; (3) a 5-foot-high concrete diversion structure, at elevation 1,620 feet m.s.l. on Rocky Creek, immediately downstream of discharge from Sulpher Creek; (4) a 48-inch-diameter, 2,000 foot-long steel penstock; (5) a powerhouse containing two generating units with a combined rated capacity of 3,400 kW; and (6) appurtenant facilities.

Purpose of Project—The estimated 17.9 million kWh of energy, to be generated by the proposed project annually, would be sold to a local utility.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Commission Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before December 9, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27353 Filed 10-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6672-000]

Lawrence J. McMurtrey; Application for Preliminary Permit

September 29, 1982.

Take notice that Lawrence J. McMurtrey (Applicant) filed on September 2, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for Project No. 6672 to be known as the Boulder Creek Project located on Boulder Creek within Snoqualmie-Mt. Baker National Forest in Skagit County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Lawrence J. McMurtrey, 12122 196th N.E., Redmond, Washington, 98052.

Project Description—The proposed project would consist of: (1) A 2-foot-high diversion structure; (2) a 36-inch-diameter, 12,000-foot-long penstock; (3) a powerhouse containing a single generating unit with a rated capacity of 6,810 kW; and (4) appurtenant facilities. Applicant estimates an annual energy generation of 29.8 million kWh for the proposed project.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. Applicant has requested a 24-month permit to prepare a definitive project report including preliminary designs, results of environmental and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Forest Service and other Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $40,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must file with the Commission, on or before December 9, 1982, the competing application itself, or a notice of intent to file such an application (see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81–15, issued October 29, 1981, 46 FR 55245, November 9, 1981).

The Commission will accept applications for license or exemption from licensing, or a notice of intent to file such an application in response to this notice. A notice of intent to file an application for license or exemption must be filed with the Commission on or before December 9, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regualtions (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Filing of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than February 7, 1983.

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of the Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before December 9, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this Notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to : Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27354 Filed 10-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6679-000]

Olympic Hydro-Power; Application for Preliminary Permit

September 30, 1982.

Take notice that Olympic Hydro-Power (Applicant) filed on September 7, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)) for Project No. 6679 to be known as the Gatton Creek Project located on Gatton Creek, near Quinault, in Grays Harbor County, Washington. The project would occupy U.S. lands within Olympic National Forest. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Ms. Patricia A. Elwin, Olympic Hydro-Power, P.O. Box 3797, Lacey, Washington 98507.

Project Description—The proposed project would consist of: (1) A natural-rock formation diversion structure; (2) a 3,500-foot-long, 12-inch-diameter P.V.C. penstock; (3) a powerhouse containing one generating unit rated at 100 kW; (4) a trailrace; and (5) a 500-foot-long transmission line. The average annual energy generation is estimated to be 575,000 kWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 24 months, during which time it would conduct engineering, environmental, economic, and feasibility studies, and prepare an FERC license application. No new roads would be reqired to conduct the studies. The cost of the studies is estimated to be $67,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must file with the Commission, on or before December 20, 1982, the competing application itself, or a notice of intent to file such an application (see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81–15, issued October 29, 1981, 46 FR 55245, November 9, 1981.)

The Commission will accept application for license or exemption from licensing, or a notice of intent to file such an application in response to this notice. A notice of intent to file an application for license or exemption must be filed to the Commission on or before December 20, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR

4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Commission Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before December 20, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27255 Filed 10-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5832-000]

Pennsylvania Hydro-Electric Development Corp.; Application for License (5 MW or Less)

September 29, 1982.

Take notice that Pennsylvania Hydro-Electric Development Corporation (Applicant) filed on December 31, 1982, an application for license (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for construction and operation of a water power project to be known as the New Kernsville Water Power Project No. 5832. The project would be located on the Schuylkill River in Berks County, Pennsylvania. Correspondence with the Applicant should be directed to: Larry Gleeson, President, Pennsylvania Hydro-Electric Development Corporation, Suite 213, Continental Offices, P.O. Box 814, King of Prussia, Pennsylvania 19406.

Project Description—The proposed project would be run-of-the-river and would consist of: (1) The existing New Kernsville Dam, approximately 600 feet long and 17 feet high, constructed of concrete with spillway crest elevation at 383 feet m.s.l.; (2) a reservoir having minimal pondage; (3) a new gated intake canal, at the left dam abutment, leading to the powerhouse intake structure with trashracks; (4) a new powerhouse containing a tubular turbine-generator unit having a total rated capacity of 1,000 kW; (5) a tailrace with re-entry to the river approximately 100 feet downstream of the dam; (6) a new transmission line, approximately 6,000 feet long, connecting to existing 13.2 kV lines; and (7) appurtenant facilities. The Applicant estimates that the average annual energy output would be 5,000,000 kWh. Project energy would be sold to the Metropolitan Edison Company. New Kernsville Dam is owned by the Commonwealth of Pennsylvania.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statues. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, or or before December 8, 1982, either the competing application itself (See 18 CFR 4.33(a) and (d)) or a notice of intent (See 18 CFR 4.33(b) and (c)) to file a competing application. Filing of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or § 4.101 et seq. (1981).

Comments, Protests, or Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of the Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before December 8, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named docuents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27356 Filed 10-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6656-000]

Pioneer Hydropower, Inc.; Application for Preliminary Permit

September 30, 1982.

Take notice that Pioneer Hydropower, Inc. (Applicant) filed on August 30, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for Project No. 6656 to be known as the McGee/Elk Creeks Hydroelectric Project located on McGee and Elk Creeks in Hood River County, Oregon. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr.

Carl Rounds, 1885 W. Washington Avenue, Stayton, Oregon 97383.

Project Description—The proposed project would consist of: (1) Two 6-foot-high diversion structures; (2) two pipelines, 4,000-feet-long and 7,000-feet-long connecting with; (3) a 5,800-foot-long penstock; (4) a powerhouse to contain a single generating unit with a rated capacity of 1,870 kW, operating under a head of 490 feet; and (5) a 100-foot-long, 14-kV transmission line to tie into an existing line. The estimated average annual energy output is 8,130,000 kWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months during which the Applicant would conduct engineering, environmental and economic feasibility studies and prepare an FERC license. The estimated cost for conducting these studies and preparing an application for an FERC license is $77,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must file with the Commission, on or before December 20, 1982, the competing application itself or a notice of intent to file such an application (see: 18 CFR 4.30 et seq. (1981)); and Docket No. RM81–15, issued October 29, 1981, 46 FR 55245, November 9, 1981).

The Commission will accept applications for license or exemption from licensing, or a notice of intent to file such an application in response to this notice. A notice of intent to file an application for license or exemption must be filed to the Commission on or before December 20, 1982, and should specify the type of application forthcoming. Any applications for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Filing of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than February 18, 1983.

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of the Commission Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before December 20, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27357 Filed 10-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6654-000]

Pioneer Hydropower, Inc.; Application for Preliminary Permit

September 29, 1982.

Take notice that Pioneer Hydropower, Inc. (Applicant) filed on August 30, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for Project No. 6654 to be known as the Fall Creek Hydroelectric Project located on Fall Creek near Estacada, in Mt. Hood National Forest, in Clarkamas County, OR. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Messrs. Carl Rounds and K. Marshall Volpa, 1885 W. Washington Ave., Stayton, OR 97383.

Project Description—The proposed project would consist of: (1) A 6-foot-high by 30-foot-long diversion structure; (2) a 10,500-foot-long penstock; (3) a surge tank; (4) a powerhouse with an installed capacity of 1.4 MW; and (5) a 3900-foot-long, 12-kV transmission line. The project would produce about 7 million kWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 36-month permit to study the feasibility of constructing and operating the project and to prepare an FERC license application.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must file with the Commission, on or before December 8, 1982, the competing application itself, or a notice of intent to file such an application (see: 18 CFR 4.30 et seq.) (1981); and Docket No. RM81–15, issued October 29, 1981, 46 FR 55245, November 9, 1981.)

The Commission will accept applications for license or exemption from licensing, or a notice of intent to file such an application in response to this notice. A notice of intent to file an application for license or exemption must be filed with the Commission on or before December 8, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Filing of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than February 7, 1983.

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of the Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before December 8, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27358 Filed 10-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-518-000]

Southern Energy Co.; Application

September 29, 1982.

Take notice that on September 1, 1982, Southern Energy Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP82-518-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a compressor located at Applicant's Elba Island liquified natural gas (LNG) terminal in Chatham County, Georgia, 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 seeks to abandon a 280 horsepower compressor leased from Tidewater Compression Service, Inc. Applicant asserts that it no longer needs the additional compression capacity provided by these facilities to compress LNG vapor from its storage tanks. Applicant states that the facilities were originally installed because of an emergency delayed exchange of LNG between Applicant and Boston Gas Company. Applicant states that the inventory of LNG has been depleted and there is no anticipation of receiving LNG in the near future, and therefore has no need for the facilities.

It is further stated that Applicant can terminate the lease with Tidewater upon 30 days notice to Tidewater and Applicant would cancel the lease promptly if granted authorization to do so. Applicant submits that abandonment of the compressor would reduce its operational expenses while not resulting in any termination of service to Applicant's customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 21, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 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) 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 the 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 or this application if no motion to intervene is filed within the time required therein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are 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 Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27345 Filed 10-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-525-000]

West Lake Arthur Corp.; Application

September 29, 1982.

Take notice that on September 3, 1982, West Lake Arthur Corporation, 1200 Milam, Suite 3300, Houston, Texas 77001, filed in Docket No. CP82-525-000 an application pursuant to Section 7 of the Natural Gas Act and Subpart F of Part 157 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the construction, acquisition, and operation of certain facilities and the transportation and sale of natural gas and for permission and approval to abandon certain facilities and service, all as more fully set forth in the application on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said aid application should on or before October 21, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 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) 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 the 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 application 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 and permission and approval for the proposed abandonment are 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 Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27344 Filed 10-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 6573-000]

Wild River Owners Association; Application for Preliminary Permit

September 29, 1982.

Take notice that Wild River Owners Association (Applicant) filed on August 4, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)) for Project No. 6573 to be known as the Pringle Falls Hydroelectric Project located on Deschutes River in Deschutes County, Oregon. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Patrick M. Gisler, President, Wild River Owners Association, 20 North West Greenwood, Bend, Oregon 97709.

Project Description—The proposed project would consist of: (1) A 3-foot to 5-foot high diversion structure; (2) a 150-inch-diameter, 2,400-foot-long penstock; (3) a powerhouse to contain two generating units with a total rated capacity of 1,600 kW, operating under a head of 40 feet; (4) a 15-foot to 30-foot-long open channel discharging directly into Deschutes River; and (6) a transmission line to tie into an existing line owned by Mid-State Electric Co-op.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months during which the Applicant would conduct engineering, environmental, and economic feasibility studies and prepare an application for an FERC license. The estimated cost for conducting these studies and preparing an application for an FERC license would range between $5,280,000-$7,600,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must file with the Commission, on or before December 9, 1982, the competing application itself, or a notice of intent to file such an application (see: 18 CFR 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981).

The Commission will accept applications for license or exemption from licensing, or a notice of intent to file such an application in response to this notice. A notice of intent to file an application for license or exemption must be filed to the Commission on or before December 9, 1982, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Filing of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than February 7, 1983.

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Commission Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025-26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before December 9, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", " COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27359 Filed 10-4-82; 8:45 am]

BILLING CODE 6717-01-M

South Georgia Natural Gas Co. et al.; Tariff Sheet Filings

September 28, 1982.

In the matter of South Georgia Natural Gas Co., Docket No. TC82-45-000; National Fuel Gas Supply Co., Docket No. TC82-46-000; El Paso Natural Gas Co., Docket No. TC82-48-000; Arkansas Louisiana Gas Co., Docket No. TC82-49-000; East Tennessee Natural Gas Co., Docket No. TC82-50-000; Florida Gas Transmission Co., Docket No. TC82-51-000; Tennessee Gas Pipeline Co., a Division of Tenneco Inc., Docket No. TC82-52-000; Mississippi River Transmission Corp., Docket No. TC82-54-000; Southern Natural Gas Co., Docket No. TC82-55-000; Eastern Shore Natural Gas Co., Docket No. TC82-56-000; Panhandle Eastern Pipe Line Co., Docket No. TC82-57-000; Trunkline Gas Co., Docket No. TC82-58-000; Kansas-Nebraska Natural Gas Co. Inc., Docket No. TC82-60-000; Colorado Interstate Gas Co., Docket No. TC82-61-000.

Take notice that the following pipelines [1] have filed revised tariff sheets to become effective November 1, 1982 pursuant to § 281.204(b)(2), of the Commission's Regulations which section requires interstate pipelines to update their respective index of entitlements annually to reflect changes in priority 2 entitlements (Essential Agricultural Users).

Pipeline, Docket No., and Tariff Sheets

(1) South Georgia Natural Gas Company TC82-45-000—Sixth Revised Sheet No. 44, Seventh Revised Sheet No. 45, Fourth Revised Sheet No. 46, Fifth Revised Sheet No. 47 of FERC Gas Tariff, First Revised Volume No. 1.

(2) National Fuel Gas Supply Corporation TC82-46-000—Third Revised Sheet No. 32(B), Third Revised Sheet No. 32(C), Second Revised Sheet No. 32(D), Second Revised Sheet No. 32(E), First Revised Sheet No. 32(F) First Revised Sheet No. 32(G) of FERC Gas Tariff, Original Volume No. 1

(3) El Paso Natural Gas Company TC82-48-000—Twelfth Revised Sheet No. 63-C.3 of FERC Gas Tariff, Original Volume No. 1, Third Revised Sheet No. 1-M.3 of FERC Gas Tariff, Third Revised Volume No. 2, Twelfth Revised Sheet No. 7-MM.3 of FERC Gas Tariff Original Volume No. 2A.

(4) Arkansas Louisiana Gas Company TC82-49-000—Fourth Revised Sheet No. 3E, Fourth Revised Sheet No. 3F, Fourth Revised Sheet No. 3G, Fourth Revised Sheet No. 3H, Fourth Revised Sheet No. 3I, Fourth Revised Sheet No. 3J of FERC Gas Tariff, First Revised Volume No. 1.

(5) East Tennessee Natural Gas Company TC82-50-000—Second Revised Sheet Nos. 263 through 277 of FERC Gas Tariff, Original Volume No. 1.

[1] Addresses of the pipelines are listed in the appendix hereto.

(6) Florida Gas Transmission Company TC82-51-000—First Revised Sheet No. 20-D.1, Second Revised Sheet No. 20-E.1, Second Revised Sheet No. 20-F.1, Second Revised Sheet No. 20-G.1, Second Revised Sheet No. 20-H.1, Second Revised Sheet No. 20-I.1, Second Revised Sheet No. 20-J.1, Second Revised Sheet No. 20-K.1, First Revised Sheet No. 20-L.1 of FERC Gas Tariff, Original Volume No. 1.

(7) Tennessee Gas Pipeline Company, a Division of Tenneco Inc. TC82-52-000—Fifth Revised Sheet Nos. 2, 96; Fourth Revised Sheet Nos. 9, 22, 23, 24, 43, 92, 93, 121, 122; Third Revised Sheet Nos. 29, 61, 126; Second Revised Sheet Nos. 19, 82, 131, 134; First Revised Sheet Nos. 45, 83, 84 of FERC Gas Tariff, Original Volume No. 1A.

(8) Mississippi River Transmission Corporation TC82-54-000—Sixth Revised Sheet No. 35, Seventh Revised Sheet No. 36, Sixth Revised Sheet No. 38, Seventh Revised Sheet No. 39 of FERC Gas Tariff, First Revised Volume No. 1.

(9) Southern Natural Gas Company TC82-55-000—Tenth Revised Sheet No. 61, Second Revised Sheet No. 61A, Tenth Revised Sheet No. 62, Third Revised Sheet No. 62A, Twelfth Revised Sheet No. 63, Fourth Revised Sheet No. 63A, Twelfth Revised Sheet No. 64, Fourth Revised Sheet No. 64A, Eleventh Revised Sheet No. 65, Sixth Revised Sheet No. 65A, Twelfth Revised Sheet No. 66, Sixth Revised Sheet No. 66A, Fourteenth Revised Sheet No. 67, Sixth Revised Sheet No. 67A, Fifth Revised Sheet No. 68, Third Revised Sheet No. 68A, Seventh Revised Sheet No. 69, Second Revised Sheet No. 69A, Seventh Revised Sheet No. 70, Second Revised Sheet No. 70A, Fourteenth Revised Sheet No. 71, Sixth Revised Sheet No. 71A, Ninth Revised Sheet No. 72, Second Revised Sheet No. 72A, Ninth Revised Sheet No. 73, Third Revised Sheet No. 73A, Eleventh Revised Sheet No. 74, Fourth Revised Sheet No. 74A, Eleventh Revised Sheet No. 75, Fourth Revised Sheet No. 75A, Eleventh Revised Sheet No. 76, Sixth Revised Sheet No. 76A, Thirteenth Revised Sheet No. 77, Sixth Revised Sheet No. 77A, Fourteenth Revised Sheet No. 78, Sixth Revised Sheet No. 78A, Fifth Revised Sheet No. 79, Third Revised Sheet No. 79A, Seventh Revised Sheet No. 80, Second Revised Sheet No. 80A, Seventh Revised Sheet No. 81, Second Revised Sheet No. 81A, Fourteenth Revised Sheet No. 82, Sixth Revised Sheet No. 82A of FERC Gas Tariff, Sixth Revised Volume No. 1.

(10) Eastern Shore Natural Gas Company TC82-56-000—Third Revised Sheet No. 424 of FERC Gas Tariff, Original Volume No. 1.

(11) Panhandle Eastern Pipe Line Company TC82-57-000—Sixth Revised Sheet Nos. 2 through 38 of FERC Gas Tariff, Original Volume No. 1-A.

(12) Trunkline Gas Company TC82-58-000—Fifth Revised Sheet No. 21-C.3, Fifth Revised Sheet No. 21-C.4, Fifth Revised Sheet No. 21-C.5, Fifth Revised Sheet No. 21-C.6, Fifth Revised Sheet No. 21-C.7, Sixth Revised Sheet No. 21-C.8 of FERC Gas Tariff, Original Volume No. 1.

(13) Kansas-Nebraska Natural Gas Co., Inc., TC82-60-000—Sixth Revised Sheet Nos. 33 through 37, Fourth Revised Sheet Nos. 38 through 49, Second Revised Sheet No. 50, First Revised Sheet Nos. 51 through 53 of FERC Gas Tariff, Third Revised Volume No. 1.

(14) Colorado Interstate Gas Company, TC82-61-000—Third Revised Sheet No. 61H of FERC Gas Tariff, Original Volume No. 1.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filings should on or before October 13, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 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.

Appendix

South Georgia Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202.

National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, New York 14203.

El Paso Natural Gas Company, P.O. Box 1492, El Paso, Texas 79978.

Arkansas Louisiana Gas Company, P.O. Box 21734, Shreveport, Louisiana 71151.

East Tennessee Natural Gas Company, Tenneco Building, P.O. Box 2511, Houston, Texas 77001.

Florida Gas Transmission Company, P.O. Box 44, Winter Park, Florida 32790.

Tennessee Gas Pipeline Company, a Division of Tenneco, Inc., Tenneco Building, P.O. Box 2511, Houston, Texas 77001.

Mississippi River Transmission Corporation, 9900 Clayton Road, St. Louis, Missouri 63124.

Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202.

Eastern Shore Natural Gas Company, P.O. Box 615, Dover, Delaware 19901.

Panhandle Eastern Pipe Line Company, 3000 Bissonnet Avenue, P.O. Box 1642, Houston, Texas 77001.

Trunkline Gas Company, 3000 Bissonnet Avenue, P.O. Box 1642, Houston, Texas 77001.

Kansas-Nebraska Natural Gas Company, Inc., 12055 West Second Place, P.O. Box 15265, Lakewood, Colorado 80215.

Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944.

[FR Doc. 82-27389 Filed 10-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST81-38-001]

Tennessee Gas Pipeline Co.; Notice of Extension Reports

September 28, 1982.

The companies listed below have filed extension reports pursuant to Section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The Commission's regulations provide that the transportation or sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under Section 284.222 of the Commission's Regulations.

Any person desiring to be heard or to make any protest with reference to said extension report should on or before October 25, 1982 file with the Federal Energy Regulatory Commission, Washington, D.C. 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 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 petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date
ST81-38-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Transcontinental Gas Pipe Line Corp	Sept. 2, 1982	G	Oct. 28, 1982.
ST81-61-001	Big Sandy Gas Corp., P.O. Box 3710, Charleston, WV 25337	Hope Natural Gas Corp	Sept. 3, 1982	C	Nov. 24, 1982.
ST81-96-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Midwestern Gas Transmission Co	Sept. 2, 1982	G	Dec. 4, 1982.
ST81-102-001	United Texas Transmission Co., P.O. Box 1478, Houston, TX 77001.	United Gas Pipe Line Co	do	C	Dec. 5, 1982.
ST81-108-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Monterey Pipeline Co	Sept. 10, 1982	B	Dec. 11, 1982.
ST81-112-001	Transcontinental Gas Pipe Line Corp., P.O. Box 1396, Houston, TX 77001.	Southern Natural Gas Co	Sept. 1, 1982	G	Dec. 1, 1982.
ST81-134-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Consolidated Gas Supply Corp	Sept. 13, 1982	G	Dec. 31, 1982.
ST81-157-001	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77001	Michigan Wisconsin Pipe Line Co	Sept. 2, 1982	G	Jan. 23, 1983.
ST81-304-001	Natural Gas Pipeline Co. of America, 122 South Michigan Ave., Chicago, IL 60603.	United Gas Pipe Line Co	Sept. 1, 1982	G	Dec. 1, 1982.

[FR Doc. 82-27390 Filed 10-4-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-824-000]

Texas-New Mexico Power Co.; Notice of Filing

September 28, 1982.

The filing Company submits the following:

Take notice that on September 22, 1982, the Texas-New Mexico Power Company (TNP) tendered for filing an Economy Energy Agreement between TNP and Southern California Edison Company (Edison). TNP states that the Agreement provides for interruptible sales of economy energy. The rate provided for in the Agreement is a split-the-savings rate or, if decremental energy value cannot be determined in advance, the rate is 115% of incremental energy cost unless the incremental energy cost is the price paid to a third party for purchased energy, in which event the rate is the incremental energy cost plus one mill per kilowatt hour.

TNP requests waiver of the 60-day notice requirement and that the Commission accept the Agreement for filing as soon as possible.

Copies of the filing have been served on Edison, the New Mexico Public Service Commission, the Public Utility Commission of Texas, and the California Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before Octobver 14, 1982. 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. 82-27391 Filed 10-4-82; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed, Week of September 3 Through September 10, 1982

During the week of September 3 through September 10, 1982, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 28, 1982.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Sept. 3 through Sept. 10, 1982]

Date	Name and Location of Applicant	Case No.	Type of Submission
Sept. 7, 1982	Elk Trading Company, Inc., Washington, D.C	HFA-0082	Appeal of an Information Request Denial. If granted: The July 30, 1982 Information Request Denial issued by the Office of Fuels Programs would be rescinded, and Elk Trading Company would receive access to certain DOE information.
Sept. 7, 1982	OE/C.K. Smith & Company, Inc., Washington, D.C	HEX-0044	Supplemental Order. If Granted: Refund checks should be issued to overcharged customers pursuant to the July 16, 1982 Decision and Order (Case No. HEF-0006).

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Sept. 3 through Sept. 10, 1982]

Date	Name and Location of Applicant	Case No.	Type of Submission
Sept. 8, 1982	Taxpayers Coalition Against Clinch River, Washington, D.C	HFA-0083	Appeal of an Information Request Denial. If granted: The September 3, 1982 Information Request Denial issued by Oak Ridge Operations would be rescinded, and the Taxpayers Coalition Against Clinch River would recieve access to certain DOE information.
Sept. 9, 1982	Cordele Operating Company, Washington, D.C	HRD-0074 and HRH-0074	Motion for Discovery and Request for Evidentiary Hearing. If Granted: An Evidentiary Hearing would be convened and discovery would be granted to Cordele Operating Company in connection with the Statement of Objection submitted in response to the June 3, 1982 Proposed Remedial Order (Case No. HRO-0069) issued to Cordele Operating Company.
Sept. 9, 1982	Engineered Operating Company, Washington, D.C	HRD-0073 and HRH-0073	Motion for Discovery and Request for Evidentiary Hearing. If Granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the statement of objections submitted by Engineered Operating Company in response to the Proposed Remedial Order (Case No. HRO-0068) issued to the firm.
Sept. 9, 1982	State of California, Sacramento, California	HRZ-0090	Supplemental Order. If Granted: The State of California would be permitted to participate in the ongoing settlement negotiations between Mobil Oil corporation and the Office of Special Counsel.
Sept. 9, 1982	State of New York, Albany, New York	HRZ-0089	Supplemental Order. If Granted: the New York State Energy Office would be permitted to participate in the ongoing settlement negotiations between Mobil Oil Corporation and the Office of Special Counsel.

REFUND APPLICATIONS RECEIVED

[Week of Sept. 3 to Sept. 10, 1982]

Date	Name of refund proceeding/name of refund applicant	Case No.
Sept. 7, 1982	OKC Corp Hornet Oil Co	RF13-29.
Sept. 9, 1982	Liquid Products Recovery, Inc./Sun Company, Inc	RF19-1.

NOTICES OF OBJECTION RECEIVED

[Week of Sept. 3 to Sept. 10, 1982]

Date	Name and location of applicant	Case No.
Aug. 18, 1982	State of Maine, Augusta, Maine	HEE-0033

[FR Doc. 82-27298 Filed 10-4-82; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of September 6 Through September 10, 1982

During the week of September 6 Through September 10, 1982, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy.

Remedial Order

Crow Canyon Shell, 9/8/82; BRP-1540

Andrew R. Krissovich d/b/a Crow Canyon Shell objected to a Proposed Remedial Order which the ERA Western District Office of Enforcement issued to the firm on June 27, 1980. In the Proposed Remedial Order, the ERA found that Crow Canyon improperly charged a fee for services computed on a cents-per-gallon basis in violation of 10 CFR 210.62, charged prices in excess of its maximum lawful selling prices in violation of 10 CFR 212.93, and refused to produce records upon request of a DOE representative in violation of 10 CFR 210.92. The DOE therefore concluded that the Proposed Remedial Order should be issued as a final order. The important issues discussed in the Decision and Order include (i) whether the charging of a cents-per-gallon fee for services that results in a total price in excess of the maximum lawful selling price violated 10 CFR 212.93; (ii) whether 10 CFR 210.62 was promulgated in violation of the procedural requirements of the DOE Organization Act and the Administrative Procedure Act; and (iii) whether Section 324 of the Clean Air Act permits the firm to charge prices in excess of maximum lawful prices in order to recover the costs of installing vapor recovery equipment.

Interlocutory Order

True Oil Co., Economic Regulatory Administration, 9/8/82; HRZ-0087

True Oil Company filed a Motion to Dismiss a Proposed Remedial Order issued to the firm by the Economic Regulatory Administration. The ERA moved for leave to amend the PRO for the period commencing January 1, 1975 through the end of the audit period. Both motions were filed in response to the decision of the Temporary Emergency Court of Appeals in *Gulf Oil Corp. v. DOE*, 671 F.2d 485 (Temp. Emer. Ct. App. 1982). In *Gulf*, the TECA held that Subpart K of the Mandatory Petroleum Price Regulations, 10 CFR 212.161 *et seq.* permitted inter-affiliate transfers of natural gas liquids and natural gas liquid products to be treated as "first sales" that are entitled to certain price adjustments set forth in 10 CFR 212.164. In considering the motions filed in this proceeding, the DOE found that good cause existed for the amendment sought by ERA. Accordingly, this motion was granted in its entirety and the ERA was permitted to amend the PRO for the period following January 1, 1975. The ERA did not seek to amend the PRO for the period before January 1, 1975, stating that the *Gulf* decision does not apply to Subpart K retroactively through the terms of a Class Exception issued to natural gas processors (*Retroactive Application of Subpart K*, 2 FEA ¶ 84,901 (1975)). The DOE found this argument to be untenable in light of the language and rationale of *Gulf* and of the Class Exception. Accordingly, True's Motion to Dismiss was granted without prejudice for the period prior to January 1, 1975.

Refund Applications

Tenneco Oil Co./Quarles Petroleum Inc. et al., 9/8/82; RF7-8 et al.

On February 18, 1982, the Office of Hearings and Appeals issued a Decision and Order implementing special refund procedures with respect to a $5,000,000 refund obtained by the DOE through a consent order with the Tenneco Oil Company. *See Office of Special Counsel*, 9 DOE ¶ 82,538 (1982). The February 18, 1982 Decision stated that the DOE would accept applications for refund filed by purchasers of Tenneco crude oil or refined petroleum

products who bought these products during the period covered by the consent order, March 3, 1973 through December 31, 1980. On September 8, 1982, the Office of Hearings and Appeals issued an order concerning 3 of the applications for refund filed in response to the February 18 Decision. These applications were all filed by firms which purchased more than 50,000 gallons per month of any given covered product, but elected to limit their claims to the 50,000 gallon per month small claims threshold. In considering these applications, the DOE determined that they met the standards set forth in the February 18 Decision and in DOE regulations applicable to special refund proceedings, 10 CFR Part 205, Subpart V. Accordingly, the applications were granted.

Copies of the full text of these decision and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1111, New Post Office Building, 12th and Pennsylvania Ave., NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published looseleaf reporter system.

Reorge B. Dreznay,

Director, Office of Hearings and Appeals.

September 29, 1982.

[FR Doc. 82-27368 Filed 10-4-82; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders; Period of August 30 Through September 17, 1982

During the period of August 30 through September 17, 1982 the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exceptions.

Under the procedural regulations that apply to exception proceedings (10 CFR Pat 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals., Room 1111, New Post Office Building, 12th and Pennsylvania Ave., NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 29, 1982.

Little America Refining Co., Washington, D.C.; HYX-0006 crude oil

On February 4, 1982, the Little America Refining Company (LARCO) submitted 1980 fiscal year financial and operating data to the Department of Energy in order to make it possible to review the entitlements exception relief previously granted to the firm. Based on the new information, on September 14, 1982, the DOE issued a Proposed Decision and Order in which it determined that LARCO should be permitted to sell $3,296,436 of entitlements to adjust for the insufficient exception relief that the firm had recieved with respect to its 1980 fiscal year.

Little America Refining Co., Washington, D.C.; HYX-0014 crude oil

On March 1, 1982, the Little America Refining Comapny (LARCO) submitted 1979 fiscal year financial and operating data to the Department of Energy in order to make it possible to review the entitlements exception relief previously granted to the firm. Based on the new information, on September 14, 1982, the DOE issued a Proposed Decision and Order in which it determined that LARCO should be permitted to sell $9,796,480 of entitlements to adjust for the insufficient exception relief that the firm had received with respect to its 1979 fiscal year.

[FR Doc. 82-27367 Filed 10-4-82; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Orders Filed; Week of September 13 Through September 17, 1982

During the week of September 13 through September 17, 1982, the notice of objection to proposed remedial order listed in the Appendix of this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 29, 1982.

Gasoline Marketers of America, Fords, New Jersey, HRO-0089, Motor Gasoline

On September 14, 1982, Gasoline Marketers of America, Inc. (GMA), 424 King George Rd., Fords, New Jersey, filed a Notice of Objection to a Proposed Remedial Order which the DOE Economic Regulatory Administration (ERA) issued to the firm on August 13, 1982. In the PRO the ERA found that during March 1, 1979 to August 30, 1979, GMA overcharged its customers in sales of motor gasoline. According to the PRO the GMA violation resulted in $841,393.66 of overcharges, plus interest.

[FR Doc. 82-27366 Filed 10-4-82; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Central Valley Project Order Confirming and Approving an Extension of Power Rates on an Interim Basis

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of an extension of power rates on an interim basis—Central Valley Project, California.

SUMMARY: Notice is given of Rate Order No. WAPA-14 of the Assistant Secretary for Conservation and Renewable Energy extending power rates on an interim basis for power marketed by the Western Area Power Administration (Western) from the Central Valley Project (CVP), California.

FOR FURTHER INFORMATION CONTACT:

Mr. James A. Braxdale, Office of Power Marketing Coordination, CE-91, Department of Energy, Federal Building, Washington, D.C. 20461, (202) 633-8338

Mr. Conrad K. Miller, Chief, Rates and Statistics Branch, Western Area Power Administration, Department of Energy, P.O. Box 3402, Golden, CO 80401, (303) 231–1535

Mr. David G. Coleman, Area Manager, Sacramento Area Office, Western Area Power Administration, Department of Energy, 2800 Cottage Way, Sacramento, CA 95825, (916) 484–4251.

SUPPLEMENTARY INFORMATION: By Delegation Order No. 0204–33, effective January 1, 1979 (43 FR 60636, December 28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications the authority to develop power and transmission rates, acting by and through the Administrator of Western, and to confirm, approve, and place in effect such rates on an interim basis, and to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Assistant Secretary under the delegation. Due to a Department of Energy organizational realignment, Delegation Order No. 0204–33 was amended, effective March 19, 1981, to transfer the authority of the Assistant Secretary for Resource Applications to the Assistant Secretary for Conservation and Renewable Energy.

Pursuant to the delegation order, the Assistant Secretary for Resource Applications issued Rate Order No. WAPA–2 (44 FR 57962, October 9, 1979), confirming and approving on an interim basis, effective November 1, 1979, Rate Schedules CV–F4 and CV–P3 for power marketed by Western from CVP. The rates were to remain in effect for a period of 12 months unless the period was extended or until FERC confirmed and approved them, or substitutes rates, on a final basis. The rates were submitted to FERC for confirmation and approval on a final basis on October 2, 1979. By Rate Order No. WAPA–5 (45 FR 67442, October 10, 1980), the rates were extended for 12 months, through October 31, 1981. By Rate Order No. WAPA–10 (46 FR 47655, September 29, 1981), the rates were again extended for 12 months through October 31, 1982.

The purpose of Rate Order No. WAPA–14 is to extend the power rates pending FERC's confirmation and approval of them, or substitute rates, on a final basis, or until they are superseded.

Issued in Washington, D.C., September 27, 1982.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

Department of Energy—Assistant Secretary for Conservation and Renewable Energy

September 27, 1982.

In the matter of: Western Area Power Administration—Central Valley Project Power Rates; Order confirming and approving an extension of power rates on an interim basis, Rate Order No. WAPA–14.

Pursuant to section 302(a) of the Department of Energy Organization Act, 42 U.S.C. 7152(a), the power marketing functions of the Secretary of the Interior, under the Reclamation Act of 1902, 43 U.S.C. 372, et seq., as amended and supplemented by subsequent enactments, particularly by section 9(c) of the Reclamation Act of 1939, 43 U.S.C. 485h(c), for the Bureau of Reclamation were transferred to and vested in the Secretary of Energy. By delegation Order No. 0204–33, effective January 1, 1979 (43 FR 60636, December 28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications the authority to develop power and transmission rates, acting by and through the Administrator of the Western Area Power Administration, and to confirm, approve, and place in effect such rates on an interim basis, and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Assistant Secretary under the delegation. Due to a Department of Energy organizational realignment, Delegation Order No. 0204–33 was amended, effective March 19, 1981, to transfer the authority of the Assistant Secretary for Resource Applications to the Assistant Secretary for Conservation and Renewable Energy.

Background

Pursuant to Delegation Order No. 0204–33, on October 2, 1979, the Assistant Secretary for Resource Applications issued Rate Order No. WAPA–2 (44 FR 57962, October 9, 1979), confirming and approving on an interim basis, effective November 1, 1979, Rate Schedules CV–F4 and CV–P3 for power marketed by the Western Area Power Administration's (Western) Central Valley Project (CVP). The rate order stated that the rates "* * * shall remain in effect on an interim basis for a period of 12 months unless such period is extended or until FERC confirms and approves them, or substitute rates, on a final basis." The rate schedules were submitted to FERC for confirmation and approval on a final basis by the Assistant Secretary's letter of October 2, 1979. By Rate Order No. WAPA–5 (45 FR 67442, October 10, 1980), the rates were extended for 12 months, through October 31, 1982.

On May 4, 1982, FERC issued an "Order Disapproving Rate Schedules," Docket No. EF80–5011–000 (47 FR 20371, May 12, 1982), applicable to the Rate Order No. WAPA–2 and subsequent extensions, Rate Order Nos. WAPA–5 and –10. FERC's order requested that the Assistant Secretary for Conservation and Renewable Energy file a substitute rate within 120 days. The Assistant Secretary, on June 3, 1982, petitioned FERC for a rehearing. Also on June 3, 1982, the Assistant Secretary filed a motion with FERC for an extension of time to file a substitute rate. By order issued July 2, 1982, FERC denied both the petition for a rehearing and, without prejudice, the motion for an extension of time to file a substitute rate. On August 9, 1982, Western submitted to FERC a second motion for an extension of time to file a substitute rate. Inasmuch as resolution of the various procedural and legal questions is not expected soon, the rates should be extended beyond October 31, 1982.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective November 1, 1982, an extension of existing Rate Schedules CV–F4 and CV–P3. These rates shall remain in effect until FERC confirms and approve them, or substitute rates, on a final basis, or until they are superseded.

Issued in Washington, DC, September 27, 1982.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

Department of Energy—Western Area Power Administration

Central Valley Project, California

Schedule of Rates for Wholesale Firm Power Service

Effective: November 1, 1979.

Available: In the area served by the Central Valley Project.

Applicable: To wholesale firm power customers for general power service supplied through one meter at one point of delivery.

Character and Conditions of Service: Alternating current, sixty hertz, three phase, delivered and metered at the voltages and points established by contract.

Monthly Rate

Demand Charge: $2.00 per kilowatt of billing demand.

Emergy Charge: 5.11 mills per kilowatt-hour for all energy use up to, but not in excess of, the energy obligation under the power sales contract.

Billing Demand: The billing demand will be the highest 30-minute integrated demand establihsed during the month up to, but not in excess of, the delivery obligation under the power sales contract.

Energy Obligation: The maximum kilowatt-hour obligation of the United States during the month as established under the power sales contract.

Minimum Bill: $2.00 per kilowatt of the effective contract rate of delivery.

Billing for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual power and/or energy obligations, such overrun shall be billed at ten times the above rate.

Adjustments, For character and conditions of service: If delivery is made at transmission voltage so that the United States is relieved of substation costs, five percent discount will be allowed on the demand and energy charges.

For transformer losses: If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased two percent to compensate for transformer losses.

For power factor: None. The customer will normally be required to maintain a power factor at the point of delivery of between 95 percent lagging and 95 percent leading.

Department of Energy—Western Area Power Administration

Central Valley Project, California

Schedule of Rates For Commercial Irrigation and/or Drainage Pumping Service and for Wholesale Firm Power Service When Supplied in Conjunction Therewith

Effective: November 1, 1979.

Available: In the area served by the Central Valley Project.

Applicable: To commercial irrigation customers for their own use for, or for resale for, irrigation and/or drainage pumping and purposes incidental thereto supplied through one meter at one point of delivery, and for the purposes other than irrigation and/or drainage pumping service when supplied in conjunction with the pumping service through the same meter at the same point of delivery.

Character and Conditions of Service: Alternating current, sixty hertz, three phase, delivered and metered at the voltages and points established by contract.

Monthly Rate

Demand Charge: $2.00 per kilowatt of billing demand.

Emergy Charge: 5.11 mills per kilowatt-hour for all energy use up to, but not in excess of, the energy obligation under the power sales contract.

Billing Demand: The billing demand will be the highest 30-minute integrated demand establihsed during the month up to, but not in excess of, the delivery obligation under the power sales contract.

Energy Obligation: The maximum kilowatt-hour obligation of the United States during the month as established under the power sales contract.

Minimum Bill: None.

Billing for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual power and/or energy obligation, such overrun shall be billed at ten times the above rate.

Adjustments, For character and conditions of service: If delivery is made at transmission voltage so that the United States is relieved of substation costs, five percent discount will be allowed on the demand and energy charges.

For transformer losses: If deliver is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased two percent to compensate for transformer losses.

For power factor: None. The customer will normally be required to maintain a power factor at the point of delivery of between 95 percent lagging and 95 percent leading.

[FR 82-27370 Filed 10-4-82; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[TSH-FRL-2221-2; OPTS-59098A]

Modified Polycarboxylic Acid Sodium Salt; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA received an application for a test marketing exemption (TM-82-45) under section 5 of the Toxic Substances Control Act (TSCA) on August 17, 1982. Notice of receipt of the application was published in the **Federal Register** of August 27, 1982 (47 FR 37955). EPA has granted the exemption.

EFFECTIVE DATE: This exemption is effective on September 28, 1982.

FOR FURTHER INFORMATION CONTACT: Rose Allison, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-206, 401 M St., SW., Washington, D.C. 20460 (202-382-3738).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture in, or import into, the United States a new chemical substance for commercial purposes must submit a notice to EPA before manufacture or import begins. A "new" chemical substance is any chemical substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. Section 5(a)(1) requires each premanufacture notice (PMN) to be submitted in accordance with section 5(d) and any applicable requirements of section 5(b). Section 5(d)(1) defines the contents of a PMN and section 5(b) contains additional reporting requirements for certain new chemical substances.

Section 5(h), "Exemption", contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, to exempt persons from any requirements of section 5(a) or section 5(b), and to permit them to manufacture or process chemical substances for test marketing purposes. To grant an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and under section 5(h)(6) the Agency must publish a notice of this disposition in the **Federal Register**. If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

On August 17, 1982, EPA received an application for an exemption from the requirements of sections 5(a) and 5(b) of TSCA to import a new chemical substance for test marketing purposes. The application was assigned test marketing exemption number TM-82-45. The submission is for modified polycarboxylic acid sodium salt. The substance will be used in an open use. The submitter claimed its identity, the specific identity, and specific use as confidential business information. A maximum of 10,000 kilograms (kg) will be imported and will be test marketed for a period not to exceed 3 months. The importer states that the use will involve possible dermal, inhalation, and eye exposure for a total of 10 workers up to 6 hours/day for a maximum of 3 days.

A notice published in the **Federal Register** of August 27, 1982 (47 FR 37955) announced receipt of this application and requested comment on the appropriateness of granting the exemption. The Agency did not receive any comments concerning the application.

EPA has established that the test marketing of the new substance submitted in TM-82-45 under the conditions set out in the application will not present any unreasonable risk of injury to health or the environment. The Agency identified no significant health or ecological concerns.

This test marketing exemption is granted based on the facts and information obtained and reviewed, but is subject to all conditions set out in the exemption application and, in particular, those enumerated below.

1. This exemption is granted solely to this importer.

2. The applicant must maintain records of the date(s) of shipment(s) to the customers and the quantities shipped in each shipment, and must make these records available to EPA upon request.

3. Each bill of lading that accompanies a shipment of the substance during the test marketing period must state that the use of the substance is restricted to that described to EPA in the test marketing exemption application.

4. The production volume of the new substance may not exceed the quantity of 10,000 kg described in the test marketing exemption application.

5. The test marketing activity approved in this notice is limited to a 3-

month period commencing on the date of signature of this notice by the Director of the Office of Toxic Substances.

6. The number of workers exposed to the new chemical should not exceed that specified in the application, and the exposure levels and duration of exposure should not exceed those specified in the application.

The Agency reserves the right to rescind its decision to grant this exemption should any new information come to its attention which casts significant doubt on the Agency's conclusion that the test marketing of this substance under the conditions specified in the application will not present an unreasonable risk of injury to human health or the environment.

Dated: September 28, 1982.

Marcia Williams,

Acting Director, Office of Toxic Substances.

[FR Doc. 82-27398 Filed 10-4-82 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

September 28, 1982.

Background

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Paperwork Reduction Act [44 U.S.C. Chapter 35]. Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibilities under the act also considers comments on the forms and recordkeeping requirements that will affect the public. Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. OMB's usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

List of Forms Under Review

Immediately following the submission of a request by the Federal Reserve for OMB approval of a reporting or recordkeeping requirement, a description of the report is published in the **Federal Register**. This information contains the name and telephone number of the Federal Reserve Board clearance officer (from whom a copy of the form and supporting documents is available). The entries are grouped by type of submission—i.e., new forms, revisions, extensions (burden change), extensions (no change), and reinstatements.

Copies of the proposed forms and supporting documents may be obtained from the Federal Reserve Board clearance officer whose name, address, and telephone number appears below. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF 83), supporting statement instructions, transmittal letters, and other documents that are submitted to OMB for review.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829).

OMB Reviewer—Richard Sheppard—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-6880).

Requests for Extension With Revision

1. Report titles: Report of Commercial Paper Outstanding Placed by Brokers and Dealers; Report of Commercial Paper Outstanding Placed Directly by Issuers; and Daily Report of Offering Rates on Commercial Paper.

Agency form numbers: FR 2957a, FR 2957b, FR 2957d.

Frequency: Weekly, Monthly, Daily-dependent upon which form is filed.

Reporters: Securities Brokers and Dealers and Direct Issuers of Commercial Paper.

SIC Code: Multiple.

Small businesses are not affected.

General description of report: approximately 388 responses; approximately 2,059 hours needed to complete the form on an annual basis; average response time varies depending upon which form is filed (FR 2957a—30 minutes; FR 2957b—30 minutes; FR 2957d—15 minutes); respondent's obligation to reply is voluntary; a pledge of confidentiality is promised; cost to the public is approximately $30,885; cost to the Federal Government is $27,906; 3 forms submitted for approval; the report is now being reviewed under Section 3504(h) of P.L. 96-511.

These reports provide information on the amount outstanding and selected offerings rates of a commercial paper, which is used by the Federal Reserve in monitoring developments in the commercial paper market for supervisory, regulatory and monetary policy purposes.

Board of Governors of the Federal Reserve System, September 28, 1982

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-27308 Filed 10-4-82; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Company Notice of Proposed de Novo Nonbank Activities

The bank holding company listed in this notice has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to the application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on the application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for the application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *BankAmerica Corporation*, San Francisco, California (underwriting insurance activities; expansion of geographic scope; Washington): To continue to engage, through its indirect subsidiary, BA Insurance Company, Inc.,

a California corporation, in the activity of underwriter, initially as reinsurer, to the extent permitted by relevant state law, for credit-related life insurance and credit-related accident and health insurance which is directly related to extensions of credit by BankAmerica Corporation and its nonbank subsidiaries. The activities of BA Insurance Company, Inc. will be conducted from an existing office located in San Francisco, California serving the State of Washington. Comments on this application must be received not later than October 29, 1982.

Board of Governors of the Federal Reserve System, September 29, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-27308 Filed 10-4-82; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Notice of Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicted, which have been determined by the Board of governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicting how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicted for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicted for each application.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Citicorp*, New York, New York (finance company activities; Michigan): To expand the activities of an existing office of Citicorp Acceptance Company, Inc., to include the proposed *de novo* activity of: the making of loans to individuals and businesses to finance the purchase of mobile homes, modular units or related manufactured housing, together with the real property to which such housing is or will be permanently affixed, such property being used as security for the loans. The proposed activity will be conducted from an office in Southfield, Michigan. The proposed service area for the aforementioned activity shall be the entire State of Michigan. Comments on this application must be received not later than October 28, 1982.

2. *Citicorp*, New York, New York (finance company activities; Ohio): To expand the activities of an existing office of Citicorp Acceptance Company, Inc., to include the proposed *de novo* activity of: the making of loans to individuals and businesses to finance the purchase of mobile homes, modular units or related manufactured housing, together with the real property to which such housing is or will be permanently affixed, such property being used as security for the loans. The proposed activity will be conducted from an office in Columbus, Ohio. The proposed service area for the aforementioned activity shall be the entire State of Ohio. Comments on this application must be received not later than October 28, 1982.

B. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Northwest Bancorporation*, Minneapolis, Minnesota (finacing and insurance activities; Missouri): To enagage through its subsidiaries, Dial Finance Company of Missouri and Dial Finance Company of Missouri No. 1, in the activities of consumer and commercial finance, and the sale of credit-related insurance. These activities would be conducted from an office in Springfield, Missouri. This notification is for the relocation of an existing office within the same city and will serve Springfield, Missouri. Comments on this application must be received not later October 27, 1982.

2. *Northwest Bancorporation*, Minneapolis, Minnesota (financing and insurance activities; Indiana): To engage through its subsidiary, Dial Finace Company of Indiana, Inc., in the activities of consumer and commercial finance, and the sale of credit-related insurance. These activities would be conducted from an office in Merrillville, Indiana. This notification is for the relocation of an existing office in Gary, Indiana, which upon relocation, will serve Merrillville and Gary, Indiana and the surrounding communities. Comments on this application must be received not later then October 27, 1982.

3. *Northwest Bancorporation*, Minneapolis, Minnesota (financing and insurance activities; South Carolina): To engage through its subsidiary, Dial Finance Company of South Carolina, in the activities of consumer and commercial finance, and the sale of credit-related insurance. These activities would be conducted from an office in Columbia, South Carolina. This notification is for the relocation of an existing office within the same city and will serve Columbia, South Carolina. Comments on this application must be received not later than October 27, 1982.

4. *Northwest Bancorporation*, Minneapolis, Minnesota (financing and insurance activities; Texas): To engage through its subsidiary, Dial Finance Company of Texas, in the activities of consumer and commercial finance, and the sale of credit-related insurance. These activities would be conducted from an office in El Paso, Texas. This notification is for the relocation of an existing office within the same city and will serve El Paso, Texas. Comments on this application must be received not later than October 27, 1982.

5. *Northwest Bancorporation*, Minneapolis, Minnesota (financing and insurance activities; Nebraska): To engage through its subsidiary, Dial Finance Company of Nebraska, in the activities of consumer and commercial finance, and the sale of credit-related insurance. These activities would be conducted from offices in Omaha and Grand Island, Nebraska. This notification is for the relocation in Omaha, Nebraska, of an existing office within the same city, serving Omaha, Nebraska; and the relocation in Grand Island, Nebraska, of an existing office within the same city, serving Grand Island, Nebraska. Comments on this application must be received not later than October 28, 1982.

6. *Northwest Bancorporation*, Minneapolis, Minnesota (financing and insurance activities; Ohio): To engage through its subsidiaries, Dial Finance Company of Ohio, First Dial, Inc. and Dial Finance Company of Ohio No. 1, Inc., in the activities of consumer and commercial finance, and the sale of the

credit-related insurance. These activities would be conducted from an office in Youngstown, Ohio. This notification is for the relocation of an existing office within the same city and will serve Youngstown, Ohio. Comments on this application must be received not later than October 28, 1982.

7. *Northwest Bancorporation,* Minneapolis, Minnesota (financing and insurance activities; Minnesota): To engage through its subsidiaries, Dial Finance Company of Minnesota, Dial Industrial Finance Company of Minnesota and Dial Finance Company of Minnesota No. 1, in the activities of consumer and commercial finance, and the sale of credit-related insurance. These activities would be conducted from an office in Burnsville, Minnesota. This notification is for the relocation of an existing office in Bloomington, Minnesota, which office, upon relocation, will serve Burnsville and Bloomington, Minnesota. Comments on this application must be received not later than October 28, 1982.

8. *Northwest Bancorporation,* Minneapolis, Minnesota (financing and insurance activities; New Jersey): To engage through its subsidiary, Dial Finance Company of New Jersey Inc., in the activities of consumer and commercial finance, and the sale of credit-related insurance. These activities would be conducted from an office in Sussex, New Jersey. This notification is for the relocation of an existing office in Franklin, New Jersey, which office, upon relocation, will serve the town of Sussex, New Jersey, the surrounding rural area and nearby towns. Comments on this application must be received not later than October 28, 1982.

9. *Northwest Bancorporation,* Minneapolis, Minnesota (financing and insurance activities; Oklahoma): To engage through its subsidiary, Dial Finance Company of Oklahoma, Inc., in the activities of consumer and commercial finance, and the sale of credit-related insurance. These activities would be conducted from an office in Oklahoma City, Oklahoma. This notification is for the relocation of an existing office within the same city and will serve Oklahoma City, Oklahoma. Comments on this application must be received not later than October 28, 1982.

10. *Northwest Bancorporation,* Minneapolis, Minnesota (financing and insurance activities; North Dakota): To engage through its subsidiary, Dial Finance Company of North Dakota, in the activities of consumer and commercial finance, and the sale of credit-related insurance. These activities would be conducted from an office in Fargo, North Dakota. This notification is for the relocation of an existing office within the same city and will serve Fargo, North Dakota. Comments on this application must be received not later than October 28, 1982.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco 94120:

1. *Wells Fargo & Company,* San Francisco, California (insurance activities; nation-wide): To engage through its subsidiary, Wells Fargo AG Credit ("WFAC"), in acting as agent for credit life and disability insurance related to WFAC's extensions of credit, to the extent permissible under applicable state insurance laws or regulations. These activities would be conducted from offices in Englewood, Colorado; Tulsa, Oklahoma; St. Louis, Missouri; Billings, Montana; and Spokane, Washington, serving the United States of America. Comments on this application must be received not later than October 28, 1982.

2. *Wells Fargo & Company,* San Francisco, California (insurance activities; nation-wide): To engage through its subsidiary, Wells Fargo Insurance Services ("WFIS"), in acting as agent for credit life and disability insurance related to extensions of credit or the provision of other financial services by Wells Fargo & Company or its subsidiaries, to the extent permissible under applicable state insurance laws or regulations. These activities would be conducted from an office in San Francisco, California, serving the United States of America. Comments on this application must be received not later than October 28, 1982.

Board of Governors of the Federal Reserve System, September 28, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-27309 Filed 10-4-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First National Bank Holding Corporation,* Pensacola, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Escambia County, Pensacola, Florida. Comments on this application must be received not later than October 29, 1982.

2. *First United Bancshares, Inc.,* Montezuma, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First United Bank, Montezuma, Georgia. Comments on this application must be received not later than October 29, 1982.

3. *State Bancshares, Inc.,* Enterprise, Alabama; to become a bank holding company by acquiring not less than 85 percent of the voting shares of Coffee County Bank, Enterprise, Alabama. Comments on this application must be received not later than October 29, 1982.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Investors Services, Inc.,* Fort Knox Military Reservation, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Fort Knox National Bank, Fort Knox Military Reservation, Kentucky. Comments on this application must be received not later than October 29, 1982.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Bryant Bancshares, Inc.,* Bryant, South Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of Bryant State Bank, Bryant, South Dakota. Comments on this application must be received not later than October 29, 1982.

2. **Hazelton Bancshares, Inc.,** Hazelton, North Dakota; to become a bank holding company by acquiring 94 percent or more of the voting shares of Bank of Hazelton, Hazelton, North Dakota. Comments on this application must be received not later than October 29, 1982.

D. **Federal Reserve Bank of San Francisco,** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. **Northern Sierra Financial Corporation**, Yreka, California; to become a bank holding company by acquiring 80 percent of the voting shares of Scott Valley Bank, Yreka, California. Comments on this application must be received not later than October 29, 1982.

Board of Governors of the Federal Reserve System, September 29, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-27307 Filed 10-4-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 79N-0113; DESI 2847]

Certain Parenteral Multivitamin Products; Drug Efficacy Study Implementation; Revocation of Exemption and Notice of Opportunity for Hearing

AGENCY: Food and Drug Administration (FDA).

ACTION: Notice.

SUMMARY: This notice revokes the temporary exemption for continued marketing of certain parenteral multivitamin products. Under the exemption, the drugs have been allowed to remain on the market for continued study beyond the time limit scheduled for implementation of the Drug Efficacy Study. This notice also reclassifies the drugs to lacking substantial evidence of effectiveness, proposes to withdraw approval of the new drug applications, and offers an opportunity for a hearing on the proposal. The manufacturers of these products have not complied with previously announced conditions for continued marketing and in some cases have informed FDA that they are no longer interested in marketing these products.

DATES: Revocation of exemption effective October 5, 1982. Hearing requests due on or before November 4, 1982.

ADDRESS: Communications in response to this notice should be identified with Docket No. 79N-0113 and the reference number DESI 2847 and directed to the attention of the appropriate office named below:

Requests for a hearing, supporting data, and comments: Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD-310), National Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD-501), National Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Herbert Gerstenzang, National Center for Drugs and Biologics (HFD-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 27, 1972 (37 FR 15027), FDA announced its conclusion that certain parenteral multivitamin preparations lack substantial evidence of effectiveness for their claimed indications. This was not based upon lack of effectiveness of individual vitamins, but upon a finding that formulations then available lacked certain essential vitamins, and some contained vitamins in too high a dose, too low a dose, or both.

Subsequently, in a notice published in the **Federal Register** of December 14, 1972 (37 FR 26623), FDA granted a temporary exemption from the time limits established for completing certain phases of the drug efficacy study (DESI) program for parenteral multivitamin products. The exemption was granted because of the critical medical importance of parenteral multivitamin therapy and the lack of suitable alternative drugs. FDA believed that these products should remain available as they were then formulated to allow time to resolve the complex technical and medical problems and to develop and test rational formulations of parenteral multivitamin preparations.

In a followup notice (44 FR 40933; July 13, 1979) FDA announced its acceptance, with minor exceptions, of guidelines recommended by the American Medical Association for the preparation of rational formulations of parenteral multivitamins and for conducting studies for stability, safety, and effectiveness. That notice established additional conditions under which products already on the market could continue to be marketed while reformulated products were studied. The principal change was that the manufacturer of any such product was to submit a new drug application (NDA) if the marketed formulation was not then provided for by an NDA; or if the marketed formulation was already the subject of an approved or "deemed approved" application, the manufacturer was to supplement the NDA. The NDA or supplement was to describe the proposed reformulation and outline the studies proposed to be conducted.

Some manufacturers have submitted NDA's or supplements while others have not and have discontinued marketing their products. Therefore this notice revokes the temporary exemption announced in the **Federal Register** of December 14, 1972, as amended July 13, 1979, as it applies to those drug products whose manufacturers have not complied with the July 13, 1979 notice.

This notice also proposes to withdraw approval of the new drug applications for those drug products and offers an opportunity for a hearing on the proposal. Persons who wish to request a hearing may do so on or before November 4, 1982. The products are:

1. NDA 4-895; Parbexin Injectable containing thiamine hydrochloride, niacinamide, dexpanthenol, riboflavin, and pyridoxine hydrochloride; Cooper Vision Pharmaceuticals, P.O. Box 367, San German, Puerto Rico 00753.

2. NDA 6-373; Vi-Syneral Injectable containing vitamin A, ergocalciferol, ascorbic acid, thiamine hydrochloride, riboflavin, niacinamide, pyridoxine hydrochloride, dexpanthenol, dl-alpha tocopherol acetate; Fisons Corp., Pharmaceutical Division, 2 Preston Ct., Bedford, MA 01730.

3. NDA 7-094; Soluzyme Injectable containing cyanocobalamin, folic acid, thiamine hydrochloride, sodium pantothenate, and niacinamide; The Upjohn Co., 7171 Portage Rd., Kalamazoo, MI 49002.

4. That part of NDA 7-590 pertaining to Manibee Injectable containing thiamine hydrochloride, niacinamide, dexpanthenol, pyridoxine hydrochloride, and riboflavin, Endo Laboratories, Inc., subsidiary of E. I. Dupont de Nemours & Co., Inc., 1000 Stewart Ave., Garden City, NY 11530.

5. NDA 7-619; Betolake Improved Injectable containing thiamine hydrochloride, riboflavin, niacinamide, pyridoxine hydrochloride and dexpanthenol, Merrell Dow Pharmaceuticals Inc., 2110 E. Galbaith Rd., Cincinnati, OH 45215.

6. NDA 6-141; Folbesyn Injectable containing thiamine hydrochloride, sodium panthothenate, niacinamide, riboflavin, pyridoxine hydrochloride, cyanocobalamin, ascorbic acid, and folic acid; Lederle Laboratories, P.O. Box 500, Pearl River, NY 10965.

Approval of the following new drug applications has already been

withdrawn on the ground of failure to submit required reports under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)). At the time the notices withdrawing approval were published, conclusions concerning the products' effectiveness had been deferred. These products are included in this notice because they were among the parenteral multivitamin drugs previously determined to lack evidence of effectiveness, for the reasons stated above, and because the holders of the new drug applications did not meet the conditions of the July 13, 1979 exemption notice. This notice offers the applicants an opportunity to request a hearing concerning all issues relating to the legal status of the products.

1. NDA 2–847; Breonex L Injectable and Breonex M Injectable, both containing thiamine hydrochloride, riboflavin, pyridoxine hydrochloride, panthenol, niacinamide, and cyanocobalamin; Cooper Laboratories, 300 Fairfield Rd., Wayne, NJ 07470.

2. NDA 4–635; Beclysyl Injection containing dextrose, sodium chloride, thiamine hydrochloride, riboflavin, niacinamide, pyridoxine hydrochloride, and cyanocobalamin; Abbott Laboratories, 14th and Sheridan Rd., North Chicago, IL 60064.

3. That part of NDA 7–590 pertaining to Manibee-C500 Injectable containing thiamine hydrochloride, niacinamide, dexpanthenol, pyridoxine hydrochloride, riboflavin, and ascorbic acid, Endo Laboratories Inc.

On the basis of all of the data and information available to him, the Director of the National Center for Drugs and Biologics is unaware of any adequate and well-controlled clinical investigation, conducted by experts qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 314.111(a)(5) and 300.50, demonstrating the effectiveness of these drugs that are not in compliance with the conditions established for continued marketing.

Therefore, notice is given to the holders of the new drug applications, and to all other interested persons, that the Director of the National Center for Drugs and Biologics proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of the new drug applications and all amendments and supplements thereto providing for the drug products referred to in this notice for which an approval is still in effect. The proposed action is based on the ground that new information with respect to the drug products, evaluated together with the evidence available when the applications were approved, shows there is a lack of substantial evidence that the drug products as currently formulated will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling, because they lack certain seential vitamins and some contain vitamins in too high a dose, too low a dose, or both.

In addition to the holders of the new drug applications specifically named above, this nitice of opportunity for hearing applies to all persons (except those in compliance with the terms of the exemption) who manufacture or distribute a parenteral multivitamin drug product that is identical, related, or similar to a drug product named above, as defined in 21 CFR 310.6. It is the responsibility of every drug manufacturer or distributor to review this notice of opportunity for hearing to determine whether it covers any drug product that the person manufactures of distributes. Such person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling compliance (address given above).

In addition to the ground(s) for the proposed withdrawal of approval stated above, this notice of opportunity for hearing encompasses all issued relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6), e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act under the exemption for products marketed before June 25, 1938, in section 201(p) of the act, or under section 107(c) of the Drug Amendments of 1962, or for any other reason.

In accordance with section 505 of the act (21 U.S.C. 355) and the regulations promulgated thereunder (21 CFR Parts 310, 314), the applicants and all other persons subject to this notice under 21 CFR 310.6 are hereby given an opportunity for a hearing to show why approval of the new drug applications should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of a drug product named above and all identical, related, or similar drug products.

An applicant or other person subject to this notice under 21 CFR 310.6 who decides to seek a hearing shall file (1) on or before November 4, 1982, a written notice of appearance and request for hearing and (2) on or before December 6, 1982, the data, information, and analyses relied on to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 314.200.

The failure of an applicant or any other person subject to this notice under 21 CFR 310.6 to file a timely written notice of appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by the person not to make use of the opportunity for a hearing concerning the action proposed with respect to the product, and a waiver of any contentions concerning the legal status any such drug product. Any such drug product may not thereafter lawfully be marketed, and Food and Drug Administration will initiate appropriate regulatory action to remove such a drug product from the market. Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice are to be filed in four copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 502, 505, 52 Stat. 1050–1053, as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the National Center for Drugs and Biologics (see 21

CFR 5.82 and 47 FR 26913 published in the **Federal Register** of June 22, 1982).

Dated: September 24, 1982.

Harry M. Meyer, Jr.,

Director, National Center for Drugs and Biologics.

[FR Doc. 82-27301 Filed 10-4-82; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting of Blood Diseases and Resources Advisory Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Blood Diseases and Resources Advisory Committee, National Heart, Lung, and Blood Institute, October 18-19, 1982, National Institutes of Health, Building 31, Conference Room 9, Bethesda, Maryland 20205.

The entire meeting will be open to the public from 9:00 AM-5:00 PM, October 18, 1982, and from 8:30 AM-4:30 PM, October 19, 1982, to discuss the status of the Blood Diseases and Resources program needs and opportunities. Attendance by the public will be limited to space available.

Mr. Larry Blaser, Chief of the Research Reporting Section, National Heart, Lung, and Blood Institute, Building 31, Room 4A21A, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496-4236, will provide summaries of the meeting and rosters of the committee members.

Dr. Fann Harding, Special Assistant to the Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, Federal Building, Room 5A-08, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496-1817, will furnish substantive program information.

Dated September 28, 1982.

Betty J. Beveridge,

National Institutes of Health, Committee Management Officer.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health

Note.—NIH Programs are not covered by OMB Circular A-95 because they fit the description of "programs not considered appropriate" in section 8(b) (4) and (5) of that Circular.

[FR Doc. 82-27302 Filed 10-4-82; 8:45 am]

BILLING CODE 4140-01-M

National Digestive Diseases Advisory Board; Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board on October 21, 1982, 8:30 a.m. to adjournment, in the Wimbleton Room, at the Linden Hill Hotel, Pooks Hill Road, Bethesda, Maryland. The Meeting, which will be open to the public, is being held to discuss the Board's activities and to continue the evaluation of the implementation of current digestive diseases plan. Attendance by the public will be limited to space available.

Dr. Ralph Bain, Executive Director, National Digestive Diseases Advisory Board, P.O. Box 30377, Bethesda, Maryland 20814, (301) 496-2232, will provide an agenda and roster of members. Summaries of the meeting may be obtained by contacting Carole A. Peters, Committee Management Office, NIADDK, National Institutes of Health, Room 9A46, Building 31, Bethesda, Maryland 20205, (301) 496-5765.

Dated: September 28, 1982.

Betty J. Beveridge,

National Institutes of Health, Committee Management Officer.

[FR Doc. 82-27304 Filed 10-4-82; 8:45 am]

BILLING CODE 4140-01-M

Research Subcommittee of the National Digestive Diseases Advisory Board; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Research Subcommittee of the National Digestive Diseases Advisory Board on October 20, 1982, 9:00 a.m. to adjournment, in the Wimbleton Room, Linden Hill Hotel, Pooks Hill Road, Bethesda, Maryland. The meeting, which will be open to the public, is being held to develop the plan to update the report of the Digestive Diseases Commission. Attendance by the public will be limited to space available.

Further information may be obtained by contacting Dr. Ralph Bain, Executive Director, National Digestive Diseases Advisory Board, P.O. Box 30377, Bethesda, Maryland 20814, (301) 496-2232. The agenda and rosters of the members can also be obtained from his office. Summaries of the meeting may be obtained by contacting Carole A. Peters, Committee Management Office, NIADDK, National Institutes of Health, Room 9A46, Building 31, Bethesda, Maryland 20205, (301) 496-5765.

Dated: September 28, 1982.

Betty J. Beveridge,

National Institutes of Health, Committee Management Officer.

[FR Doc. 82-27303 Filed 10-4-82; 8:45 am]

BILLING CODE 4140-01-M

Bureau of Land Management

[F-14990-A]

Alaska Native Claims Selection

On November 19, 1974, Kipchaughpuk Limited, for the Native village of Crooked Creek, filed selection application F-14990-A, as amended, under the provisions of Sec. 12(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1611 (1976) (ANCSA), for the surface estate of certain lands in the vicinity of Crooked Creek.

On April 25, 1977, in accordance with Title 10, Chapter 05, Secs. 396 and 399 of the Alaska Business Corporation Act, and as authorized by 43 U.S.C. 1627, Georgetown Incorporated, a domestic corporation, merged with Aniak Limited, Chuathbaluk Company, Kipchaughpuk Limited, Lower Kalskag Incorporated, Napamute Limited, Red Devil Incorporated, Sleetmute Limited, Stony River Ltd., and Upper Kalskag Incorporated, all domestic corporations, into Georgetown Incorporated, which consolidated individual village interests into one single constituent corporation whose name was changed to The Kuskokwim Corporation. The surviving corporation, The Kuskokwim Corporation, is entitled to all rights, privileges, and benefits of the Alaska Native Claims Settlement Act.

As to the lands described below, selection application F-14990-A, as amended, is properly filed and meets the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a) of ANCSA, aggregating approximately 84,913 acres, is considered proper for acquisition by The Kuskokwim Corporation (for the village of Crooked Creek) and is hereby approved for conveyance pursuant to Sec. 14(a) of ANCSA:

U.S. Survey No. 4125, Alaska, lots 2, 3, and 7, situated at the village of Crooked Creek in southwestern Alaska, on the right bank of the Kuskokwim River.

Containing 1.94 acres.

Seward Meridian, Alaska (Surveyed)

T. 21 N., R. 47 W.
Secs. 28, 29 and 30;
Sec. 31, excluding Native allotment F-14566 Parcel C;
Sec. 32, excluding Native allotments F-14514 Parcel B and F-14566 Parcel C.

Containing approximately 2,778 acres.

T. 20 N., R. 48 W.
Sec. 3, excluding Native allotment F-14566 Parcel C;
Secs. 4 and 5;
Sec. 6, excluding Native allotments F-14405 Parcel B and F-14567 Parcel B;
Sec. 7, excluding Native allotments F-14568 Parcel B and F-18070;
Secs. 8, 9 and 10;
Sec. 16, excluding Native allotment F-19244 Parcel B;
Sec. 17, excluding Native allotments F-14404 Parcel B and F-18068;
Sec. 18, excluding Native allotments F-14404 Parcel B and F-14452.

Containing approximately 5,050 acres.

T 21 N., R. 48 W.
Secs. 1 to 26, inclusive;
Secs. 27 and 28, excluding Native allotment F-14513;
Sec. 29;
Sec. 30, excluding Native allotment F-14403 Parcel A;
Sec. 31, excluding Native allotments F-14403 Parcels A and B and F-14567 Parcel A;
Sec. 32, excluding U.S. Survey No. 4125 and Native allotments F-14403 Parcels A, B and C, F-14514 Parcel A, F-14566 Parcel B, F-14567 Parcel A, F-14568 Parcel A and F-19244 Parcel A;
Sec. 33, excluding U.S. Survey No. 4125 and Native allotments F-14402, F-14406, F-14513 and F-14514 Parcel A;
Sec. 34, excluding Native allotment F-14513,
Secs. 35 and 36.

Containing approximately 21,894 acres.

T 22 N., R. 48 W.
Sec. 31.

Containing approximately 628 acres.

T. 23 N., R. 48 W.
Secs. 17 to 20, inclusive;
Secs. 29, 30 and 31.

Containing approximately 4,379 acres.

T. 19 N., R. 49 W.
Secs. 4 to 7, inclusive;
Sec. 8, excluding Native allotment F-14453 Parcel A;
Secs. 9, 15 and 16;
Sec. 17, excluding Native allotment F-14453 Parcel A;
Secs. 18 to 23, inclusive;
Secs. 29 to 32, inclusive.

Containing approximately 10,301 acres.

T. 20 N., R. 49 W.
Sec. 1, excluding Native allotment F-14402;
Sec. 2, excluding Native allotments F-14402, F-14566 Parcel B and F-18069;
Sec. 3, excluding Native allotment F-14567 Parcel A;
Sec. 10, excluding Native allotment F-18066 Parcel A;
Sec. 11,
Sec. 12, excluding Native allotment F-14568 Parcel B;
Sec. 13, excluding Native allotment F-16986 Parcel B;
Sec. 14, excluding Native allotment F-14401 Parcel B;
Sec. 15, excluding Native allotment F-16999;
Sec. 22, excluding Native allotments F-18066 Parcel B and F-18067;
Sec. 23, excluding Native allotment F-18066 Parcel B;
Sec. 24;
Sec. 26, excluding Native allotments F-15667 and F-18131;
Sec. 27, excluding Native allotment F-18067;
Sec. 28, excluding Native allotment F-14451;
Secs. 29 and 30, excluding Native allotment F-989 Parcel B;
Sec. 31, excluding Native allotment F-989 Parcel B and F-16757 Parcel A;
Sec. 32;
Sec. 33, excluding Native allotment F-14451.

Containing approximately 9,196 acres.

T. 21 N., R. 49 W.
Secs. 1, 2, 3 and 6;
Secs. 10 to 14, inclusive;
Sec. 24.

Containing approximately 6,390 acres.

T. 22 N., R. 49 W.
Secs. 2, 3, 10 and 11;
Secs. 14, 15 and 16;
Secs. 22 and 23;
Secs. 26 to 36, inclusive.

Containing approximately 12,775 acres.

T. 23 N., R. 49 W.
Secs. 10, 13, 14 and 15;
Secs. 21 to 27, inclusive;
Secs. 33 to 36, inclusive.

Containing approximately 9,600 acres.

T. 21 N., R. 50 W.
Secs. 1 and 12.

Containing approximately 1,280 acres.

T. 22 N., R. 50 W.
Sec. 36.

Containing approximately 640 acres.

Aggregating approximately 84,913 acres.

Excluded from the above-described lands herein approved for conveyance are the submerged lands, up to the ordinary high water mark, beneath all water bodies determined by the Bureau of Land Management to be navigable because they have been or could be used in connection with travel, trade and commerce. The following named water bodies, together with any unnamed water bodies are identified on the attached navigability maps, the original of which will be found in easement case file F-14990-EE: Kuskokwim River, Crooked Creek, Oskawalik River.

All other water bodies not depicted as navigable on the attached maps within the lands to be conveyed were reviewed. Based on existing evidence they were determined to be nonnavigable.

The lands excluded in the above description are not being approved for conveyance at this time and have been excluded for one or more of the following reasons: Lands are no longer under Federal jurisdiction; lands are under applications pending further adjudication; lands are pending a determination under Sec. 3(e) of ANCSA; or lands were previously rejected by decision. Lands within U.S. Surveys which are excluded are described separately in this decision if they are available for conveyance. These exclusions *do not* constitute a rejection of the selection application, unless specifically so stated.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(f); and

2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1616(b) (1976), the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file F-14990-EE, are reserved to the United States. All easements are subject to applicable Federal, State, or Municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two- and three-wheel vehicles, and small all-terrain vehicles (ATV's) (less than 3,000 lbs. Gross Vehicle Weight (GVW)).

50 Foot Trail—The uses allowed on a fifty (50) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two- and three-wheel vehicles, small and large all-terrain vehicles, track vehicles and four-wheel drive vehicles.

50 Foot Road—The uses allowed on a fifty (50) foot wide road easement are: travel by foot, dogsled, animals, snowmobiles, two- and three-wheel vehicles, small and large all-terrain vehicles, track vehicles, four-wheel drive vehicles, automobiles, and trucks.

One Acre Site—The uses allowed on a one (1) acre site easement are: vehicle

parking (e.g., aircraft, boats, ATV's, snowmobiles, cars, trucks), temporary camping, and loading or unloading. Temporary camping, loading, or unloading shall be limited to 24 hours.

a. (EIN 8 C3, L) An easement fifty (50) feet in width for an existing access trail from FAS Route No. 231 in Sec. 34, T. 23 N., R. 49 W., Seward Meridian, northwesterly paralleling Grouse Creek to public land. The uses allowed are those listed above for a fifty (50) foot wide trail easement.

b. (EIN 9 D1, L) An easement fifty (50) feet in width for an existing access trail from FAS Route No. 231 in Sec. 14, T. 23 N., R. 49 W., Seward Meridian, easterly along Donlin and Dome Creeks to public land. The uses allowed are those listed above for a fifty (50) foot wide trail easement.

c. (EIN 10 D1) An easement fifty (50) feet in width for an existing access trail from FAS Route No. 231 in Sec. 3, T. 22 N., R. 49 W., Seward Meridian, easterly paralleling Omega Gulch to public lands. The uses allowed are those listed above for a fifty (50) foot wide trail easement.

d. (EIN 16 C4) An easement fifty (50) feet in width for a proposed access trail from FAS Route No. 231 in Sec. 11, T. 21 N., R. 49 W., Seward Meridian, southwesterly, generally paralleling Getmuna Creek, to public lands. The uses allowed are those listed above for a fifty (50) foot wide trail easement. Large all-terrain vehicles (more than 3,000 lbs. Gross Vehicle Weight (GVW)), track vehicles, and four-wheel drive vehicles will be limited to winter use only.

e. (EIN 20 C4) A one (1) acre site easement upland of the ordinary high water mark in Sec. 23, T. 20 N., R. 49 W., Seward Meridian, on the left bank of the Kuskokwim River near the mouth of a small unnamed stream. The uses allowed are those listed above for a one (1) acre site easement.

f. (EINB 20a C4) An easement twenty-five (25) feet in width for a proposed access trail from site EIN 20 C4 and the Kuskokwim River easterly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

g. (EIN 21 C4) A one (1) acre site easement upland of the ordinary high water mark in Sec. 29, T. 20 N., R. 49 W., Seward Meridian, on the right bank of the Kuskokwim River near the mouth of an unnamed creek. The uses allowed are those listed above for a one (1) acre site easement.

h. (EIN 21a C4) An easement twenty-five (25) feet in width for a proposed access trail from site EIN 21 C4 located in Sec. 29, T. 20 N., R. 49 W., Seward Meridian, northwesterly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

i. (EIN 27 C4) An easement fifty (50) feet in width for an existing road from the Kuskokwim River in Sec. 32, T. 21 N., R. 48 W., Seward Meridian, northwesterly to the airport thence easterly intersecting FAS Route No. 231 and continuing on easterly and overlaying former BIA right-of-way AA-9165 and beyond to the village of Crooked Creek. The uses allowed are those uses listed above for a fifty (50) foot wide road easement.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent after approval and filing by the Bureau of Land Management of the official supplemental plat of survey confirming the boundary description and acreage of the lands hereinabove granted;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. Ch. 2, Sec. 6(g)), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1616(b)(2) (ANCSA), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law;

3. Airport lease AA-9208, containing approximately 92 acres, located in Secs. 30, 31 and 32, T. 21 N., R. 48 W., Seward Meridian, Alaska, issued to the State of Alaska, Department of Transportation and Public Facilities, under the provisions of the act of May 24, 1928, 49 U.S.C. 211-214;

4. Any right-of-way interest in FAS Route No. 231, transferred to the State of Alaska by quitclaim deed dated June 3, 1959, executed by the Secretary of Commerce under the authority of the Alaska Omnibus Act, P.L. 86-70 (73 Stat. 141), from Crooked Creek o the Kuskokwim River northward to Iditarod; and

5. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(c), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

The Kuskokwim Corporation (for the village of Crooked Creek) is entitled to conveyance of 92,160 acres of land selected pursuant to Sec. 12(a) of ANCSA. Together with the lands herein approved, the total acreage conveyed or approved for conveyance is approximately 84,913 acres. The remaining entitlement of approximately 7,247 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of ANCSA and Departmental regulation 43 CFR 2652.4, conveyance of the subsurface estate of the lands described above shall be issued to Calista Corporation when the surface estate is conveyed to The Kuskokwim Corporation (for the village of Crooked Creek), and shall be subject to the same conditions as the surface conveyance, except for those provisions under Sec. 14(c) of ANCSA; also the right to explore, develop or remove mineral materials from the subsurface estate in lands within the boundaries of the Native village shall be subject to the consent of The Kuskokwim Corporation.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in The Tundra Drums.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the attached regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E, as revised. However, pursuant to Pub. L. 96-487, this decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

If an appeal is taken the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until November 4, 1982 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Managment, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

The Kuskokwim Corporation, 429 D Street, Suite 307, Anchorage, Alaska 99501

Calista Corporation, 516 Denali Street, Anchorage, Alaska 99501

Ann Johnson,

Chief, Branch of ANCSA Adjudication.

[FR Doc. 82-27329 Filed 10-4-82; 8:45 am]

BILLING CODE 4310-84-M

Exchange of Public Lands in Missoula, Granite, Powell, and Lewis and Clark Counties, Montana; Correction

In **Federal Register** Document 82-24900 appearing on pages 39898 and 39899, September 10, 1982, the legal description for T. 13 N., R. 16 W., Section 31 is corrected to read:

Lot 4, SE¼SE¼, SW¼NE¼, E½NE¼

Dated: September 27, 1982.

Jack A. McIntosh,

Butte District Manager.

[FR Doc. 82-27326 Filed 10-4-82 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Intent To Prepare an Environmental Impact Statement for the Comprehensive Conservation Plan for Tetlin National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Service intends to gather information necessary for the preparation of an Environmental Impact Statement (EIS) and a comprehensive conservation plan for the Tetlin National Wildlife Refuge in interior Alaska. Public meetings regarding preparation of this plan and the EIS also will be held. This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are solicited.

DATES: Written comments should be received by November 30, 1982. Public meetings regarding the Tetlin National Wildlife Refuge plan and EIS will be held at:

Tok—the Community Center, 7:00 pm, October 25, 1982;

Northway—the Community Hall, 6:30 pm, October 26, 1982.

ADDRESSES: Comments should be addressed to: Regional Director, U.S.Fish and Wildlife Service; 1011 E. Tudor Road; Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Mike Evans, Public Affairs Specialist, Refuge Planning, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503.

SUPPLEMENTARY INFORMATION: This comprehensive conservation plan is being prepared to fulfill requirements of the Alaska National Interest Lands Conservation Act of 1980, section 304 g. The environmental review of the project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et seq.), Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), other appropriate Federal regulations, and FWS procedures for compliance with those regulations.

We estimate the Draft Environmental Impact Statement and plan will be made available to the public by November 1983.

Dated: September 13, 1982.

Keith M. Schreiner,

Regional Director.

[FR Doc. 82-27339 Filed 10-4-82; 8:45 am]

BILLING CODE 4310-55-M

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contracting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service clearance officer and the Office of Management and Budget reviewing official, Mr. Rick Otis, at 202–395–7340.

Title: Public Use Surveys.

Bureau Form Number: N/A.

Frequency: On occasion.

Description of Respondents: Visitors to National wildlife refuges.

Annual Responses: 10,000.

Annual Burden Hours: 500.

Service clearance officer: Arthur J. Ferguson, 202–653–8770.

Dated: September 28, 1982.

Walter R. McAllester,

Acting Associate Director—Wildlife Resources.

[FR Doc. 82-27323 Filed 10-4-82; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Receipt of Applications

The applicants listed below wish to conduct certain activities with endangered species:

Applicant: Duke University Primate Center, Durham, NC—PRT 2-6368

The applicant requests an amendment to their permit to allow import of 6 *Lemur variegatus*, 6 *Lemur mongoz*, 10 *Cheirogaleus medius* and 20 *Lemur macaco* from the wild of Madagascar for the enhancement of propagation and survival of the species.

Applicant: Joseph C. Witt, Orange, CA—PRT 2-9675

The applicant requests a permit to purchase in interstate commerce one pair of black-headed red siskins (*Spinus cucullatus*) from Patricia Demko, Pittsburgh, PA for enhancement of propagation.

Humane care and treatment during transport, if applicable, has been indicated by the applicants.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 N. Glebe Rd., Arlington, Virginia, or by writing to the U.S. Fish & Wildlife Service, WPO, P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on these applications within 30 days of the date of this publication by submitting written data, views, or arguments to the above address. Please refer to the file number when submitting comments.

Dated: September 30, 1982.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 82-27373 Filed 10-4-82; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Sodium Leasing Land Classification Order; California No. 2

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of amendment of Sodium Leasing Land Classification Order California No. 2, published in **Federal Register**, vol. 47, No. 91, p. 20210, May 11, 1982.

SUMMARY: Lands described in Sodium Leasing Land Classification Order California No. 2 are amended as follows: San Bernardino Meridian (California) to read: Mount Diablo Meridian (California); T. 26 S., R. 43 E., sec. 9 to read: N½, N½ SW¼, SE¼SW¼, SE¼; sec. 15 to read: N½, E½ SW¼, SE¼; sec. 16 to read: E½NE¼.

Dated: September 27, 1982.

William P. Pendley

Director, Minerals Management Service.

[FR Doc. 82-27321 Filed 10-4-82; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Cuyahoga Valley National Recreation Area Advisory Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Cuyahoga Valley National Recreation Area Advisory Commission will be held beginning 7:00 p.m. (EST), on Thursday, October 28, 1982, at the Happy Days Visitor Center located on West Streetsboro Road, 1 mile west of Route 8 in Peninsula, Ohio.

The Commission was established by the Act of December 27, 1974, 88 Stat. 1788, 16 U.S.C. 460ff–4, to meet and consult with the Secretary of the Interior on matters relating to the administration and development of the Cuyahoga Valley National Recreation Area.

The members of the Commission are as follows:

Mrs. Tommie Patty (Chairperson)
Mr. John Craig
Mr. Norman A. Godwin
Mrs. William Hutchison
Mr. James S. Jackson
Mrs. George Klein
Mr. Stanley Mottershead
Mr. C. W. Eliot Paine
Mr. Melvin J. Rebholz
Mr. F. Eugene Smith
Ms. Robbie Stillman
Mr. Barry K. Sugden
Dr. Robert W. Teater

Matters to be discussed at this meeting include:

1. Draft Transportation Study
2. Haydite Landfill
3. James A. Garfield National Historic Site

The meeting will be open to the public. It is expected that about 100 persons, in addition to members of the Commission, will be able to attend this meeting. Interested persons may submit written statements. Such statements should be submitted to the official listed below prior to the meeting.

Further information concerning this meeting may be obtained from Lewis S. Albert, Superintendent, Cuyahoga Valley National Recreation Area, P.O. Box 158, Peninsula, Ohio 44264, telephone (216) 650–4414. Minutes of the meeting will be available for public inspection 3 weeks after the meeting, at the office of Cuyahoga Valley National Recreation Area, located at 501 West Streetsboro Road (State Route 303), 2 miles east of Peninsula, Ohio.

Dated: September 24, 1982.

J. L. Dunning,

Regional Director, Midwest Region.

[FR Doc. 82-27371 Filed 10-4-82; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 24, 1982. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by October 20, 1982.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Pinal County

Florence, *Florence Townsite Historic District*, Roughly bounded by 3rd and Florence Sts., Butte and Central Aves., and Chase/Ruggles Ditch

COLORADO

Denver County

Denver, *Cheesman Park Duplex*, 1372 S. Pennsylvania St.
Denver, *Flower-Vaile House*, 1610 Emerson St.
Denver, *Grafton, The*, 1001–1020 E. 17th Ave.
Denver, *Palmer, Judge Peter L., House*, 1250 Ogden St.
Denver, *Tallmadge and Boyer Block*, 2926–2942 Zuni St.

El Paso County

Colorado Springs, *Old Colorado City Historic Commercial District*, N side of Colorado Ave. from 24th St., W to 2611 Colorado Ave., also includes 115 S. 26 St. and 2418 W. Pikes Peak Ave.

Routt County

Toponas vicinity, *Rock Creek Stage Station*, E of Toponas off CO 84

CONNECTICUT

Hartford County

Hartford, *Apartment at 49–51 Spring Street (Asylum Hill Historic MRA)*, 49–51 Spring St.
Hartford, *Garden Street District (Asylum Hill Historic MRA)*, 216–232 Garden St.
Hartford, *House at 36 Forest Street (Asylum Hill Historic MRA)*, 36 Forest St.
Hartford, *Linke, William L., House (Asylum Hill Historic MRA)*, 174 Sigourney St.
Hartford, *Myers and Gross Building (Asylum Hill Historic MRA)*, 2 Fraser Pl.
Hartford, *Spencer House (Asylum Hill Historic MRA)*, 1039 Asylum Ave.

KANSAS

Douglas County

Baldwin City, *Santa Fe Depot*, 1601 High St.

Labette County

Edna, *First State Bank*, SW corner of Delware and Main Sts.

Marshall County

Frankfort, *Old Frankfort City Jail*, Railway Ave.

Saline County

Brookville, *Brookville Grade School*, Jewitt and Anderson Sts.

Sedawick County

Wichita, *Administration Building*, McConnell Air Force Base
Wichita, *Hayford Buildings*, 255 N. Market and 115–127 E. 2nd Sts.
Wichita, *Stearman Aircraft Company Hanger*, McConnell Air Force Base

LOUISIANA

Caddo Parish

Shreveport, *Antioch Baptist Church*, 1057 Texas Ave.

Lafourche Parish

Raceland vicinity, *Thibodaux, Jean Baptiste, House*, W of Raceland on LA 308

Madison Parish

Tallulah, *Scottland Plantation House*, 903 Bayou Dr.

Orleans Parish

New Orleans, *Turner's Hall*, 606 O'Keefe St.

Pointe Coupee Parish

Glynn, *Glynnwood*, LA 416

St. Mary Parish

Patterson vicinity, *Idlewild*, S of Patterson on LA 182

Tangipahoa Parish

Hammond, *McGehee House*, 1106 S. Holly St.

Terrebonne Parish

Houma vicinity, *Ardoyne Plantation House*, NW of Houma on LA 311

MASSACHUSETTS

Barnstable County

Falmouth, *Woods Hole School*, 24 School St.

Bristol County

Attleboro, *Sadler, Herbert A., House*, 574 Newport Ave.

Suffolk County

Boston, *10 Liberty Square Building*, 55 Kilby St.

Boston, *Wigglesworth Building*, 89–83 Franklin St.

Worcester County

Milford, *Gillon Block*, 189 Main St.

MONTANA

Beaverhead County

Dillion vicinity, *Birch Creek CCC Camp*, N of Dillion on US FS Rd. 98

Gallatin County

Belgrade, *Belgrade City Hall and Jail*, Broadway at Northern Pacific Blvd.

Bozeman, *Bozeman National Fish Hatchery*, 4050 Bridger Canyon Rd.

West Yellowstone, *Kennedy Building (West Yellowstone MRA)*, 127 Yellowstone Ave.

West Yellowstone, *Madison Hotel and Cafe (West Yellowstone MRA)*, 137 Yellowstone Ave.

West Yellowstone, *West Yellowstone Historic District (West Yellowstone MRA)*, S side of Yellowstone Ave. between Faithful St. and park boundary

Lewis and Clark County

Helena, *Appleton House #13*, 2200 Cannon

Missoula County

Missoula, *Belmont Hotel*, 430 N. Higgins Ave.

Missoula, *Palace Hotel*, 147 W. Broadway

Ravalli County

Stevensville, *May, George, House*, 100 Part Ave.

Stillwater County

Columbus, *Norton, W. H., House*, Third Ave.

NEBRASKA

Douglas County

Omaha, *Porter-Thomsen House*, 3426 Lincoln Blvd.

Omaha, *St. Martin of Tours Episcopal Church*, 2312 J St.

VERMONT

Chittenden County

Jonesville vicinity, *Jonesville Academy*, S of Jonesville at Cochran and Waterbury Rds.

Franklin County

Georgia, *Evarts-McWilliams House*, Georgia Shore Rd.

WISCONSIN

Dane County

Stoughton, *Main Street Historic District*, Main St. from the Yahara River to Forest St.

Rock County

Orfordville vicinity, *Smiley, Samuel, House*, SE of Orfordville on WI 213

[FR Doc. 82-27372 Filed 10-4-82; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

[INT-FES 82-44]

Closed Basin Division, San Luis Valley Project, Colorado; Availability of Final Supplement to Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a Final Supplement to the Final Environmental Statement for the Closed Basin Division, San Luis Valley Project, Colorado.

The supplement presents a revised plan to mitigate project effects on wetlands in the Closed Basin and other project changes which have occurred since filing of the FES in 1979. The amount of wetlands to be affected is significantly less than believe in 1979. Also the results of pump tests and the vegetation monitoring program are discussed. Updated information on waterfowl production and other bird use is presented. More extensive cultural resource investigations have been done to determine project impacts. Other project feature changes, such as conveyance channel alinement and additional wells, are also described. The nature of and probable impacts of the revised proposed action are presented.

Copies are available for inspection at the following locations:

Office of Environmental Affairs, Bureau of Reclamation, Department of the Interior, Room 7622, Washington, DC 20240, Telephone (202) 343–4991

Library Branch, Division of Management Support, E&R Center, Denver Federal Center, Denver, CO 80225, Telephone (303) 234–3019

Office of the Regional Director, Bureau of Reclamation, 714 South Tyler Street, Suite 201, Amarillo, TX 79101, Telephone (806) 378–5467

New Mexico Representative, Bureau of Reclamation, 505 Marquette Avenue, NW., Albuquerque, NM 87103, Telephone (505) 766–2272

Project Construction Engineer, Bureau of Reclamation, Post Office Box 449, Alamosa, CO 81101

Single copies of the final statement may be obtained on request to the Office of Environmental Affairs, Regional Director, or New Mexico Representative. Please refer to the statement number above.

Dated: September 30, 1982.

Jed D. Christensen,

Acting Commissioner of Reclamation.

[FR Doc. 82–27320 Filed 10–4–82; 8:45 am]

BILLING CODE 4310-09-M

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contracting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Mr. William T. Adams, at 202–395–7340.

Title: "Procedure to Process and Recover Value of Right-of-Way and Administrative Cost," 43 CFR Part 429.

Bureau Form Number: No prescribed form.

Frequency: On occassion.

Description of Respondents: All individuals, firms, or governmental agencies desiring a right-of-way across Reclamation's lands or facilities.

Annual Responses: 400.

Annual Burden Hours: 800.

Bureau clearance officer: Wilson M. Carr, 202–343–4247.

Dated: September 28, 1982.

David G. Houston,

Acting Assistant Secretary—Land and Water Resources.

[FR Doc. 82–27327 Filed 10–4–82; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 387]

Exemptions for Contract Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Notices of provisional exemptions.

SUMMARY: Provisional exemptions are granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the below-listed contract tariffs may become effective on one day's notice. These exemptions may be revoked if protests are filed.

DATES: Protests are due within 15 days of publication in the **Federal Register.**

ADDRESS: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275–7278,

or

Tom Smerdon, (202) 275–7277.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in these instances to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from abuse of market power; moreover, the transaction is of limited scope. Therefore, we find that the exemption requests meet the requirements of 49 U.S.C. 10505(a) and are granted subject to the following conditions:

These grants neither shall be construed to mean that the Commission has approved the contracts for purposes of 49 U.S.C. 10713(e) not that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review these contracts and to determine their lawfulness.

Sub-No.	Name of railroad, contract number and specifics	Review bd.[1]	Decided date
284	Southern Pacific Transportation Co., ICC-SP-C-0092, Supplement 1, (Soybeans).	1	Sept. 30, 1982.
289	Seaboard Coast Line Railroad Co., ICC-SCL-C-0040, (Grain and soybeans via the Port of Savannah, GA).	3	Sept. 29, 1982.
290	Burlington Northern Railroad Co., ICC-BN-C-0153, (Grain and grain products via Ports in Oregon or Washington).	3	Sept. 29, 1982.

[1] Review Board Number 1, Members Parker, Chandler, and Fortier. Review Board Number 3, Members Krock, Joyce, and Dowell.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-27393 Filed 10-4-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers, Permanent Authority Decisions; Correction

In the **Federal Register** issue of September 24, 1982, 47 FR 42182, Volume OP4–336 was inadvertently published under an incorrect authority description prescribed in the preamble immediately following the heading entitled "Motor Carriers; Permanent Authority Decisions; Decision-Notice." The purpose of this document is to amend by revising the preamble for Volume OP4–336 *only.*

Correction. In the second paragraph after the heading, lines 3 through 8, remove the sentence that reads "Applications may be protested only on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations." The entire preamble otherwise remains the same.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-27394 Filed 10-4-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

For the following please direct status inquiries to Team 1 at 202–275–7992.

Volume No. OP1–170

Decided: September 29, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Chandler not participating.)

MC 67841 (Sub-6), filed September 20, 1982. Applicant: MORGANTOWN-INDIANAPOLIS FREIGHT LINE, INC., P.O. Box 251, Morgantown, IN 46160. Representative: Robert W. Loser II, 1101 Chamber of Commerce Bldg., 320 N. Meridian St., Indianapolis, IN 46204, (317) 635–2339. Transporting *general commodities* (except classes A and B

explosives, household goods and commodities in bulk), between points in IN, on the one hand, and, on the other, points in IL, KY, MI, MO, OH, and WI.

MC 118341 (Sub-7), filed September 17, 1982. Applicant: VALLEY TRUCKING CO., INC., P.O. Box 2298, Brownsville, TX 78520. Representative: Billy R. Reid, 1721 Carl St., Fort Worth, TX 76103, (817) 332–4718. Transporting *transportation equipment*, between points in TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 129031 (Sub-11), filed September 20, 1982. Applicant: KLAUSNER TRANSPORTATION CO., INC., 101 North Avenue 18, Los Angeles, CA 90031. Representative: William Davidson, 5501 Pacific Blvd., Suite 200, Huntington Park, CA 90255, (213) 589–6073. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. under continuing contract(s) with Transportation Alternatives Company, of Lawndale, CA, and Orient GOH Uni-Freight Systems, of Carson, CA.

MC 152231 (Sub-5), filed September 17, 1982. Applicant: EME TRANSPORT CORP., 217 Brook Ave., Passaic, NJ 07055. Representative: Harold L. Reckson, 33–28 Halsey Rd., Fair Lawn, NJ 07410. Transporting *food and related products*, between points in Union County, NJ, on the one hand, and, on the other, those points in the U.S. in and east of WI, IL, MO, AR and LA.

MC 152640 (Sub-9), filed September 21, 1982. Applicant: RAPID DISTRIBUTION SERVICE, INC., 2392 North Dupont Highway, Dover, DE 19901. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 Fifteenth, St. Washington, DC 20005, (202) 296–3555 Transporting *such commodities* as are dealt in and distributed by retail department stores and chain stores, between points in the U.S. (except AK and HI), under continuing contract(s) with Mason Athletic Company, Sports Division of Riegle Textile, of Dallas, NC.

MC 152640 (Sub-10), filed September 22, 1982. Applicant: RAPID DISTRIBUTION SERVICE, INC., 2392 North Dupont Highway, Dover, DE 19901. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 Fifteenth St., N.W., Washington, DC 20005, (202) 296–3555. Transporting *such commodities* as are dealt in or used by retail department stores and discount houses, between New York, NY, on the one hand, and, on the other, points in MA, CT, RI, NY, NJ, PA, DE, MD, VA, WV, NC, SC, GA, FL, AL, MS, TN, KY, OH, IL, MI, IN and DC.

MC 153641 (Sub-1) filed September 20, 1982. Applicant: JOHN WALKER d.b.a. RED LABEL EXPRESS, W. 910 Lacey Ave., Hayden, ID 83835. Representative: Kevin M. Clark, 2417 Bank Dr., Suite 8, Boise, ID 83705; (208) 344–7714. Transporting *general commodities* (except classes A and B explosives, commodities in bulk and household goods) between points in ID, MT, WA, and OR.

MC 160230, filed September 15, 1982. Applicant: A & A TRUCKING COMPANY, P.O. Box 9366, Casper, WY 82609. Representative: Eric A. Distad, Suite 305, 120 West 1st, P.O. Box 2314, Casper, WY 82602; (307) 266–4245. Transporting *Mercer commodities*, between points in WY, MT, ND, SD, CO, UT, ID, and NM.

MC 163441, filed September 20, 1982. Applicant: PRESTIGE DELIVERY, INC., Route 8, Box 432, Statesville, NC 28677. Representative: Timothy Co. Miller, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101; (703) 893–4924. Transporting *food and related products, and such commodities* as are dealt in by retail furniture and department stores, between points in NC, on the one hand, and, on the other, points in FL, GA and SC.

For the following, please direct status inquiries to Team 2 at 202–275–7030.

Volume No. OP2–242

Decided: September 29, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Chandler not participating.)

MC 145813 (Sub-6) filed September 22, 1982. Applicant: POINTS WEST TRUCKING, INC., 20727 Santa Clara St., Canyon Country, CA 91351. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501; 402–475–6761. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk) (1) between Los Angeles, CA, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (2) between Chicago, IL, points in Sullivan County, TN, and points in MD, PA, NJ, NY, CT, RI, MA, VT, NH, ME, and TX, on the one hand, and, on the other, those points in the U.S., in and west of MT, WY, CO, NM, and TX (except AK and HI).

MC 146442 (Sub-7), filed September 21, 1982. Applicant: CLEARFIELD TRANSPORTATION COMPANY, INC., P.O. Box 313, Clinton, MO 64735. Representative: Mark J. Andrews, Suite 1100, 1660 L St., NW., Washington, DC 20036, 202–452–7438. Transporting *food and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with (a) Mid-America Dairymen, Inc., of Springfield, MO. and (b) Clearfield Cheese Co., a partnership, of Curwensville, PA.

MC 161572 (Sub-1), filed September 22, 1982. Applicant: RIVER LINE TRANSPORT COMPANY P.O. Box 426, Hennepin, IL 61327. Representative: Peter A. Greene, 1920 N St., NW., Suite 700, Washington, DC 20036, 202–331–8800. Transporting *metal products and commodities in bulk*, between points in the U.S. (except AK and HI).

MC 162052, filed September 22, 1982. Applicant: MPG TRANSPORT LTD., 21630 W. McNichols, Detroit, MI 48219. Representative: Alex J. Miller, 555 South Woodward Ave., Suite 512 Birmingham, MI 48011; 313–647–3350.. Transporting *such commodities*, as are dealt in or used by manufacturers and distributors of swimming pools, between points in the U.S. (except AK and HI), under continuing contract(s) with Kayak Manufacturing Corporation, of Depew, NY.

MC 16390, filed September 17, 1982. Applicant: TRANSPORTATION SYSTEMS, 1926 Stanford Dr., Anchorage, AK 99508. Representative: Brandon Collins (same address as applicant) (907) 276–4999. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in AK.

Volume No. OP2–244

Decided: September 29, 1982.

By the Commission, Review Board No. 1 Members Parker, Chandler, and Fortier. (Member Chandler not participating.)

MC 2392 (Sub-142), filed September 7, 1982, published in the **Federal Register** issue of September 22, 1982, and republished, as corrected, this issue. Applicant: WHEELER TRANSPORT SERVICE, INC., P.O. Box 14248, West Omaha Station, Omaha, NE 68124. Representative: Robert R. Harris, 1730 M St., N.W., Suite 501 Washington, D.C. 20036, 202–296–2900. Transporting *commodities in bulk* (a) between points in PA, on the one hand, and, on the other, points in AL, CA, CT, GA, IA, IL, IN, KY, LA, MD, MA, MI, MN, MO, NJ, NY, OK, OH, TN, TX, and VA, and (b) between points in GA, on the one hand, and, on the other, points in IL, KS, MN, and MO. The purpose of this republication is to include states inadvertently excluded from the prior publication.

MC 140302 (Sub-8), filed September 24, 1982. Applicant: AMERICAN TANK TRANSPORT, INC., 6350 Ordnance

Point Rd., Curtis Bay, MD 21225. Representative: Gerald K. Gimmel, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877; 301–840–8565. Transporting *commodities in bulk*, between Philadelphia, PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 142672 (Sub-193), filed September 20, 1982. Applicant: DAVID BENEUX PRODUCE & TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Don A. Smith, P.O. Box 43, Forth Smith, AR 72902; (501) 782–1001. Over *regular routes*, transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between Cincinnati, OH, and Philadelphia, PA: from Cincinnati, OH, over Interstate Hwy 71 to junction Interstate Hwy 70, then over Interstate Hwy 70 to junction Interstate Hwy 76, then over Interstate Hwy 76 to Philadelphia, PA, and return, serving all intermediate points.

Note.—Applicant indicates intention to tack with existing authority.

MC 159863 (Sub-1), filed September 23, 1982. Applicant: DAVIDSON TRANSPORTATION AGENCY, INC., P.O. Box 716, Beverly Shores, IN 46301. Representative: Themis N. Anastos, 120 West Madison St., Chicago, IL 60602; 312–782–8668. Transporting *pulp, paper and related products*, between Louisville, KY, and points in Lenawee and Monroe Counties, MI, and McKean County, PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 163922, filed September 20, 1982. Applicant: ROGER TUCKER, d.b.a. THE ART MOVERS, 11 A Myrtle St., Jamaica Plain, MA 02130. Representative: Roger Tucker (same address as applicant) (617) 522–8787. Transporting *household goods*, between points in the U.S. (except AK and HI).

MC 163963, filed September 22, 1982. Applicant: WELKER TRUCKING, INC., 1840 Carter Rd., Cleveland, OH 44113. Representative: Earl N. Merwin, 85 East Gay St., Columbus, OH 43215; 614–224–3161. Transporting *food and related products*, between points in OH and SC, on the one hand, and, on the other, points in the U.S. (except AK and HI).

For the following, please direct status inquiries to Team 3 at 202–275–5223.

Volume No. OP3–149

Decided: September 28, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 17605 (Sub-7), filed September 13, 1982. Applicant: RONALD E. WATSON, d.b.a. R. E. WATSON TRUCKING, P.O. Box 217, Ross, OH 45061. Representative: Stephen L. Oliver, 275 E. State St., Columbus, OH 43215; (614) 228–8575. Transporting *commodities in bulk*, between points in Hamilton County, OH, and those in KY, on the one hand, and, on the other, points in OH, KY, and IN.

MC 88575 (Sub-3), filed September 13, 1982. Applicant: CHARLES T. LUDY, JR. d.b.a. CHARLES T. LUDY, JR. TRUCKING, 208 Plank Rd., Somerset, PA 15501. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740; (301) 797–6060. Transporting *iron and steel products*, between Cambria County, PA, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, AR, and LA.

MC 107445 (Sub-44), filed September 13, 1982. Applicant: UNDERWOOD MACHINERY TRANSPORT, INC., 940 West Troy Ave., Indianapolis, IN 46225. Representative: Michael D. McCormick, 1301 Merchants Plaza, Indianapolis, IN 46204; (317) 638–1301. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. in and east of ND, SD, NE, KS, OK, and TX, on the one hand, and, on the other, points in the U.S. (except HI).

MC 135684 (Sub-172), filed September 14, 1982. Applicant: BASS TRANSPORTATION CO., INC., P.O. Box 391, Flemington, NJ 08822. Representative: Edward A. O'Donnell, 1004 29th Street, Sioux City, IA 51104; (712) 255–3127. Transporting *general commodities* (except household goods and classes A and B explosives), between points in the U.S. (except AK and HI).

MC 135764 (Sub-4), filed September 16, 1982. Applicant: WINTER TRUCK LINES, INC. d.b.a. WINTER TRUCK LINE, Box 19, Mahnomen, MN 56557. Representative: Thomas J. Van Osdel, 15 Broadway, Suite 502, Fargo, ND 58102; (701) 235–4487. Transporting *fertilizer and fertilizer ingredients, feed and feed ingredients*, and *chemicals and related products*, between points in MN, ND, SD, IA, and WI.

MC 140484 (Sub-110), filed September 13, 1982. Applicant: LESTER COGGINS TRUCKING, INC., P.O. Box 69, Fort Myers, FL 33902. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 Fifteenth St., NW., Washington, D.C. 20005. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 141985 (Sub-3), filed September 16, 1982. Applicant: TAB TRANSPORTATION, INC., 8457 Eastern Ave., Bell Gardens, CA 90201. Representative: Gerald K. Gimmel, 444 N. Frederick Ave., Suite 200, Gaithersburg, MD 20877; (301) 840–8565. Transporting *food and related products, plastic and rubber articles*, and *electrical machinery*, between points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, and WY.

MC 143785 (Sub-3), filed September 13, 1982. Applicant: B & W TRANSPORTATION, INC., 24 Collins Ave., Randolph, MA 02368. Representative: David M. Marshall, 101 State St., Suite 304, Springfield, MA 01103; (413) 732–1136. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Windham County, CT, and MA, NJ, NY, and points in PA on and east of U.S. Hwy 15.

MC 145925 (Sub-4), filed September 10, 1982. Applicant: TRANS CONTINENTAL LEASING, LTD., 8920 Pershall Rd., Hazelwood, MO 63042. Representative: B. W. LaTourette, Jr., 11 South Meramec, Suite 1400, St. Louis, MO 63105; (314) 727–0777. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contracts with (a) Lever Brothers Company, of St. Louis, MO, (b) Golden Dipt Company, Division of DCA Food Industries, Inc., of Millstadt, IL, (c) Consolidated Flavor Corp., of Bridgeton, MO, (d) John Morrell & Co., of Chicago, IL, (e) Heimburger, Inc., of St. Louis, MO, and (f) Mrs. Smith's Frozen Foods Co., of Pottstown, PA.

MC 150255 (Sub-9), filed September 13, 1982. Applicant: LEPRINO TRANSPORTATION COMPANY, 3740 Shoshone St., Denver, CO 80211. Representative: John T. Wirth, 2600 Petro-Lewis Tower, 717 17th St., Denver, CO 80202; (303) 892–6700. Transporting *alcoholic beverages and related products*, between points in the U.S., under continuing contract(s) with C & C Distributing Company, of Denver, CO.

MC 150305 (Sub-1), filed September 17, 1982. Applicant: ANCHORAGE FREIGHT SERVICE, INC., 1907 Post Rd., Anchorage, AK 99510. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101; (703) 893–3050. Transporting *general commodies* (except classes A and B explosives and household goods), between points in the U.S. (except HI), under continuing contract(s) with Peninsula Shippers Association, Inc., of Anchorage, AK.

MC 151685 (Sub-3), filed September 2, 1982. Applicant: W D P TRANSPORTATION, INC., 453 Versailles Rd., Frankfort, KY 40601. Representative: George M. Catlett, Suite 700–702, McClure Bldg., Frankfort, KY 40601; (502) 227–7384. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Anderson, Boone, Bourbon, Boyle, Bullitt, Campbell, Carroll, Clark, Fayette, Franklin, Garrard, Grant, Hardin, Harrison, Henry, Jefferson, Jessamine, Kenton, Lincoln, Madison, Mercer, Nelson, Nicholas, Oldham, Owen, Pulaski, Scott, Shelby, Spencer, Trimble, Washington, Whitley, and Woodford Counties, KY, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 152394 (Sub-1), filed September 8, 1982. Applicant: ROBERT S. HOSKINS d.b.a. HOSKINS TRUCKING, 1818 Roanoke Ave., Lakeland, FL 33803. Representative: Robert S. Hoskins (same address as applicant) (813) 682–0030. Transporting *food and related products and machinery*, between points in the U.S. (except AK and HI), under continuing contract(s) with Ore-Ida Foods, of Boise, ID.

MC 152775 (Sub-8), filed September 13, 1982. Applicant: RAM ROD TRUCKING, INC., P.O. Box 1127, Marrero, LA 70073. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205; (601) 948–8820. Transporting *building materials*, between points in Mobile County, AL, and Jefferson and Orleans Parishes, LA, on the one hand, and, on the other, points in AL, AR, FL, GA, MS, TN, and TX.

MC 154464 (Sub-6), filed September 13, 1982. Applicant: B-HI TRANSPORT, INC., P.O. Box 1227, Searcy, AR 72143. Representative: Larry Bowen (same address as applicant) (501) 268–3897. Transporting *general commodities* (except household goods, classes A and B explosives, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Wilco Trading Company, Inc., of Lakewood, NJ.

MC 155645 (Sub-1), filed September 10, 1982. Applicant: LAND-LINK TRUCKING CORPORATION, 807 Ocean Rd., Point Pleasant Beach, NJ 08742. Representative: Carl E. Lappke (same address as applicant) (201) 899–4242. Transporting (1) *commercial and household cleaners and related products*, between points in the U.S., under continuing contract(s) with Stanson Chemical Company, of Teaneck, NJ, and (2) *chemicals and related products*, between points in the U.S., under continuing contract(s) with S & R Distributing, of Teaneck, NJ.

MC 157324 (Sub-1), filed September 16, 1982. Applicant: SUNFLOWER FOOD EXPRESS, INC., Box 143, Sedgwick, KS 67135. Representative: Lester C. Arvin, 814 Century Plaza Bldg., Wichita, KS 67202; (316) 265–2634. Transporting *food and related products*, between points in the U.S. (except AK and HI).

MC 161154, filed September 13, 1982. Applicant: MAINE LINE CARTAGE, INC., 110 Loon Hill Rd., Dracut, MA 01826. Representative: James F. Flint, 406 World Center Bldg., 918 16th St., N.W., Washington, DC 20006; (202) 833–1170. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 162255, filed August 23, 1982. Applicant: BAILEY GRAIN & SUPPLY, P.O. Box 167, Morrill, KS 66615. Representative: Bruce C. Harrington, Kansas Credit Union Bldg., 1010 Tyler, Suite 110–L, Topeka, KS 66612; (913) 233–9629. Transporting (1) *liquid nitrogen solution*, between points in NE, and Union County, IA, on the one hand, and, on the other, points in Brown County, KS, (2) *fertilizer materials*, (a) between points in Gage, Sarpy and Richardson Counties, NE, Tulsa, OK, Newton, Chariton, and Jackson Counties, MO, on the one hand, and, on the other, points in Brown County, KS, and (b) between points in Jackson County, MO, on the one hand, and, on the other, points in Osage County, KS, and (3) *fertilizer*, between points in Holt County, MO, on the one hand, and, on the other, points in KS, NE, IA, OK, and NM.

MC 163664, filed September 16, 1982. Applicant: L & L TRUCK BROKER, INC., 607 East Second St., P.O. Box 924, Stuttgart, AR 72160. Representative: Dwight L. Koerber, Jr., 110 North Second St., P.O. Box 1320, Clearfield, PA 16830; (814) 765–9611. Transporting *food and related products*, between points in Craighead, Phillips, and Arkansas Counties, AR, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 163774, filed September 9, 1982. Applicant: ENTERPRISE EXPRESS INC., 5460 Leroy Lane, Greendale, WI 53129. Representative: Paul Parworth (same address as applicant) (414) 421–9272. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between the points in the U.S. (except AK and HI), under continuing contract(s) with General Electric Medical Systems Operations, of Milwaukee, WI.

MC 163795, filed September 13, 1982. Applicant: THOMAS P. MOXLEY CARTAGE CO., 2325½ No. 74th Ave., Elmwood Park, IL 60635. Representative: Christine M. Steenbergen (same address as applicant) (312) 452–5187. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between Chicago, IL and Milwaukee, WI, on the one hand, and, on the other, points in AR, IL, IN, IA, KY, LA, MI, MO, MS, OH, OK, TN, TX, and WI.

MC 163824, filed September 13, 1982. Applicant: GLADYS LEE ABBOTT d.b.a. HOBO EXPRESS, P.O. Box 246, Bloomingdale, GA 31302. Representative: J. L. Fant, P.O. Box 577, Jonesboro, GA 30237 (404) 477–1525. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AL, FL, GA, KY, LA, MS, NC, SC, TN, and VA.

MC 163845, filed September 14, 1982. Applicant: VANCOM, INC., 2351 E. 170th St., South Holland, IL 60473. Representative: Guy H. Postell, 3384 Peachtree Rd., Suite 675, Atlanta, GA 30326; (404) 237–6472. Transporting *passengers and their baggage*, in the same vehicle with passengers, in charter and special operations, beginning and ending at points in IL, IN, MI and WI, and extending to points in the U.S. (except HI).

MC 163855, filed September 9, 1982. Applicant: DENNIS KEAR TRUCKING, INC., P.O. Box 112, York, NE 68467. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501, (402) 475–6761. Transporting (1) *machinery*, between Milwaukee, WI, Kansas City, MO and points in LaPorte County, IN, on the one hand, and, on the other, points in NE and (2) *food and related products*, between points in York and Madison Counties, NE, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 163864, filed September 16, 1982. Applicant: AAA MOVING & STORAGE, INC., 1229 DeLoss St., Indianapolis, IN 46203. Representative: Andrew K. Light, 1301 Merchants Plaza, E. Tower, Indianapolis, IN 46204; (317) 638–1301. Transporting *household goods*, between points in IN, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, NE, CO, OK, and TX.

MC 163885, filed September 17, 1982. Applicant: JACK WEBER TRUCKING,

6960 So. 641 W., Unit 3, Salt Lake City, UT 84047. Representative: Franklin L. Slaugh, 8522 So. 1300 E Suite D–203, Sandy, UT 84070; (801) 566–4675. Transporting *food and related products,* between points in the U.S. (except HI), under continuing contract(s) with Aspen Distribution, Inc., of Salt Lake City, UT.

MC 163895, filed September 16, 1982. Applicant: THOMPSON TRUCK LINES, INC., 2411 Gunbarrel, Chattanooga, TN 37421. Representative: J. Grey Hardeman, 618 United Southern Bank Bldg., Nashville, TN 37219; (615) 244–8100. Transporting *paper and related products,* between points in AL, AR, CO, DE, FL, GA, IA, IL, IN, KS, KY, LA, MD, MO, MI, MS, NE, NJ, NC, OH, OK, PA, SC, TN, TX, VA, WV, and WI, under continuing contract(s) with Inland Container Corporation, of Indianapolis, IN.

MC 153525 (Sub-2) filed August 17, 1982, previously published on September 9, 1982, and partially republished below. Applicant: THE GEORGE RIMES TRUCKING COMPANY, INC., 404 Washington St., Chardon, OH 44024. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215; (216) 228–1541. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), (B) over regular routes, (31) Between junction OH Hwys 45 and 307, and Leon, OH: From junction OH Hwys 45 and 307 over OH Hwy 307 to junction unnumbered hwy, then over unnumbered hwy to Leon, OH, and return over the same route; (40) Between junction OH Hwys 45 and 88, and junction OH Hwys 7 and 88, over OH Hwy 88; (41) Between junction U.S. Hwy 422 and OH Hwy 88, and junction HO Hwys 14 and 88, over OH Hwy 88; (42) Between junction OH Hwy 44 and U.S. Hwy 422, and Parkman, OH, over OH Hwy 422; (45) Between junction OH Hwys 84 and 193, and junction OH Hwys 88 and 193, over OH Hwy 193; (46) Between junction OH Hwys 84 and 7, and junction OH Hwys 87 and 7, over OH Hwy 7; (61) Between junction OH Hwys 88 and 193, and junction OH Hwys 305 and 193, over OH Hwy 193; (73) Between junction OH Hwys 528 and 84, and junction Narrows Rd. and OH Hwy 84: From junction OH Hwys 528 and 84 over OH Hwy 84 to junction Lane Rd., then over Lane Rd. to junction Narrows Rd., then over Narrows Rd. to junction OH Hwy 84, and return over the same route; and (74) Between junction Lane Rd. and Shepherd Rd., and junction Shepherd Rd. and OH Hwy 84, over Shepherd, Rd.

Note.—This partial republication corrects the route descriptions.

For the following, please direct the status inquiries to Team 4 at 202–275–7669.

Volume No. OP4–346

Decided: September 28, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 117416 (Sub-73), filed September 21, 1982. Applicant: NEWMAN AND PEMBERTON CORPORATION, 2007 University Ave., NW., Knoxville, TN 37921. Representative: Herbert Alan Dubin, 818 Connecticut Ave., NW., Washington, DC 20006; (202) 331–3700. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 119626 (Sub-13), filed September 16, 1982. Applicant: ILL-PAC. COAST TRANSPORTATION CO., 1601 Market St., Madison, IL 62060. Representative: E.B. Roling (same address as applicant) (618) 452–6177. Transporting *pyroxlin plastics and pyroxlin plastic products,* between points in Riverside County, CA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 146787 (Sub-10), filed September 8, 1982. Applicant: ALBAUGH FARMS TRUCKING CORPORATION, 1306 Wayne St., Des Moines, IA 50316. Representative: Thomas E. Leahy, Jr., 1980 Financial Ctr., Des Moines, IA 50309; (515) 245–4300. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Dico Company, Inc., of Des Moines, IA, and Albaugh Chemical Corporation, of Ankeny, IA.

MC 154907 (Sub-6), filed September 20, 1982. Applicant: THE BUCK COMPANY, 631 W. Cherry, Wayland, MI 49348. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503; (616) 459–6121. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Faribault Canning Company, of Faribault, MN; Hastings Manufacturing Company, of Hastings, MI; L. Perrigo Co., of Allegan, MI; United Biscuit Company of America, of Grand Rapids, MI; and Mid-Michigan Freight Brokers, Inc., of Portland, MI.

MC 163137 (Sub-1), filed September 16, 1982. Applicant: CABLE TRUCKING SERVICE, Highway 69 Bypass South, McAlester, OK 74501. Representative: Lew Gravitt, P.O. Box 53567, Oklahoma City, OK 73152; (405) 524–2268. Transporting (1) *Mercer commodities,* (2) *coal,* and (3), *sand, rock and gravel,* between points in Pittsburg County, OK, and those in TX, LA, and KS.

MC 163217, filed September 20, 1982. Applicant: KAETS TRANSPORT, INC., 711 Vandalia St., St. Paul, MN 55114. Representative: Stanley C. Olsen, Jr., 5200 Willson Rd., Suite 307, Edina, MN 55424; (612) 927–8855. Transporting *food and related products,* between points in MN, and Adams County, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 163337 (Sub-1), filed September 20, 1982. Applicant: ALBA BLAIR d.b.a. ALBA BLAIR TRUCKING, 107 Holly Dr., Roland, OK 74954. Representative: Jack L. Schiller, 123–60 83rd Ave., Kew Gardens, NY 11415; (212) 263–2078. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Taber, Inc. of Russellville, AR.

MC 163786, filed September 10, 1982. Applicant: SEA-PORT TRUCKING, INC., 9833 40th Ave., S. Seattle, WA 98118. Representative: Bill Hughes, 415 W. 6th St., Vancouver, WA 98666; (206) 694–8061. Transporting *general commodities* (except classes A and B explosive, household goods, and commodities in bulk), between points in WA, OR, ID, MT, CA, NV, UT, AZ, and AK. CONDITION: The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application under 49 U.S.C. 11343(A) or submit an affidavit indicating why such approval is unnecessary to the Secretary's office. In order to expedite issuance of any authority please submit a copy of the affidavit or proof of filing the application(s) for common control to Team Four, Room 2410.

MC 163907, filed September 17, 1982. Applicant: TRI-CONTINENTAL INDUSTRIES, INC., 1325 Kenilworth Ave., NE., Washington, D.C. 20019. Representative: Edward J. Kiley, 1730 M St., NW, Suite 501, Washington, D.C. 20036; (202) 296–2900. Transporting *commodities in bulk,* between points in DE, DC, MD, NC, and VA, points in Gloucester, Camden, Burlington, Mercer Monmouth, Middlesex, Union, Essex, Hudson, Bergen and Passaic Counties, NJ, those points in PA in and east of Tioga, Lycoming, Union, Snyder, Juniata, Perry, Cumberland, and Adams Counties, PA, and New York, NY.

MC 163917, filed September 20, 1982. Applicant: RUSSELL OTTOMEIER, North 6821 Regal, Spokane, WA 99207. Representative: Russell Ottomeier (same address as applicant) (509) 487–4024. Transporting *general commodities*, (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with P.C.R. Truck Brokerage of Newman Lake, WA.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–27392 Filed 10–4–82; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Proposed Consent Decree in Action to Enforce the Clean Water Act and the Resource Conservation and Recovery Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on September 22, 1982, a proposed consent decree in *United States* v. *Fike Chemicals, Inc., C.S.T., Inc. and Coastal Tank Lines, Inc.*, No. 80–2497, was lodged with the United States District Court for the Southern District of West Virginia. The proposed decree provides for settlement of a suit under the Clean Water Act and the Resource Conservation and Recovery Act concerning the defendants' facilities in Nitro, West Virginia. The proposed decree requires that the defendants remedy soil and groundwater contamination on and beneath their plant sites and pay stipulated penalties in the event of a breach of the terms of the consent decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this notice, written 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. *Fike Chemicals, Inc., C.S.T., Inc. and Coastal Tank Lines, Inc.*, D.J. Ref. No. 90–7–1–123.

A proposed consent decree may be examined at the office of the United States Attorney, Southern District of West Virginia, 500 Quarrier Street, Charleston, West Virginia 25332; at the Region III Office of the United States Environmental Protection Agency, Office of Regional Counsel, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106; and the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, 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 the proposed consent decree please send a check or money order in the amount of $2.30 (10 cents per page reproduction charge) made payable to the Treasurer of the United States.

Carol E. Dinkins,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 82–27322 Filed 10–4–82; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 11, 1982, and published in the **Federal Register** on June 18, 1982, (47 FR 26474), Ganes Chemicals, Inc., Lessee of Siegfried Chemical, Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Dextropropoxphene (9273)	II

No comments or objections having been received and pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations § 1301.54(e), the Acting Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: September 28, 1982.

Francis M. Mullen, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 82–27299 Filed 10–4–82; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 11, 1982, and published in the **Federal Register** on June 18, 1982; (47 FR 26474), Western Fher Laboratories, Inc., Carretera 132, KM. 25.3, P.O. Box 7468, Ponce, Puerto Rico 00732, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Phenmetrazine (1630), a basic class of controlled substance listed in Schedule II.

No comments or objections having been received and pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations § 1301.54(e) the Acting Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: September 28, 1982.

Francis M. Mullen, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 82–27300 Filed 10–4–82; 8:45 am]

BILLING CODE 4410–09–M

SMALL BUSINESS ADMINISTRATION

Presidential Advisory Committee on Small and Minority Business Ownership; Public Meeting

The Presidential Advisory Committee on Small and Minority Business Ownership, located in Washington, D.C., will hold a public meeting at 9:00 a.m. until 5:00 p.m., Monday, October 18, 1982, at the Hyatt Regency Hotel, The Curtis Room, 122 North Second Street, Phoenix, Arizona 85004, to discuss such business as may be presented by the Committee members. The meeting will be open to the interested public, however, space is limited.

Persons wishing to present written statements should notify Mr. Joseph J. Luna, Director, Office of Capital Ownership Development, Small Business Administration, Room 317, 1441 L Street, NW., Washington, D.C. 20416, (202) 653–6475, in writing or by telephone no later than October 13, 1982.

Dated: September 29, 1982.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

[FR Doc. 82–27362 Filed 10–4–82; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan No. 2065]

Tennessee; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration, I find that the County of Gibson and the adjacent County of Carroll in the State of Tennessee constitute a disaster area

because of damage resulting from severe storms and flooding beginning on September 12, 1982. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on November 22, 1982, and for economic injury until the close of business on June 22, 1983, at: Small Business Administration, 211 Federal Office Building, 167 North Main Street, Memphis, Tennessee 38103, or other locally announced locations.

Interest rates for applicants filing for assistance under this declaration are as follows:

Homeowners with credit available elsewhere—14¾ percent
Homeowners without credit available elsewhere—7⅜ percent
Businesses with credit available elsewhere—13½ percent
Businesses without credit available elsewhere—8 percent
Businesses (EIDL) without credit available elsewhere—8 percent
Other (non-profit organizations including charitable and religious organizations)—11½ percent

It should be noted that assistance for agriculture enterprises is the primary responsibility of the Farmers Home Administration as specified in Pub. L. 96–302.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Dated: September 23, 1982.

Robert B. Webber,

Acting Administrator.

[FR Doc. 82–27363 Filed 10–4–82; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice CM–8/559]

Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on October 20, 1982 at 10:00 a.m. in Room 856 of the Federal Communications Commission, 1919 M Street, NW., Washington, D.C. This Study Group deals with U.S. Government aspects of international telegram and telephone operations and tariffs.

The Study Group will discuss international telecommunications questions relating to telegraph, telex, new record services, data transmission and leased channel services in order to develop U.S. positions to be taken at upcoming international Study Groups I and III meetings.

Members of the general public may attend the meeting subject to the instruction of the Chairman. Admittance of public members will be limited to the seating available. Requests for further information should be directed to Earl S. Barbely, Conference Staff, Federal Communications Commission, Washington, D.C., telephone (202) 632–3214.

Dated: September 14, 1982.

Gordon L. Huffcutt,

Acting Director, Office of International Communications Policy.

[FR Doc. 82–27324 Filed 10–4–82; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–8/560]

Study Group 7 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 7 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on October 22, 1982 at the U.S. Naval Observatory, Room 300, Building 52, 34th and Massachusetts Avenue, NW., Washington, D.C. The meeting will begin at 8:30 a.m.

Study Group 7 deals with time-signal services by means of radiocommunications. The purpose of the meeting is to review the progress of work in preparation for the international Study Group 7 meeting to be held in November 1983.

Members of the general public may attend the meeting and join in the discussions subject to the instruction of the Chairman. Requests for further information should be directed to Mr. Gordon Huffcutt, State Department, Washington, D.C. 20520, (telephone (202) 632–2592).

Dated: September 17, 1982.

Gordon L. Huffcutt,

Chairman, U.S. CCIR National Committee.

[FR Doc. 82–27325 Filed 10–4–82; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 82–183; Customs Delegation Order No. 65]

Customs Establishes Order of Succession of Persons To Act as Commissioner of Customs

By virtue of the authority vested in me by Treasury Department Order No. 129, Revision No. 2, dated April 22, 1955, (20 FR 2875), it is hereby ordered that the following officers of the U.S. Customs Service, in the order of succession enumerated, shall act as Commissioner of Customs, in the event of an enemy attack or during the absence or disability of the Commissioner of Customs, or when there is a vacancy in such office:

1. The Deputy Commissioner of Customs.
2. The Assistant Commissioner (Enforcement).
3. The Assistant Commissioner (Inspection and Control).
4. The Assistant Commissioner (Commercial Operations).
5. The Deputy Commissioner of Customs for International Affairs.
6. The Comptroller.
7. The Assistant Commissioner (Internal Affairs).

By virtue of authority vested in me by said Treasury Department Order No. 129 (Revision No. 2), and Treasury Department Order No. 165, Revised (T.D. 53654, 19 FR 7241) there is hereby delegated to the Regional Commissioners of Customs, District Directors of Customs, and Port Directors of Customs, in the event of an enemy attack on the continental United States, authority to perform any function of the Commissioner of Customs which is necessary to insure continuous performance of essential functions otherwise assigned to such officers. This delegation of authority will remain in effect until notice has been received from proper authority that it has been terminated.

This order supersedes Customs Delegation Order No. 63, dated September 15, 1981, (T.D. 81–250, 46 FR 46738).

Dated: September 28, 1982.

William von Raab,

Commissioner of Customs.

[FR Doc. 82–27375 Filed 10–4–82; 8:45 am]

BILLING CODE 4820–02–M

VETERANS ADMINISTRATION

Career Development Committee; Meeting

The Veterans Administration gives notice under the provisions of Pub. L. 92–463 that a meeting of the Career Development Committee, authorized by 38 U.S.C. 4101, will be held in the Assembly Room of the Hotel Washington, 15th Street and Pennsylvania Avenue, NW., Washington, DC 20004, October 25 and 26, 1982 at 8:30 a.m. The meeting will be for the purpose of scientific review of applications for appointment to the Career Development Program in the Veterans Administration. The committee advises the Director, Medical Research Service on selection and appointment of Associate Investigators, Research Associates, Clinical Investigators, Medical Investigators, Senior Medical Investigators and William S. Middleton Award Nominees.

The meeting will be open to the public up to the seating capacity of the room from 8:30 a.m. to 9 a.m. to discuss the general status of the program. Because of the limited seating capacity of the room, those who plan to attend should contact Mr. David D. Thomas, Executive Secretary of the Career Development Committee (151J), Veterans Administration Central Office, Washington, DC 20420 (Phone 202–389–2317) prior to October 15, 1982.

The meeting will be closed from 9 a.m. to 5 p.m. on October 25 and 26 for consideration of individual applications for positions in the Career Development Program. This necessarily requires examination of personnel files and discussion and evaluation of the qualifications, competence, and potential of the several candidates, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. In addition, decisions recommended by the committee are strictly advisory in nature; other factors are considered in final decisions. Premature disclosure of committee recommendations as well as the disclosure of research information would be likely to significantly frustrate implementation of final proposed agency actions. Accordingly, closure of this portion of the meeting is permitted by section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463 as amended, in accordance with subsections (c)(6) and (c)9(B), 5 U.S.C. 552b.

Minutes of the meeting and rosters of the committee members may be obtained from Mr. David D. Thomas, Chief, Career Development Program, Medical Research Service (151J), Veterans Administration, Washington, DC 20420 (Phone 202–389–2317).

Dated: September 27, 1982.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 82–27401 Filed 10–4–82; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 193
Tuesday, October 5, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10 a.m., Thursday, October 7, 1982.

LOCATION: Third floor hearing room, 1111 18th Street, N.W., Washington, DC.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Flymo Power Mower Petition CP 82-4
The staff will brief the Commission on issues related to a petition from Flymo, Inc. which requests an exemption for gasoline-fueled, air cushion mowers from the requirements of certain sections of the Safety Standard for Walk-Behind Power Lawn Mowers, 16 CFR Part 1205.

Closed to the Public:

2. Compliance Status Report
The staff will brief the Commission on the status of various compliance activities.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Deputy Secretary, Office of the Secretary, Room 342, 5401 Westbard Avenue, Bethesda, MD, (301) 492-6800.

[S-1414-82 Filed 10-1-82; 10:53 am]

BILLING CODE 6355-01-M

2

FEDERAL COMMUNICATIONS COMMISSION

Open Commission Meeting, Wednesday, October 6, 1982.

September 29, 1982.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, October 6, 1982, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Agenda, Item No., and Subject

Common Carrier—1—*Title:* Immediate Revision to Section 61.38 of the Commission Rules, specifying support materials required with tariff transmittals. *Summary:* Commission will consider revisions in Section 61.38 of its Rules and Regulations, which governs cost support materials required to be submitted with tariff transmittals.

Common Carrier—2—*Title:* American Telephone and Telegraph Company Revisions to Tariff F.C.C. No. 259, Wide Area Telecommunications Service (WATS) (CC Docket No. 80-765). *Summary:* The Commission wil consider and clarify the effect of *Ad Hoc Telecommunications Users Committee v. F.C.C.*, 680 F.2d 790 (D.C. Cir. 1982) on the recently instituted second phase of its investigation into American Telephone and Telegraph Company's WATS tariff.

Common Carrier—3—*Title:* In the Matter of MCI Telecommunications Corporation Refusal To Pay Certain Charges for Exchange Network Facilities Used for Interstate Access (CC Docket No. 82-619). *Summary:* The Commission will consider an emergency petition filed by AT&T asking for a ruling declaring: (1) That MCI's usage of local exchange facilities in providing interstate MTS/WATS-type services is governed by the BSOC 8 tariff (except for resale of MTS and WATS), whether or not such services involve use of facilities leased from other carriers and (2) that MCI's failure to make payments required by the tariff is unlawful.

Cable Television—1—"Petition for Special Relief" (CSR-1215) filed by Four States Television, Inc., licensee of Station KIVA-TV (NBC, Channel 12) Farmington, New Mexico. The petitioner has requested a waiver of § 76.92 of the Commission's Rules to maintain same day network nonduplication protection.

Cable Television—2—*Title:* Notice of Apparent Liability Against Sonic Cable TV. *Summary:* Proposed Notice of Apparent Liability against Sonic Cable TV for violations of §§ 76.605(a)(12) and 76.613(b)(2) of the Commission's Rules.

Al & TC—1—*Title:* (1) Application for the voluntary assignment of license of station WREN(AM), Topeka, Kansas, from WREN Broadcasting Company, Inc. (BAL-820716FS); and (2) Request of Radio Station WREN Company, Inc., for a waiver of § 73.35(a) of the Commission's Rules, the "duopoly" rule, which prohibits 1 mV/m signal contour overlap between commonly-owned AM stations. *Summary:* The Commission will consider whether an overlap of the 1 mV/m signal contours of WREN(AM), Topeka, Kansas, and KFH(AM), Wichita, Kansas, is *de minimis*, and thus justifies a waiver of the Commission's AM duopoly rule.

Renewal—1—*Title:* License Renewal Application of Provident Broadcasting Company for Station WQCK(FM), Manchester, Georgia. *Summary:* The East Central Alabama-West Central Georgia Minority Christian Broadcast Coalition filed a petition to deny alleging that licensee's programming does not serve the needs and interests of the local minority population and that licensee's employment practices regarding minorities do not comply with the Commission's EEO rules and policies. The Commission considers petitioner's allegations.

Aural—1—*Title:* Petition for reconsideration of a staff action disapproving a buy-out agreement, without republication, filed by Mobile Broadcasting Service, Inc. and MBB, Incorporated. *Summary:* The Commission will consider the request of Mobile Broadcasting Service, Inc. and MBB, Incorporated for approval of a buy-out agreement, without republication, in which MBB would receive its legitimate and prudent expenses and its application would be dismissed.

Aural—2—*Title:* Application for review of action of Broadcast Bureau granting request of Mountain View Broadcasting Corporation, permittee of new FM Station KWOZ, Mountain View, Arkansas, for waiver of § 73.1130(a) of the Rules. *Summary:* KWOZ requested a waiver to permit it to originate a majority of its programming from an auxiliary studio to be established in Batesville, Arkansas. Biard Communications, Inc. filed an informal objection against the request. The Biard objection was dismissed by the Broadcast Bureau, and the KWOZ request was subsequently granted. Biard Communications filed the instant application for review.

Broadcast—1—*Title:* Amendment of § 73.202(b) of the Commission's Rules with respect to the deletion of Channel 252A from Clarksville, Virginia. (RM-3715.) *Summary:* The Commission will consider an application for review in the above-captioned proceeding.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: September 29, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S-1417-82 Filed 10-1-82; 11:12 am]

BILLING CODE 6712-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:00 p.m. on Wednesday, September 29, 1982, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider a recommendation regarding the request of First Gulf Beach Bank and Trust Company, St. Petersburg Beach, Florida, for reconsideration of a previous denial of its application for consent to purchase the assets of and to assume the liability to pay deposits made in First Bank and Trust Company, Belleair Bluffs, Florida, and for consent to establish the three offices of First Bank and Trust Company as branches of the resultant bank.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Chairman's office, Room 6023, of the FDIC Building located at 550 17th Street, NW., Washington, D.C.

Dated: October 1, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1419-82 Filed 10-1-82; 12:19 pm]

BILLING CODE 6714-01-M

4

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 43485, Friday, October 1, 1982.

PLACE: Board room, sixth floor, 1700 G Street, N.W., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Lockwood (202-377-6679).

CHANGES IN THE MEETING: The following item has been added to the open portion of the Bank Board meeting scheduled Wednesday, October 6, 1982.

Examination Fees and Assessments

[No. 66, October 1, 1982]

[S-1416-82 Filed 10-1-82; 11:07 am]

BILLING CODE 6720-01-M

5

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 43485, Friday, October 6, 1982.

PLACE: Board room, sixth floor, 1700 G Street, N.W., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Lockwood (202-377-6679).

CHANGES IN THE MEETING: The following item has been added to the open portion of the Bank Board meeting scheduled Wednesday, October 6, 1982.

Interstate Institution Membership in Federal Home Loan Banks

[No. 67, October 1, 1982]

[S-1415-82 Filed 10-1-82; 11:04 am]

BILLING CODE 6720-01-M

6

INTERNATIONAL TRADE COMMISSION

[USITC SE-82-42]

TIME AND DATE: 10 a.m., Friday, October 15, 1982.

PLACE: ROOM 331, 701 E STREET, N.W. WASHINGTON, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Investigations 701-TA-86/128 (Final) (Certain Carbon Steel Products from Belgium, Brazil, France, Italy, Luxembourg, the United Kingdom, and the Federal Republic of Germany) — briefing and vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-1420-82 Filed 10-1-82; 3:14 pm]

BILLNG CODE 7020-02-M

7

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-82-22]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 40977, September 16, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m., Wednesday, September 22, 1982.

CHANGE IN MEETING: A majority of the Board determined by recorded vote that the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. The following additional item was considered in open session.

MATTERS TO BE CONSIDERED:

9. *Recommendations* to the District of Columbia Department of Transportation on Highway Tunnel Safety.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming, (202)382-6525.

September 30, 1982.

[S-1418-82 Filed 10-1-82; 11:23 am]

BILLNG CODE 4910-58-M

8

NUCLEAR REGULATORY COMMISSION

DATE: Thursday, September 30, 1982.

PLACE: Commissioners' Conference Room, 1717 H Street, N.W., Washington, D.C.

STATUS: Closed.

MATTERS TO BE DISCUSSED: Thursday, September 30:

9:00 a.m.:

Discussion of Pending Investigation (Closed—Exemptions 5 and 7)

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634-1498. Those planning to attend a meeting should reverify the status on the date of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634-1410.

September 30, 1982.

Walter Magee,

Office of the Secretary.

[S-1421-82 Filed 10-1-82; 3:59 pm]

BILLING CODE 7590-01-M

federal register

Tuesday
October 5, 1982

Part II

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Statistical Standards for Evaluating Intermediary Performance During Fiscal Year 1982

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Medicare Program; Statistical Standards for Evaluating Intermediary Performance During Fiscal Year 1982

AGENCY: Health Care Financing Administrative (HCFA), HHS.

ACTION: General notice with comment period.

SUMMARY: This is HCFAs annual notice containing statistical standards to be used for evaluating the performance of fiscal intermediaries in the administration of the Medicare program for fiscal year 1982. The standards were developed from available statistical data contained in routine intermediary reports and consists of measures of timeliness and of cost of an intermediary's Medicare operations. The results of the evaluations are considered whenever we make, renew or terminate an intermediary agreement; assign or reassing providers of services to an intermediary; or designate regional or national intermediaries.

We are publishing this notice in final form in order to avoid delay in the use of the standards in fiscal year 1982 evaluations. However, we will accept the comments of interested parties and consider them as we develop future standards.

EFFECTIVE DATE: October 5, 1982. To assure consideration, comments should be received by November 4, 1982.

ADDRESSES: Address comments in writing to: Administrator, Department of Health and Human Services, Health Care Financing Administration, P.O. Box 17073, Baltimore, Maryland 21235.

If you prefer, you may deliver your comments to Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., S.W., Washington, D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to BPO–19–GNC.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication, in Room 309–G of the Department's office at 200 Independence Ave., S.W., Washington, D.C., 20201 on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–7890).

FOR FURTHER INFORMATION CONTACT: Newton Dikoff, 301–594–8190.

SUPPLEMENTARY INFORMATION:

Background

Under section 1816 of the Social Security Act, public or private organizations and agencies may participate in the administration of Part A (Hospital Insurance) of the Medicare program under contract with the Secretary. These agencies or organizations are known as fiscal intermediaries, and they perform bill processing and benefit payment functions. Providers of services (hospitals, skilled nursing facilities and home health agencies) submit bills to these intermediaries, who determine whether the services are covered under Medicare and determine proper reimbursement. The intermediaries both issue payments to the providers and undertake audits and other cost settlement acitivities.

We evaluate the performance of intermediaries annually using performance criteria contained in 42 CFR 421.120 and statistical standards published in accordance with 42 CFR 421.122. The evaluation itself is a two-step process. The first step involves evaluation in terms of performance criteria. The performance criteria measure areas of bill processing, provider reimbursement, beneficiary services, fiscal management, and general administration. The second step of the evaluation process is based on the statistical standards contained in this notice. We may initiate administrative actions as a result of the evaluation of intermediary performance under these performance criteria and statistical standards.

We consider the results of the evaluation in any determinations we make concerning—

- Making, renewing or terminating agreements with intermediaries;
- Assigning or reassigning providers to intermediaries; and
- Designating regional or national intermediaries for classes of providers.

Statistical Standards

42 CFR 421.122 provides for the use of statistical standards in the categories of timeliness and cost for evaluating intermediary performance. We will use the standards in the notice to evaluate performance during the Federal Government's fiscal year 1982 (October 1, 1981 through September 30, 1982). Performance will be measured in three major areas: unit cost of bill processing, timeliness of bill processing, and timeliness of settling provider cost reports. We will continue to evaluate the overall "quality" of intermediary performance for fiscal year 1982 by the performance criteria listed in 42 CFR 421.120.

A. Scoring System

We will measure each of three major areas (unit cost, timeliness of bill processing, and timeliness of provider cost report settlement) individually, as we did in fiscal year 1981. A starting score of 100 will be assigned to each of the three areas, and we will subtract points from the starting score for intermediary performance that does not meet the levels set by the standards. This method of assessment of points will allow for an equitable comparison of intermediary performance because intermediaries that are similar in performance will have similar scores.

An intermediary must achieve a score of 75 points in each of the major areas to pass. If an initial score of 75 or better is attained in a statistical area, bonus points will be awarded for levels of performance exceeding the standards. Failure to achieve a minimum score of 75 in any of the three statistical areas will result in an overall assessment of unsatisfactory performance for the statistical standards phase of the evaluation process.

To promote the best possible performance, we set all of the statistical standards at levels of achievement reached by 50 percent of the intermediaries in prior years. However, the minimum passing score of 75 points is representative of the level of achievement reached by 85 to 90 percent of the intermediaries and is intended to identify inefficient intermediaries. In addition, the processing time standards have been further relaxed by an average of five processing days in compliance with initiatives to reduce intermediary administrative expenditures.

B. Use of Weights

The three major areas collectively contain 15 standards by which each intermediary will be evaluated in fiscal year 1982 (see Attachment A). We assigned each of the 15 standards a weight between 0 and 1, and we will multiply points received in any of these standards by the weight of the standards before we apply them to the starting score. We will use the bonus point concept in the standards to provide an incentive to the intermediaries to exceed the standards as much as possible. Because there is only one standard in the unit cost area, it has been assigned a weight of one. In the other statistical areas, the individual standards carry weights according to their relative importance within the statistical area to beneficiaries.

providers, and governmental record-keeping requirements. We derived these weights on the basis of our experience in the billing process and after consultation with the intermediary community.

There are 8 standards in the area of bill processing timeliness: 2 each for inpatient hospital, outpatient hospital, skilled nursing facility (SNF), and home health agency (HHA) bills. We assigned relatively equal weights to the standards for each type of bill because we believe each is equally important. We set the standards at different levels for each type of bill to reflect the varying difficulties of processing each type of bill and the actual achievements reached by intermediaries in these areas. All 8 standards are based on a level of achievement reached by about 50 percent of the intermediaries, and all have been given a weight between 0 and 1.

There are 6 standards in the area of cost report settlement timeliness: 2 each for hospitals, SNFs, and HHAs. We assigned relatively equal weights to the SNF and HHA cost report standards, and slightly higher weights to the hospital cost report standards. The variations reflect the relative importance of each standard to the effective and efficient administration of the Medicare program. As with bill processing, standards were set at different levels for different types of cost reports to reflect the varying difficulties encountered by intermediaries in processing each type and the actual achievements reached by intermediaries in these areas. All 6 standards are based on a level of achievement reached by about 50 percent of the intermediaries, and all have been given a weight between 0 and 1. The following sections explain each standard in detail.

C. Unit Cost Elements

We based the standard for unit cost of bill processing on fiscal year 1980 data adjusted to reflect the effect of inflation and increased productivity estimated to occur through fiscal year 1982. These estimates are based on fiscal year 1982 budgets submitted by intermediaries. Intermediaries routinely take productivity and inflation factors into account when submitting their budgets. In the calculation of unit cost per bill, we define the numerator "cost" as the intermediary's Medicade fiscal year 1982 administrative costs. These costs exclude nonrecurring costs and costs related to provider reimbursement, provider audit, Professional Standards Review Organization (PSRO) and Health Maintenance Organization (HMO) activities, and State premium taxes, where applicable. For Blue Cross Plans, the numerator includes a share of Blue Cross Association administrative support costs. These data will be derived from the final Interim Expenditure Report (Form HCFA–1527) filed for fiscal year 1982. We define the denominator "bill" as the intermediary's total number of processed bills for fiscal year 1982 as correctly reported on its Intermediary Workload Report (Form HCFA–1566).

D. Adjustments to Unit Cost

We developed a formula using multiple regression analysis to adjust the intermediary's unit cost for significant measurable factors that are not within the intermediary's control in order to allow for a more equitable comparison with the standard. Regression analysis is a statistical tool that is used to identify variables (such as differing salary levels between geographic areas) that impact significantly upon a given measure (such as unit cost) and to quantify the extent of such impact. In studying Medicare Part A unit costs, we used this method to examine several hundred variables with potential impact upon unit costs. The regression analysis identified two of these factors as being significant: a geographical salary index and a weighted ratio of inpatient, SNF, HHA, and "other" bills to the total bills processed (see below for further definitions of these factors). Both factors were determined to be beyond the control of the intermediaries.

Using the formula we developed, we will adjust each intermediary's unit cost for fiscal year 1982 for the effect of noncontrollable factors V_1 and V_2 as follows:

$$\text{Adjusted Unit Cost Per Bill} = (\text{Unit Cost Per Bill}) - 2.91 \times (V_1 \times 1.00) - 3.08 \times (V_2 - .478).$$

The intermediary's values for the noncontrollable variables are defined as follows:

V_1 = An index value based on Life Office Management Association (LOMA) data on average starting salaries for clerk-typists employed by the insurance industry in 1980 (see Attachment C);

V_2 = A Weighted Ratio of Inpatient Hospital, Skilled Nursing Facility, Home Health Agency and "Other" (Column vi of the Intermediary Workload Report) Bills Processed to Total Bills Processed (based on fiscal year 1981 bills processed data reported on the Intermediary Workload Report).

The weighted Ratio (V_2) is calculated as follows:

$$V_2 = \frac{\text{Inpatient} + \text{"Other"} + 1.4 \times (\text{SNF} + \text{HHA})}{\text{Total Bills Processed}}$$

E. Timeliness of Bill Processing

For the bill processing timeless standards, we define the processing period as the length of time in calendar days from the date of receipt of the bill by the intermediary to the date the intermediary processes the bill to completion. We determine the percent of bills processed within a specific time frame as follows. Using the universe of bills processed by the intermediary during fiscal year 1982 and required to be sent to HCFA, we will divide the number of bills sent to us within the specified time period by the total number of bills processed and then multiply the result by 100.

Our analyses show that the major factor outside the intermediaries' control that affects bill processing timeless is the proportion of bills by type. Therefore, instead of trying to adjust a single set of standards for a predetermined mix of bills that may not be controlled, we have established standards for each type of bill according to the following definitions:

- Inpatient hospital bills—HCFA–1453 forms submitted by hospitals.
- Skilled Nursing Facility bills—HCFA–1453 forms submitted by SNFs.
- Home Health Agency bills—HCFA–1487 forms submitted by HHAs.
- Outpatient bills—HCFA–1483 forms (Provider Billing for Medical and Other Health Services) submitted by all types of providers.

F. Timeliness of Provider Cost Report Settlement

There are two measures of timeless of provider cost report settlement for each type of provider. The first is the percentage of provider cost reports with provider accounting fiscal years ending during the Federal Government's prior fiscal year that are settled by the end of the Federal Government's current fiscal year (percent of fiscal year 1981 cost reports settled by the end of fiscal year 1982). The second is the percentage of cost reports with provider accounting fiscal years ending during the Federal Government's fiscal year 1980 that are settled by the end of the Federal Government's current fiscal year (percent of fiscal year 1980 cost reports settled by the end of fiscal year 1982).

Analyses reveal the major noncontrollable factor affecting provider cost report settlement timeless is the proportion of providers by type. We take this factor into account by setting standards for each type of provider.

The cost report fiscal year ending date determines the amount of time available to the intermediary for processing the

cost report. Because of this, we developed a formula to adjust intermediaries' actual performance in this area for the noncontrollable factor of cost report fiscal year ending dates in fiscal year 1981. However, adjustments for fiscal year 1980 cost reports were not indicated because of the mitigating effect of the extra length of time.

We calculate the adjusted percentage of fiscal year 1981 cost reports settled by the end of fiscal year 1982 for each type of provider by multiplying the intermediary's actual percentage of settled fiscal year 1981 cost reports by its adjustment factor. The adjustment factor is the ratio of 100 percent to a weighted average of the percentage of cost reports with ending dates during each quarter of fiscal year 1981:

Adjustment factor (hospitals) = 100.0 divided by [(percentage of hospital cost reports with ending dates in October-December 1980 + (.875 × percentage of hospital cost reports with ending dates in January-March 1981) + (.75 × percentage of hospital costs reports with ending dates in April-June 1981 + (.625 × percentage of hospital cost reports with ending dates in July-September 1981)].

We compute the adjustment factors for SNF cost reports and HHA cost reports the same way, except that we use SNF and HHA cost report data, respectively, instead of hospital cost report data. An example might be as follows: an intermediary settles 33.3 percent of its fiscal year 1981 HHA cost reports by the end of the fiscal year 1982 and has the following distribution of HHA cost report ending dates:

October–December 1980—0 percent
January–March 1981—0 percent
April–June 1981—100 percent
July–September 1981—0 percent

Applying the above formula to these percentages, the adjustment factor for this example is 1.33 and the intermediary's adjusted percentage of fiscal year 1981 HHA cost reports settled is 44.4 percent.

G. Scoring

We will evaluate each intermediary with respect to the 15 standards in fiscal year 1982. As previously explained, each of the three major statistical areas (unit cost of bill processing, timeliness of bill processing, and timeliness of provider cost report settlement) will be evaluated individually. There is one standard for unit cost, 8 for bill processing timeliness, and 6 for the timeliness of provider cost report settlements. Unsatisfactory performance in any of the three major statistical areas will result in an overall assessment of unsatisfactory performance for the statistical standards.

The starting score for each of the three statistical areas is 100 points. Each individual standard has a formula used to calculate points based on the intermediaries' performance for that standard. In addition, each standard carries a weight between 0 and 1 relative to its importance within its statistical area. The calculated points are multiplied by that weight before being applied to the starting score. Attachment A lists the standards for fiscal year 1982, the point scoring formulas for the standards, and each standard's weight.

If an intermediary exactly meets each of the standards within a statistical area, it will achieve the starting score of 100 points. For performance better or worse than the set standards, the point scoring formulas and the standards' weights will be used to substract points or establish potential bonus points for the statistical areas. For performance below the standard, calculated points (after multiplying by the weight) are subtracted from the starting score of 100. An intermediary with a score of 74 or less is performing unsatisfactorily in the statistical area and is not eligible for bonus points in that area. The use of bonus points is intended to help further distinguish between various levels of acceptable performance by intermediaries whose overall performance in an area is passing. We will not use bonus points in an area to help an intermediary whose performance does not achieve a passing score in that area. An intermediary that acquires 75 or more points is then eligible to accomulate bonus points. An intermediary can possibly accumulate more than 100 points in any of the statistical areas. Attachment B contains examples of how the scoring will be accomplished.

We intend the scoring methodology to provide incentives to intermediaries to perform as well as possible. The graded assessment of points for performance below a standard will allow HCFA to distinguish more easily between various levels of deficient performance in order to determine whether and to what extent adverse action should be taken. The bonus points will make it easier to distinguish between various levels of acceptable performance as one consideration in the awarding of future contracts.

Attachment C is a table showing the salary indices (variable V_i in the cost adjustment formula) for current intermediaries. With this information and the definitions provided above, intermediaries should be able to track their individual performance with respect to the standard for the adjusted unit cost per bill. In addition, throughout the evaluation period, HCFA will provide intermediaries with information on their performance relative to each of the 15 standards in Attachment A.

ATTACHMENT A.—STATISTICAL STANDARDS AND RELATIVE POINTS FOR EVALUATING MEDICARE INTERMEDIARIES FOR FISCAL YEAR 1982

Area	Standard	Scoring formula [1]	Weight
	Weight		
Unit cost of bill processing: 1. Average adjusted unit cost per bill	$4.00	62.5 ($4.00—PERF)	1.00
Timeliness of Bill Processing:			
1. Inpatient—Percent processed in 30 days	76.0	1.5 (PERF—76.0)	.15
2. Inpatient—Percent processed in 60 days	90.0	4.0 (PERF—90.0)	.10
3. Outpatient—Percent processed in 30 days	73.0	1.0 (PERF—73.0)	.15
4. Outpatient—Percent processed in 60 days	90.0	4.0 (PERF—90.0)	.10
5. SNF—Percent processed in 30 days	67.5	1.0 (PERF—67.5)	.15
6. SNF—Percent processed in 60 days	87.5	2.0 (PERF—87.5)	.10
7. HHA—Percent processed in 30 days	68.0	1.0 (PERF—68.0)	.15
8. HHA—Percent processed in 60 days	87.5	3.0 (PERF—87.5)	.10
Timeliness of cost report settlement: [2]			
1. Hospital—Percent of fiscal year 1981 cost reports settled by end of fiscal year 1982	88.0	0.7 (PERF—88.0)	.25
2. Hospital—Percent of fiscal year 1980 cost reports settled by end of fiscal year 1982	100.0	4.0 (PERF—100.0)	.15
3. SNF—Percent of fiscal year 1981 cost reports settled by end of fiscal year 1982	98.5	1.0 (PERF—98.5)	.20
4. SNF—Percent of fiscal year 1980 cost reports settled by end of fiscal year 1982	100.0	3.5 (PERF—100.0)	.10
5. HHA—Percent of fiscal year 1981 cost reports settled by end of fiscal year 1982	100.0	1.0 (PERF—100.0)	.20
6. HHA—Percent of fiscal year 1980 cost reports settled by end of fiscal year 1982	100.0	12.5 (PERF—100.0)	.10

[1] The variable "PERF" refers to the intermediary's actual performance for the standard. The coefficients in the scoring formulas (e.g., 62.5 for unit cost) are set so that intermediaries performing at the 85th–90th percentile level would lose 25 points. As an example, the 85th percentile of unit costs is $4.40. $4.00 - $4.40 = -$.40, which is then multiplied by a factor of 62.5. This results in a loss of 25 points (−.40 × 62.5 = −25).

[2] Adjusted for Fiscal Year Ending Dates.

ATTACHMENT B.—EXAMPLE OF SCORING STATISTICAL STANDARDS

Area unit cost	Standard	Performance	Subtraction (−) bonus (+) points [1]	Weight	Weighted subtraction (−) bonus (+) points	Area score
1. Adjusted unit cost	$4.00	$4.39	−24.37	1.00	−24.3	76
Timeliness of bill processing (percent):						
1. Inpatient—30 days	76.0	89.5	+20.25	.15	+3.0	
2. Inpatient—60 days	90.0	96.9	+35.6	.10	+3.6	
3. Outpatient—30 days	73.0	91.7	+18.7	.15	+2.8	
4. Outpatient—60 days	90.0	98.4	+33.6	.10	+3.4	125
5. SNF—30 days	67.5	81.7	+14.2	.15	+2.1	
6. SNF—60 days	87.5	97.7	+20.4	.10	+2.0	
7. HHA—30 days	68.0	95.8	+27.8	.15	+4.2	
8. HHA—60 days	87.5	98.9	+34.2	.10	+3.4	
Timeliness of cost report settlement (percent):						
1. Hospital—fiscal year 1981 reports	88.0	67.8	−14.14	.25	−3.5	
2. Hospitals—fiscal year 1980 reports	100.0	90.4	−38.4	.15	−5.7	
3. SNF—fiscal year 1981 reports	98.5	95.0	−3.5	.20	−0.7	[2]73
4. SNF—fiscal year 1980 reports	100.0	100.0	0.0	.10	0.0	
5. HHA—fiscal year 1981 reports	100.0	53.7	−46.3	.20	−9.2	
6. HHA—fiscal year 1980 reports	100.0	93.3	−83.75	.10	−8.3	

[1] See attachment A for appropriate formula.
[2] No bonus points may be awarded because intermediary's cost report settlement timeliness score is below the minimum passing level of 75.

ATTACHMENT C.—LIFE OFFICE MANAGEMENT ASSOCIATION DATA ON AVERAGE STARTING SALARIES FOR CLERK-TYPISTS EMPLOYED BY INSURANCE COMPANIES IN 1980

Intermediary	Salary index (V)
Alabama B/C	0.941
Arkansas B/C	.960
Arizona B/C	1.018
Los Angeles, California B/C	1.128
Oakland, California B/C	1.101
Colorado B/C	1.053
Connecticut B/C	1.005
Delaware B/C	.967
District of Columbia B/C	1.070
Florida B/C	.945
Atlanta, Georgia B/C	1.051
Columbus, Georgia B/C	.940
Idaho B/C	.953
Chicago, Illinois B/C	1.096
Indiana B/C	.975
Des Moines, Iowa B/C	.958
Sioux City, Iowa B/C	.946
Kansas B/C	.981
Kentucky B/C	.983
Louisiana B/C	.950
Maine B/C	.942
Maryland B/C	1.033
Massachusetts B/C	1.064
Michigan B/C	1.098
Minnesota B/C	.998
Mississippi B/C	.942
Montana B/C	.952
Nebraska B/C	.956
New Hampshire/Vermont B/C	.935
New Jersey B/C	1.084
New Mexico B/C	.951
North Carolina B/C	.891
North Dakota B/C	.943
Cincinnati, Ohio (HCC) B/C	.988
Cleveland, Ohio B/C	1.034
Columbus, Ohio B/C	.993
Toledo, Ohio B/C	1.032
Oklahoma B/C	.999
Oregon B/C	1.046
Allentown, Pennsylvania B/C	.982
Harrisburg, Pennsylvania B/C	1.011
Philadelphia, Pennsylvania B/C	1.034
Pittsburgh, Pennsylvania B/C	1.030
Wilkes-Barre, Pennsylvania B/C	.946
Rhode Island B/C	.961
South Carolina B/C	.941

ATTACHMENT C.—LIFE OFFICE MANAGEMENT ASSOCIATION DATA ON AVERAGE STARTING SALARIES FOR CLERK-TYPISTS EMPLOYED BY INSURANCE COMPANIES IN 1980—Continued

Intermediary	Salary index (V)
Chattanooga, Tennessee B/C	.930
Texas B/C	1.045
Utah B/C	.971
Richmond, Virginia B/C	.972
Roanoke, Virginia B/C	.947
Washington/Alaska B/C	1.099
Charleston, West Virginia B/C	.933
Parkersburg, West Virginia B/C	.933
Wheeling, West Virginia B/C	.933
Milwaukee, Wisconsin B/C	1.031
Wyoming B/C	.936
Puerto Rico (Jacksonville) B/C	.902
Aetna—California	1.150
Aetna—Connecticut	1.014
Aetna—Florida	.969
Aetna—Illinois	1.005
Aetna—Massachusetts	.989
Aetna—Nevada	1.034
Aetna—Pennsylvania	1.034
Aetna—Washington	1.099
Cooperativa De Seguros	.817
Hawaii Medical Service	1.115
HCFA—ODR	1.033
Kaiser	1.101
Mutual of Omaha	.956
Nationwide	.993
Prudential	1.044
Travelers—Michigan	1.098
Travelers—New York	1.115

Impact Analyses

Executive Order 12291

We have determined that this notice does not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291. That is, this notice will not have an annual effect on the economy of $100 million or more; cause a major increase in costs or prices for consumers, government agencies, industry, or a geographic region; or cause significant adverse effect on business, or employment.

We update this notice annually to improce an existing evaluation system. No increased costs will be incurred by the Federal Government or the intermediaries as a result of this notice. Therefore, this annual notice is not a major rule requiring a Regulatory Impact Analysis.

Regulatory Flexibility Act

The Secretary certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that his notice will not have a significant economic impact on a substantial number of small businesses, organizations or government jurisdictions. The updated statistical standards do not add to or alter the functions that intermediaries already perform for the Medicare program and, therefore, would not increase the cost or otherwise impact on an intermediary's Medicare operation.

Statistics used in the evaluation are already obtained routinely from existing reports. We believe that the changes will, in fact, be of benefit to the intermediaries because the criteria used in the evaluation system will insure a good level of performance without placing an inordinate number of intermediaries in serious jeopardy of failing the standards. Also, we set the performance criteria and statistical standards so that the size of an intermediary does not adversely affect its ability to meet the requirements.

In addition, all intermediaries are under contract with HCFA. In 1981, there were 67 intermediaries of which 59

were Blue Cross Plans under subcontract with the Blue Cross Association (BCA). HCFA also has the right of approval over all subcontracts between BCA and its affiliates. The intermediary contracts provide for evaluations of intermediary performance. The evaluations, therefore, are mutually agreed to.

(Secs. 1102, 1816 and 1871 of the Social Security Act (42 U.S.C. 1302, 1395h, and 1395hh))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: August 7, 1982.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: September 28, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 82-27235 Filed 9-30-82; 8:45 am]

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Federal Register

Tuesday
October 5, 1982

Part III

Department of Health and Human Services

Food and Drug Administration

Licensing; Reclassification Procedures To Determine That Licensed Biological Products Are Safe, Effective, and Not Misbranded Under Prescribed, Recommended or Suggested Conditions of Use

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 601

[Docket No. 80N-0523]

Licensing; Reclassification Procedures To Determine That Licensed Biological Products Are Safe, Effective, and Not Misbranded Under Prescribed, Recommended or Suggested Conditions of Use

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revising regulations on review and classification of biological products. It is issuing new regulations for reclassifying Category IIIA biological products (recommended for continued licensing, manufacturing, and marketing pending further study). It is further amending the regulations to permit interim marketing pending completion of clinical studies of certain reclassified biological products found to be safe and presumptively effective for which there is a compelling medical need and for which there is no suitable alternative therapeutic, prophylactic, or diagnostic agent.

DATE: Effective November 8, 1982.

ADDRESS: For the submission of additional data and information: Morris Schaeffer, Office of Efficacy Review (HFB-5), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205.

FOR FURTHER INFORMATION CONTACT: Albert Rothschild, National Center for Drugs and Biologics (HFB-620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306.

SUPPLEMENTARY INFORMATION

I. Background

In the **Federal Register** of January 16, 1981 (46 FR 4634), FDA proposed to revise the classification procedures for biological products prescribed in § 601.25 (21 CFR 601.25). Under existing classification procedures, each biological product licensed before July, 1972, has been reviewed by one of six qualified advisory review panels. The review determines whether the licenses for the biological products meet contemporary standards of safety, purity, and potency (the statutory standard for licensing biological products under section 351 of the Public Health Service Act (42 U.S.C. 262)). The review also determines whether the biological products are effective for their labeled uses and therefore not misbranded within the meaning of section 502(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352(a)). Each of the six advisory review panels submitted its final report to FDA. FDA responses to each report are summarized in the January 16, 1981 proposal.

Each advisory review panel report classifies products into one of the three following categories:

1. Category I: Biological products determined by the panel to be safe, effective, and not misbranded. See § 601.25(e)(1).

2. Category II: Biological products determined by the panel to be unsafe, ineffective, or misbranded. See § 601.25(e)(2).

3. Category III: Biological products determined by the panel not to fall within either Category I or II because the available data are insufficient for classification and further testing is therefore required. See § 601.25(e)(3). These products fall into two subcategories:

a. Category IIIA: Biological products recommended for continued licensing, manufacturing, and marketing while questions raised on the products are being resolved by further study. This recommendation is based on an assessment of the present evidence of safety and effectiveness of the product and the potential benefits and risks likely to result from the continued use of the product for a limited period of time.

b. Category IIIB: Biological products that a panel recommends should not be marketed and should not be licensed for general use while further studies are undertaken.

In February 1980, the Public Citizen Health Research Group (HRG), a private organization, filed a petition requesting that FDA remove from the market all biological products which have not been shown to be effective. Specifically, HRG requested that the Category IIIA designation be eliminated and that those products found by a panel to have inadequate evidence of effectiveness be removed from the market. Although disagreeing with HRG's contention that such an action was mandated by law, FDA proposed new procedural regulations to eliminate the Category IIIA designation. Copies of the petition, the agency's response, and other related correspondence are on file with FDA's Dockets Management Branch, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

The revised procedural regulations provide for the reexamination by an advisory review panel (or committee) of the available data for each Category IIIA product. These advisory review panels will either be newly established, or the agency may recharter one or more of the advisory review panels involved in the original biologics efficacy review. Each panel would recommend, based on the available evidence, whether each product should be considered safe, effective, and not misbranded (Category I) and therefore eligible for continued licensing and marketing, or unsafe, ineffective, or misbranded (Category II). Those Category IIIA products found to meet standards of safety and effectiveness consistent with state-of-the-art methodology for those products would be placed in Category I and would remain on the market. In addition, those Category II products designated as safe and presumptively effective and for which there is a compelling medical need with no suitable alternative therapeutic, prophylactic, or diagnostic agent also would be permitted to remain on the market pending completion of further studies.

Interested persons were given until March 17, 1981, to file written comments. At the written request of two interested persons, FDA announced in the **Federal Register** of March 17, 1981 the extension of the comment period until May 18, 1981 (46 FR 17063). Subsequently, eight additional requests to extend the original comment period were received. Approximately 10,000 letters of comment were received, including letters from private citizens, members of Congress, physicians, health organizations, and affected manufacturers, nearly all of which were opposed to the proposed rules. Most of the letters were expressions of concern that under the new procedures the availability of certain biological products, particularly allergenic extracts, would be jeopardized. The letters rarely commented on the specific text of the proposed regulations. Indeed, many of the letters were apparently written with the misunderstanding that the proposed rules would result in the removal of allergenic extracts from the market. The specific comments received and FDA's response are discussed below. The agency also believes that a discussion is warranted of the overall concepts of the procedural regulations and the reasons that FDA is proceeding to final rulemaking.

II. Overview of the Final Regulations

FDA recognizes that the reclassification procedures could be perceived to result in the removal of a number of biological products from the marketplace. The reclassification procedures were open to this

interpretation because the scientific criteria for reclassifying Category IIIA products were not specified in the proposed rules. These scientific criteria will be considered and recommended to the agency by the advisory review panels as part of the reclassification process. Accordingly, FDA cannot predict the specific criteria that will be established as an acceptable standard of effectiveness for each particular class of products. However, it is incorrect to assume that all Category IIIA products will be reclassified into Category II as unsafe, ineffective, or misbranded and removed from the marketplace.

The scientific criteria established and used by the previous advisory review panels for determining the regulatory category (I, II, IIIA, or IIIB) for each product may not be appropriate for reclassifying Category IIIA products. Because of the availability of Category IIIA, previous advisory review panels could reasonably recommend standards of effectiveness which would necessitate scientific methodology not previously used within the affected industry for that group of products. Previous advisory panels were at liberty, through the assignment of Category IIIA, of stimulating further research on the products under review which would ultimately resolve any doubts concerning the effectiveness of the product, while not immediately jeopardizing the availability of the product. (See, for example, the discussion of the recommendations of the Panel on Review of Allergenic Extracts in response to comment 1 below.)

The advisory review panels that will review Category IIIA products under the revised procedures will not have this prerogative. Except in limited circumstances, a product must be found safe, effective, and not misbranded on the basis of currently available data to justify its continued marketing. Advisory review panels involved in the reclassification process will be obligated to recommend standards of effectiveness consistent with the available technology and readily obtainable through the use of clinical and laboratory methodology that has already been recognized by the general scientific community as practical and applicable to the products under review. Consequently, no products will be removed from the market because of the imposition of standards of effectiveness which the biological products industry is, as yet, unable to meet because of the lack of suitable technology. It is not the agency's objective that the revised procedures precipitate the removal of any particular class of biological products from the market or that a significant number of biological products commonly used and widely accepted as a part of the medical armamentarium become suddenly unavailable to medical practitioners.

FDA acknowledges, however, that the reclassification process may result in certain additional biological products being placed in Category II and their licenses subject to revocation procedures. The advisory panels and FDA will consider the potential public health impact of removing each Category II biological product from the market. As provided in § 601.26 (c)(2) and (d), FDA will permit the continued marketing, pending completion of additional testing, of those Category II biologic products for which there is a compelling medical need and no suitable alternative therapeutic, prophylactic, or diagnostic agent available in sufficient quantities to meet current medical needs. In addition, for those products for which interim marketing could not be permitted, each manufacturer would be offered an opportunity for hearing on a proposal to revoke the product's license. Through these proceedings, a manufacturer would have the opportunity to demonstrate that its product meets the appropriate scientific standards and should continue to be marketed.

The public Health Service Act (PHS Act) requires that biological products be shown to be safe, pure, and potent. FDA's obligation is to ensure that manufacturers of biological products establish that their products continue to meet these standards. The agency considers the reclassification process to be the fairest and most expedient means of fulfilling this obligation. Accordingly, through this final rulemaking, FDA is adopting the revised procedures for the reclassification of Category IIIA biological products.

III. Comments on the Proposal

Over 10,000 comments were filed in response to the January 16, 1981 proposal. A summary of the points raised in the comments and FDA's responses follow.

A. Impact on Specific Products

1. The majority of the comments expressed concern that under the proposed procedures allegenic extracts would no longer be available for treating allergy patients. Many of these comments related the experiences of the commenters, or the commenters' relatives, acquaintances, or patients, as allergy sufferers. The comments recounted the perceived success of using allergenic extracts to alleviate the sometimes severely debilitating symptoms of allergy. Many comments observed that no alternative means of therapy for the treatment of allergies is as safe and effective as use of allergenic extracts under a physician's supervision. Some comments feared that with the removal from the market of licensed allergenic extracts, physicians may be forced to use locally made extracts of a lesser quality and that an illegal market for these products may ensue. Other comments contended that the removal of allergenic extracts from the market would deny physicians and the general public the personal freedom of choice to select an allergy therapy they thought appropriate. Accordingly, the comments recommended that the existing regulations on allergenic extracts be retained and opposed the proposed rule change which could result in allergenic extracts being unavailable to doctors for treating allergy patients.

FDA believes that the comments' concern that allergenic extracts will no longer be available is unjustified. There is no reason to expect that most of the important licensed allergenic extracts will be removed from the market once the reclassification process is completed. The effectiveness of all Category IIIA allergenic extracts will be determined as part of the reclassification process. All interested persons will have the opportunity to comment during the course of that process. Thus, comments concerning the effectiveness of allergenics are premature.

The Panel on Review of Allergenic Extracts (the Panel) has submitted its final report to FDA. Although the Panel recommended that four generic extracts be placed in Category I as fully safe and effective, all specific licensed products of these generic varieties were recommended for Category IIIA. For over 1,300 of the 1,600 generic varieties of extracts reviewed, the Panel recommended that they be placed in Category IIIA for therapeutic use. For the majority of Category IIIA products, a coordinated program of controlled clinical studies was recommended. Furthermore, the Panel found some preliminary laboratory work, e.g., development of potency assays and reference standards, were prerequisite to the successful conduct of the recommended studies.

FDA is aware that many allergenic extracts may not be amenable to controlled clinical trials. In collaboration with licensed manufacturers of allergenic extracts, independent of the review process, FDA

is developing means of establishing more precise standards and potency procedures for allergenic extracts. The successful completion of the studies recommended by the Panel would represent a significant scientific advancement in the clinical and laboratory testing of allergenic extracts. FDA would not consider it reasonable to base revocation proceedings upon the fact that licensed manufacturers and the scientific community have been unable, up to this time, to develop the scientific methodology necessary to conduct the testing recommended by the Panel. Rather, it will be the obligation of the Panel conducting the reclassification review to reexamine the scope of evidence currently available regarding the effectiveness of allergenic extracts and determine what the current practices are for the responsible assessment of the effectiveness of allergenic extracts. Furthermore, the Panel must determine whether these contemporary standards are readily applicable to each type of product under review. Products that do not meet the applicable contemporary standards will be subject to revocation proceedings. FDA believes that although certain biological products may become unavailable, this process will ensure that available allergenic products are safe, pure, and potent as required by the Public Health Service Act.

FDA remains committed to meeting its obligation of ensuring that drug products are safe and effective as required by applicable law. To further this purpose, FDA will require the updating of evidence concerning the effectiveness of allergenic extracts as suitable technology is developed.

2. Several comments said FDA should support development of potency tests and standards for allergenic extracts, rather than to take action to remove them from the market.

As described above, in collaboration with licensed manufacturers of allergenic extracts, FDA is developing methods to establish more precise standards and potency procedures for allergenic extracts. This program has included workshops for interested persons in order to demonstrate methods and equipment used in performing tests and obtaining results (see 45 FR 76251). In the Federal Register of July 31, 1981 (46 FR 39129), the agency issued a final rule which codified a more precise and reliable potency test for measuring the antigen E potency of allergenic extracts prepared from short ragweed pollen. The agency is also developing procedures for measuring the potency of allergenic extracts, including isoelectric focusing and the radioallergosorbent test (RAST). As these methods become fully developed, FDA will consider requiring their appropriate use to substantiate the potency and effectiveness of allergenic extracts.

The development of additional tests and standards for allergenic extracts does not, however, eliminate the requirement that manufacturers establish that allergenic products meet current standards of safety, purity, and potency.

3. One comment recommended a specific method of immunological testing for demonstrating the potency of allergenic extracts. The comment recommended that extracts shown potent by the specified method be placed in Category I until other methods to substantiate effectiveness are developed.

A decision on what evidence of potency and effectiveness should be available to justify a Category I designation for allergenic extracts or other biological products will be made during the reclassification process based upon the recommendations of the appropriate advisory review panel and the comments of the interested public. The advisory review process provides opportunity for public participation, and all scientific opinions will be considered.

4. Eight comments requested that allergenic extracts be removed from the market because they are ineffective, unsafe, or both. For seven of the comments, the recommendation was based on personal experiences of having allergic symptoms which were not alleviated by the use of allergenic extracts. No data were submitted to support these comments.

The effectiveness of all allergenic extracts will be determined as part of the reclassification process. All interested persons will have the opportunity to comment during the course of that process. Thus, comments concerning the effectiveness of allergenics are premature. While therapy with allergenic extracts may not always be effective, the personal experience of these commenters is not reliable evidence of the lack of effectiveness of allergenic extracts and would not be considered in determining the effectiveness of those products. See § 601.25(d)(2). The advisory review panels involved in the reclassification process will consider all available reliable evidence in determining the effectiveness of allergenic extracts.

5. The agency received several comments from concerned citizens who had relatives, or were themselves, undergoing therapy with allergenic extracts asking whether the proposal to reclassify allergenic extracts was based on a finding that the products were harmful and might endanger a patient's health.

FDA is unaware of any data that would call into question the safety of those allergenic extracts currently in Category IIIA. The Panel on Review of Allergenic Extracts found allergenic extracts to be safe when used in accordance with generally accepted principles of immunotherapy, and the agency agrees with this finding.

6. Approximately 100 comments, many in form-letter format, recommended that Staphage Lysate (SPL), bacteriophage lysate of *Staphylococcus aureus* indicated in certain *S. aureus* infections, continue to be availabe to physicians. Several comments stated that therapy with SPL had alleviated a variety of serious conditions, against which other forms of therapy had failed. Two of these comments noted that, because of the small number of patients for whom SPL threapy is successfully undertaken, it will be difficult to select an appropriate population for demonstrating the product's effectiveness through controlled clinical studies, even though the product is effective and irreplaceable for treating certain patients.

Staphage Lysate was reviewed by the Panel on Review of Bacterial Vaccines and Bacterial Antigents with "No U.S. Standard of Potency" which recommended that the product be placed in Category IIIB. As announced in the final rule of January 5, 1979 (44 FR 1544), additional data were subsequently received from the manufacturer, Delmont Laboratories, adequate to reclassify SPL into Category IIIA.

SPL will be reclassified with all other Category IIIA products. The standard of effectiveness of SPL will be consistent with the current state-of-the-art for biologics testing. Thus, the difficulty of selecting the appropriate population for demonstrating SPL's effectiveness will be taken into account in reclassifying it.

Although the agency will not delay the reclassification process to accommodate the belated submission of additional data, the agency and the appropriate advisory review Panels, if still in session, will at any time review additional data concerning any product subject to reclassification. Data submitted before the publication of the applicable reclassification final rule will be reviewed to determine the data's

effect upon the product's final classification. After final classification, additional data may be submitted to support a change in regulatory status, e.g., relicensure or continued licensure, of the product. Accordingly, a manufacturer will have continued opportunity to demonstrate the effectiveness of its product, while the expedient completion of the reclassification process is assured.

7. One comment recommended that the reclassification procedures be expanded to include the re-review of Category IIIB products—biologics for which available data are insufficient to determine their safety and effectiveness and should not continue in interstate commerce while further studies are undertaken. As bases for the recommendation, the comment noted that under the proposed reclassification procedures biological products would be reviewed under revised standards of effectiveness and Category IIIB products might be upgraded to Category I under these new standards. Furthermore, the comment noted that Category IIIB products could be permitted to remain on the market pending completion of further studies if a compelling medical need is shown and there is no suitable alternative therapeutic, prophylactic, or diagnostic agent.

FDA does not accept this comment. For all biological products placed in Category III, the panel found insufficient evidence to substantiate fully the product's effectiveness. To differentiate between Category IIIA and IIIB products, each advisory review panel assessed the potential benefits and potential risks likely to result from the interim use of the product while questions concerning the product were being resolved by further study. The Category IIIB designation represents a finding that the potential risks of maketing a product outweigh the potential benefits, and therefore these products should not be marketed pending the completion of additional studies. In the interest of the public health, the agency would not accept revised standards of effectiveness that would allow the continued marketing of a product for which the potential risks, including the risk that the product is not effective, outweigh the potential benefits.

Of course, even if Category IIIB products are not reviewed as part of the reclassification process, interested persons may at any time submit to the agency additional evidence regarding the product. The additional evidence will be assessed by FDA to determine whether a reclassification of the regulatory status of the product may be warranted. If the additional evidence demonstrates that the product meets standards comparable to those applicable to similar products placed in Category IIIA, the agency will submit the available evidence on the product to the appropriate advisory group for review and reclassification.

In addition, following the adoption of a panel's Category IIIB recommendation, each manufacturer of a Category IIIB product is offered an opportunity for hearing on a proposal to revoke the product's license. At that time the manufacturer and other interested persons may submit additional evidence to show that there is a substantial issue of fact affecting the agency's basis for the proposed license revocation. Through these proceedings, a manufacturer has the opportunity to demonstrate that its product meets the appropriate contemporary scientific standards and should continue to be marketed.

8. Several comments expressed concern that the proposed rule could possibly result in allergenic extracts for veterinary use being removed from the market.

Allergenic extracts in interstate commerce for veterinary use are regulated by the United States Department of Agriculture and not by the FDA. Accordingly, the proposed rule should not affect allergenic extracts for veterinary use.

B. Legal, Economic, and Policy Questions

9. Several comments argued that the existing biological efficacy review process is lawful and that there is no legal justification for proposing to change this process. Several comments argued that the reclassification process would serve no useful purpose and would be time-consuming, expensive, and unduly burdensome. One of these comments included a 22-page memorandum supporting the legality of the existing review process.

FDA agrees that the existing biologics efficacy review process is permitted by applicable law. A detailed discussion of the agency's legal authority is contained in the preamble to the January 16, 1981 proposed rule (46 FR 4636). The agency believes it may nevertheless lawfully change and improve the procedure. Moreover, in view of the work already completed by the advisory review panels involved in the existing efficacy review, the reclassification procedures should not be unduly time-consuming, expensive, or burdensome.

10. Numerous comments said the current review procedures are adequate and a change is unnecessary. One of these comments noted that allergenic products present unique scientific problems which were taken into account in establishing the current review process so that patients would not be deprived of useful medical products. This comment said that under the current review process, effectiveness of allergenic products can be shown without interfering with the availability of important forms of therapy. Another comment said the risks and benefits of Category IIIA products had already been examined by the previous advisory review panels and the panels had concluded that the benefits outweigh the risks. Finally, one comment contended that the agency had not explained why it is necessary to revise current procedures.

The agency rejects these comments. The agency believes that the revised procedures will more clearly define the scientific and regulatory status of products formerly designated as Category IIIA. Those which are safe and effective (Category I) by currently available standards will be identified. If further testing is necessary, and the products are allowed to remain on the market in Category II, the procedures will assure that they are safe and that there is a medical consensus about their value. Although the six previous advisory review panels did consider the risks and benefits of all Category IIIA products, there was no request for them to determine whether the products were medically necessary, nor were the products compared with alternative forms of therapy. The agency believes that these determinations are useful in ensuring that only beneficial products remain on the market.

Finally, the agency is well aware that many biological products may not be readily amenable to controlled clinical trials. This issue was recognized in FDA's proposal, and some of the particular problems presented by the testing of allergenic products were discussed. See 46 FR 4637–4638. The agency does not intend to require that any biological product meet a higher standard than is feasible considering the current state-of-the-art of biologics testing. Conversely, the continued licensing of products without reasonable evidence of safety and effectiveness for the labeled indications cannot be condoned. Should future scientific advances create questions concerning the safety or effectiveness of a licensed product, adequate provision for the resolution of questions is provided under current biologics regulations, e.g., 21 CFR 601.5 through 601.9.

11. A comment argued that by eliminating the Category III classification but providing for the interim marketing of certain biologics reclassified into Category II, the agency is, de facto, creating a new Category III which presents the same procedural weaknesses that resulted in the former classification system that had been challenged in HRG's petition. The comment contended that the new reclassification system would be subject to further litigation which would result in further procedural changes and ultimately cause certain biological products to be unavailable to those who need them.

FDA disagrees with the comment. The reclassification procedures are responsive to applicable legal requirements and to the needs of the public at large. The proposed provision for interim marketing of biological products that are found to be medically necessary and for which there is no suitable alternative therapeutic, prophylactic, or diagnostic agent for the product is quite different from Category IIIA. Category IIIA has been a broad classification that permitted the continued marketing of a product even though the product might not have been a medical necessity or might have been intended to treat a condition for which there was suitable alternative therapy. Thus, Category IIIA products will not automatically meet the strict criteria the agency is establishing for the continued marketing of a product under Category II pending further testing.

12. Some comments said allergenic extracts are not drugs and therefore should not be subject to the same regulatory requirements as chemically derived drugs.

FDA rejects these comments. Any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man is a drug within the meaning of section 201(g)(1) of the act. As such, it must be effective for its labeled uses and therefore not misbranded under section 502(a) of the act, and it must be safe, pure, and potent, as required under the PHS Act.

Although all biological products are drugs within the meaning of the act, they are not subject to the new drug provisions. Biological products are licensed before marketing under section 351 of the PHS Act. The criteria for licensure under the PHS Act are that products be safe, pure, and potent. Accordingly, the agency has consistently applied scientific standards appropriate for biological products which, in the case of standards for purity and effectiveness, for example, may not be identical to those applied to chemically derived drugs.

13. One comment argued that the reclassification procedures improperly shift the burden of proof regarding the requirement for license revocation. The comment said the burden of establishing lack of effectiveness for a previously licensed biological product should rest upon the agency.

The agency rejects this comment. When the agency proposes to revoke a license, it bears the initial burden of adducing new information, which may consist of a reevaluation of the information available when the product license was approved, that shows that the drug is not shown to be effective. See *Hess & Clark* v. *FDA*, 495 F. 2d 975 (D.C. Cir. 1974). To meet its burden, the agency need only raise significant doubts as to the prior showing of effectiveness. Once this threshold burden is met, the manufacturer is required to prove that the product is effective. Thus, the reclassification procedures are not improper in shifting the burden of proof to the manufacturer.

14. One manufacturer of a Cateogry IIIA product argued that the proposed reclassification procedures are unfair because they could result in a Category IIIA product's being removed from the market before completion of testing now being conducted.

The agency disagrees with the contention that the procedures are unfair. The agency believes it is justified in removing from the market any biological product which does not meet the current efficacy standards and for which there is no compelling medical need or for which there is a suitable alternative treatment. Several manufacturers have been engaged in additional studies since 1979 to document the effectiveness of biological products placed in Category IIIA. All data and information submitted up to the time of publication of the final rule reclassifying these biological products will be considered by FDA in determining the appropriate classification (Category I or II). In addition, a manufacturer of a product ultimately placed in Category II that seeks to dispute the agency's findings will be given an opportunity for a hearing to present its views. Thus, the agency does not believe that the reclassification procedures are unfair.

15. One comment said the proposed rule was a "major rule" under Executive Order 12291 because it would have an annual effect on the economy of $100 million or more. The comment noted that the sales of allergenic extracts are in excess of $40 million and the fees for medical services related to these products are several times that amount.

The agency rejects this comment. This rule is not a major rule as defined by Executive Order 12291. The rule is procedural and does not, indeed cannot, directly result in any product's removal from the marketplace. Moreover, any assumptions at this time about which, if any, products may eventually be removed from the marketplace are purely speculative. When each advisory group's recommendations for reclassification of Category IIIA products and FDA's responses are published in a proposed rule, the agency will be able to determine with greater certainty the economic impact of reclassifying biological products. At that time, each proposal will be assessed under Executive Order 12291 to determine whether it is a major rule.

C. Procedural Questions

16. Several comments urged that members of certain organizations with interests in the science of allergy medicine be appointed to the advisory review panels involved in the reclassification of Category IIIA allergenic extracts. The comments urged that the panel membership be as diverse as possible to ensure representation of all responsible medical and scientific opinions.

FDA agrees that the panel membership should represent all responsible opinion. Further, the agency believes that the panel should consist of qualified persons selected on the basis of their expertise in the subject matter with which the panel is concerned. These criteria were met in the selection of the former Panel on Review of Allergenic Extracts, which included members that are highly qualified in the field of allergy medicine, representative of responsible medical and scientific opinion, and familiar with the data presented to FDA on the safety and effectiveness of the Category IIIA allergenic extracts. The agency therefore believes that the public interest would be best served by asking the former allergenics panel to serve as the new Panel for the purpose of reclassifying those products originally recommended for Category IIIA. If not all the previous panel members are available to serve, FDA will ask for the nominations of appropriately qualified persons for membership to fill the vacancies. Any organization may nominate one or more of its members for service on the panel. However, members would be selected on the basis of their expertise, without consideration of their professional affiliations.

17. One comment recommended that a biologic product be reviewed and reclassified only after it is definitively placed in Category IIIA as a result of a final rule issued under § 601.25(g). The comment contended that the notice and comment procedures of the reclassification process do not compensate for summarily interrupting a review process in which manufacturers have been participating in good faith for a number of years.

FDA disagrees with this comment. The agency has yet to respond by proposed rulemaking to the recommendations contained in the reports of three advisory panels: the Panel on Review of Blood and Blood Derivatives, the Panel on Review of Bacterial Vaccines and Toxoids, and the Panel on Review of Allergenic Extracts. The information concerning all products recommended for Category IIIA by these panels will be forwarded to the appropriate advisory review panel for reclassification. During the reclassification process, interested persons, including the manufacturers of products being reclassified, will be offered the same opportunity for participation in the decisionmaking process as would be offered by the existing procedures under § 601.25. Specifically, interested persons may attend meetings and appear before an advisory review panel; notice will be provided through publication of the advisory review panel's report and FDA's responding proposed rule; and opportunity for comment and submission of additional information will be offered by the proposed rule; the final rule will provide notice of the agency's decision; and finally, for those products reclassified into Category II, a notice of opportunity for hearing will be published on the agency's intent to revoke the product license. FDA believes that these procedures offer adequate opportunity for the participation of all interested persons; therefore, the agency sees no benefit derived from delaying the reclassification procedures while duplicative procedures are undertaken to classify products as Category IIIA through final rulemaking.

18. One comment suggested that FDA eliminate the requirement for publication of a proposed order containing FDA's initial conclusions concerning the report of each advisory review panel. See § 601.26(d). The comment said the proposed order is unnecessary because advisory review panel reports have been released to the public, and FDA could therefore ask for public comment on the reports while FDA is evaluating the reports.

FDA does not agree with this suggestion. The agency believes that the substitute procedure proposed by this comment would not give the public an opportunity to comment on the agency's reaction to the panel report. The opportunity to comment is particularly important where the agency disagrees with the recommendation of a panel. Without a proposed order, the public could assume, perhaps incorrectly, that FDA agrees with the recommendations in the panel report and thus miss an opportunity to comment.

FDA believes that public participation is an important aspect of all agency rulemaking proceedings, especially where, as here, the public has demonstrated a very strong interest in the subject of the proceeding. Accordingly, there is no justification for eliminating the public's opportunity to comment on the agency's proposed order issued under § 601.26(d).

19. One comment addressed § 601.25(d)(2), which provides guidance for assessing evidence of effectiveness under the existing biologics efficacy review and, by reference, for the reclassification process. The regulation states that controlled clinical studies may be waived for other forms of evidence if controlled clinical studies are found not to be reasonably applicable or not essential to substantiating the effectiveness of a biological product. The comment argued that this statement inappropriately implies that controlled clinical studies are favored over other types of evidence and should be required unless unusual circumstances justify a special exemption for a particular product. The comment recommended that the waiver concept be eliminated as inappropriate and misleading and that the regulations be amended to state that forms of evidence other than "substantial evidence" are equally acceptable to document a product's effectiveness and to justify a Category I designation.

FDA does not accept this comment. The agency does indeed consider controlled clinical studies to be the preferred form of evidence for documenting a product's effectiveness. As stated elsewhere in this document, the agency recognizes that such studies may not, as yet, be readily applicable to many types of biological products and therefore should not be required. However, the agency believes that controlled clinical studies should be performed in circumstances where clinical studies have been firmly established as feasible for establishing the effectiveness of a biological product. Accordingly, the agency is retaining the requirement that controlled clinical studies be used to establish the effectiveness of a biological product, unless shown to be inapplicable or not essential for the product under review.

D. Interim Marketing Pending Completion of Additional Testing

20. One comment on § 601.26(c)(2) and (d) recommended the deletion of the provisions to allow the continued marketing of certain Category II biological products pending the completion of additional studies. The comment argued that there is an inherent risk associated with any potent drug, including a biological product, and that this risk should overrule any justification for allowing the continued marketing of a biological product of dubious effectiveness. Other comments argued that the standard for determining whether the continued marketing of a product pending testing should be permitted is too narrow and would result in forcing products off the market. One of these other comments said the only requirements should be that there be strong evidence that the biologic is safe, presumptive evidence that it is effective, and widespread medical acceptance of its use.

FDA rejects these comments. The interim marketing provision in § 601.26(c)(2) and (d) is neither too broad nor too narrow. Although there is an inherent risk associated with any drug, the advisory review panels involved in the existing biologics efficacy review process have already determined that the potential benefits of continued marketing of all Category IIIA products on an interim basis outweigh any potential risks associated with the use of these products. Moreover, the reclassification regulations require that there be evidence, indicating presumptively, the effectiveness of a Category II product before interim marketing pending completion of additional studies may be permitted. Accordingly, the public will not be subjected to any undue risks as a result of the interim marketing provisions of the reclassification regulations.

As to those comments arguing that the interim marketing provision is too narrow, the agency believes that there is no justification for the interim marketing of a product requiring further efficacy testing if there is no compelling medical need for the product or if there is a suitable alternative product. Accordingly, the agency believes that the additional criteria contained in the proposed rule are not too narrow.

21. One comment suggested that additional requirements be added to part of the interim marketing provision that requires the agency to determine "the likelihood that, based upon existing data, the effectiveness of the product eventually can be established by further testing" under § 601.26(c)(2). The comment suggested that for a product to be marketed pending further testing, FDA should require that there be some evidence, albeit inconclusive, that the drug had some benefits. The comment further suggested that in reclassifying such a product, the advisory review panel and FDA should describe the data relied upon, set forth the panel's and FDA's evaluation of the data, and explain why this testing shows that the drug has a benefit.

Although the requirements suggested by this comment are implicit in the propose regulation, FDA has amended the final rule to make clear that evidence of the product's effectiveness must be available, either specific to that product or generic to that class of products, to permit the continued marketing of the product pending further testing. Such evidence need not conclusively demonstrate the product's effectiveness, but should be adequate to show that the product is presumptively effective and, therefore, of benefit. The regulation further requires that this evidence be described and evaluated by the advisory review panels and FDA, and that there be an explanation why the evidence shows that the product will provide a benefit. The agency could not reasonably determine that the effectiveness of a product can eventually be established without some evidence which suggests that the product is of benefit.

22. One comment suggested that FDA consider a product's risks when determining whether to allow the product to be marketed pending further testing.

FDA agrees with this comment and has amended § 601.25(c)(2) and (d) to specify that the risks of a biological product should be considered when determining whether to permit a product to be marketed pending further testing.

23. One comment on § 601.26(c) (2) and (d) argued that a Category II designation of "unsafe, ineffective, or misbranded" is inappropriate for those biological products for which continued marketing is recommended pending further testing. The comment noted that under § 601.26(c)(2), a product for which a compelling medical need has been identified may not be recommended for continued marketing unless the panel determines that "based upon existing data, the effectiveness of the product can eventually be established by further testing and new test development." The comment found this determination to be incompatible with a designation of "unsafe, ineffective, or misbranded." The comment expressed the concern that a Category II designation could lead to widespread misunderstanding that patients are receiving a product affirmatively shown to be ineffective or unsafe. Accordingly, the comment recommended that such products conditionally be placed in Category I, or in a new "Category I (Conditional)." The comment recommended that only products determined by the panel to be safe be placed in this category, to eliminate any doubts concerning safety.

FDA agrees that it is inappropriate to designate as "unsafe, ineffective, or misbranded" products to which these terms do not apply; however, it is even more inappropriate to designate such products as "safe and effective". In considering an appropriate designation for products placed in Category IIIA under the original review process, the agency notes that all of these products were found to be safe for their indicated uses. Also, under § 601.26(c)(2), as amended in the final rule, there must be evidence showing presumptively that a product is of benefit before FDA may permit continued marketing pending further testing. Accordingly, FDA is amending § 601.26(c) (2) and (d) to provide the designation of "safe and presumptively effective" for those products that the panel recommends should remain on the market pending further testing. For regulatory purposes, such products will be in Category II, and FDA will initiate a proceeding to revoke their product licenses if adequate additional studies are not undertaken.

24. One comment recommended that the agency make more specific the requirement that the panels and the agency take into account the seriousness of the disease or condition to be treated by a Category IIIA product in determining whether to allow a product to remain on the market pending further testing. The comment said that only products intended to treat a disease or condition that can be fatal, would require hospitalization, or would be so seriously incapacitating as to prevent patients from engaging in normal activities should be allowed to be marketed pending further testing.

The agency rejects this comment. The agency agrees that FDA and the panels should give careful consideration to the seriousness of the disease intended to be treated before permitting the interim marketing of a Category IIIA product that is reclassified into Category II. However, the agency does not believe it necessary to set in the regulations a rigid standard for assessing the severity of the target disease. The agency believes that there may be a compelling medical need for some biological products that are intended to treat a disease or condition that is not life-threatening. The standard recommended by this comment could arbitrarily exclude important biological products intended to treat diseases that seriously affect a patient's health.

The agency notes that paragraph XIV of the court order in *American Public Health Assn.* v. *Veneman*, 349 F. Supp. 1311 (D.D.C. 1972), was not limited to drugs indicated for life-threatening or seriously incapacitating conditions. The order required FDA to expedite the removal from the market of drugs reviewed under the Drug Efficacy Study Implementation and found lacking substantial evidence of effectiveness. Paragraph XIV of the order permitted the continued marketing of "medically necessary" drugs pending the completion of clinical trials. The court did not impose a requirement that paragraph XIV drugs be limited to drugs intended to treat diseases of a defined severity, and the agency sees no reason to impose such a limitation on biological products. Accordingly, the agency does not agree that the interim marketing provision of the reclassification regulations should be limited to drugs intended for treating life-threatening or seriously incapacitating diseases.

25. One comment suggested that the reclassification regulations require the agency to describe what alternative treatment or drugs were considered in determining whether a biological product should be premitted to be marketed pending further testing and why such treatment or drugs are not suitable.

The agency agrees with this comment, and the regulation has been amended in § 601.26(c)(2) to reflect the change. The agency notes, however, that the availability of suitable alternatives may be made on a generic basis for a class of products rather than on a product-by-product basis. This is important because for some biological product categories there are thousands of similar individual products, and it would be burdensome and unnecessary to perform the same analysis for each individual product.

26. Several comments argued that the requirement that there are no suitable alternative therapeutic, diagnostic, or prophylatic agents for a biological product permitted to be marketed pending further testing was too restrictive, was not required in the

Veneman case cited above, and has no logical or scientific basis.

One of these comments argued that several DTP (diphtheria, tetanus, and pertussis) vaccines now in Category IIIA could not be marketed under the proposed procedures because there are some Category I DTP vaccines on the market. The comment argued that the removal from the market of the Category IIIA DTP vaccines would create a shortage of these vaccines. Another comment argued that the existence of a suitable alternative diagnostic or therapeutic agent is a highly subjective judgment that should be made by physicians.

FDA agrees that the "suitable alternative" criterion was not required by the court in *Veneman*; however, the agency has decided to include this criterion because the agency believes that there is no scientific or other justification for the marketing of a product that has not been adequately tested when there are suitable alternative remedies. The agency recognizes that this determination is a medical judgment. The term "suitable" will therefore be interpreted to ensure that medically necessary biological products are available to the public. For example, two biological products may be indicated to treat the same disease, but have different side effects. This difference might make one of these medications unsuitable for a particular patient and thus not a "suitable alternative" under § 601.26 (c)(2), (d), and (e).

The agency agrees that if a shortage of the suitable alternative product exists, such as the Category I DTP vaccine discussed in the comment, it is approporiate, indeed medically necessary, to permit the interim marketing of a Category II product that meets the other requirements for continued marketing pending testing. The agency has therefore amended § 601.26 (c)(2), (d), and (e) to require the agency, before permitting the interim marketing of a Category II product, to find that there is no suitable alternative therapeutic, prophylactic, or diagnostic agent for the product that is available in sufficent quantities to meet current medical needs.

E. Additional Testing and Labeling During Interim Marketing

27. One comment on § 601.26(f)(1) stated that it is scientifically impossible and not cost-effective to require within 30 days of publication of the final order the submission of protocols for, and the undertaking of, further studies that would be appropriate to resolve the questions raised about allergenic extracts.

FDA disagrees with the contention that 30 days is inadequate time to initiate the requisite studies; however, to assure that the affected manufacturers have ample time for receiving and reviewing the final rule mandating the studies and to prepare a written statement in reply, FDA is extending the time to 60 days.

FDA believes that manufacturers will have sufficient time to submit protocols and begin testing within 60 days of publication of the final order. The necessary tests will be described in the proposed rule. Upon request, FDA will review draft protocols for additional studies at any time during the reclassification process. Because manufacturers will receive adequate notice and guidance from FDA, the agency believes that any requisite additional studies may readily be initiated, under an appropriate protocol, within 60 days of publication of the final order. As provided in § 601.26(f)(1), FDA may extend this 60-day period, if necessary to accommodate any reasonable delays.

The intent of § 601.26(f)(1) is to assure that the manufacturer is taking positive steps toward demonstrating the effectiveness of its product. A simple statement that the manufacturer intends to undertake studies would not be adequate. FDA recognizes that considerable preliminary administrative and scientific work may be necessary prior to initiating a clinical study. Accordingly, the statement submitted to FDA should indicate that the necessary preliminary actions are underway and should outline the subsequent actions that the manufacturer intends to take to resolve the questions raised about the product.

Any additional studies that may be required under § 601.26(f)(1) will be based upon already established scientific principles and will be readily applicable to the affected products. To make clear that manufacturers will not be required to conduct tests that are not scientifically feasible, the agency has deleted the phrase "and new test development" from the following sentence in § 601.26(c)(2): "The [panel] report shall also recommend with as much specificity as possible the type of further testing and new test development required * * *"

28. One comment suggested that there should be additional safeguards to ensure that manufacturers marketing biological products pending further testing do not extend the testing period without adequate justification. The comment recommended that a definite time limit be established for all such testing and that licenses be revoked if the specified time period is not complied with.

The agency does not agree with this comment. The agency believes that the reclassification regulations are adequate for prompt, timely, additional testing. Manufacturers are required to submit, within 60 days after publication of the final order, a written statement that studies adequate and appropriate to resolve the questions raised about the product have been undertaken. If no such commitment is made, or if the commitment is inadequate, the agency must revoke the license. Manufacturers are also required to submit a progress report twice a year until completion of the studies. If the progress report is not submitted, or is inadequate, or if the studies are not being pursued promptly and diligently, or if interim results indicate that the product is not a medical necessity, the agency is required to initiate a proceeding to revoke the license. The agency believes that these safeguards are adequate to ensure that testing is completed promptly.

29. One comment recommended that patients taking biological products that are being marketed pending testing sign a consent form stating that FDA has yet to determine that the drug is effective.

The agency rejects this comment. The agency believes that the label statement required by § 601.26(f)(4) (set forth in the next numbered paragraph) is adequate to inform consumers about the status of FDA's review of the product's effectiveness. The suggested procedure is not only unnecessary, but burdensome.

It should be noted that § 601.26(f)(5) requires that informed consent be obtained from all participants in any additional studies required for biological products being marketed pending further testing.

30. One comment suggested that the word "fully" should be deleted from the following labeling statement required by § 601.26(f)(4): "The Food and Drug Administration has directed that further investigation be conducted before this product is determined to be fully effective for labeled indication(s)." The comment said the word "fully" implied that the product had been found to be partially effective.

The agency agrees that the word "fully" should be deleted from this statement, but has further amended the statement to read as follows: "The Food and Drug Administration has directed that further investigation be conducted

before this product is conclusively determined to be effective for labeled indication(s)." The agency has added the word "conclusively" to this statement because it accurately implies that there has been an initial determination of presumptive effectiveness of the product.

31. One comment addressed § 601.26(f)(4), which requires a disclosure statement for those biological products remaining on the market while undergoing further study. The comment noted that allergenic extracts are normally marketed in such small vials or in such mixtures as to make it impossible to disclose prominently the fact that further testing is necessary to determine whether the product is effective. The comment also noted that, as research on allergenic extracts continues, many allergenic mixtures will contain both some allergens to which the disclosure statement applies and other allergens that have been shown to be safe and effective. The comment therefore recommended a more general disclosure that would inform consumers that the product may contain one or more allergenic extracts that require further testing before it can be determined that they are safe and effective.

FDA does not accept this comment at this time. The agency notes that the text of § 601.26(f)(4) was codified under § 601.25(h)(4) on January 3, 1979 (44 FR 1544) and is not a new requirement. Further, § 601.26(f) sets forth general procedures for additional studies and labeling requirements for all classes of biological products requiring such additional studies. In the rulemaking to be initiated by publication of the recommendations for allergenic extracts as a proposal, FDA will consider any comments submitted concerning labeling requirements for extract mixtures containing components that have been recommended for classification into different categories.

32. The agency is amending § 601.26(f)(4) by revising the labeling box statement to accommodate the identification in the labeling of advisory groups which do not have the terms "Panel on Review of * * *" as part of their name.

F. Miscellaneous

33. At the time of the January 16, 1981 proposed rule, FDA planned to publish soon afterward the proposed orders based on the reports of the Panels on Review of Blood and Blood Derivatives and on Review of Bacterial Vaccines and Toxoids. These proposed orders have yet to be published. To avoid unnecessary delay in the reclassification process, the agency has decided to publish this final rule on reclassification procedures before publishing the proposed rules based on the reports of these two panels. The products recommended for Category IIIA in the final reports of these panels will be reviewed and reclassified under the procedures made final here.

As announced in the preamble to the January 16, 1981 proposed rule, the products recommended for Category IIIA in the final report of the Panel Review of Allergenic extracts will be reviewed and reclassified under the procedure made final here. As announced in the **Federal Register** of April 21, 1981 (46 FR 22808), a copy of the final report is on public display and may be reviewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. A copy of the final report may be obtained ($46.50 for a paper copy and $4.00 for microfiche) [1] from the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, VA 22161 (703–487–4650). All correspondence to NTIS should include references to the NTIS Accession Number PB 81–18215.

As a reference, the agency is listing the products recommended for Category IIIA by the Panel on Review of Blood and Blood Derivatives and the Panel on Review of Bacterial Vaccines and Toxoids. (Note: For those products followed by the word "revoked" the product license has been revoked at the request of the manufacturer, and further regulatory proceedings will be unnecessary.)

a. *The following products were recommended for Category IIIA by the Panel on Review of Blood and Blood Derivatives:*

Whole Blood (Human) Heparinized;

Factor IX Complex (Human) (Proplex), for use in congenital and acquired deficiencies of factors II, VII, and X, Travenol Laboratories, Inc., Hyland Therapeutics Division, License No. 140;

Fibrinolysin (Human) (Thrombolysin), Merck Sharp & Dohme, Division of Merck & Co., Inc., License No. 2;

Fibrinolysin and Desoxyribonuclease, Combined (Bovine), and Fibrinolysin and Desoxyribonuclease, Combined (Bovine), with Chloramphenicol (Elase powder for solution, Elase ointment and Elase-Chloromycetin ointment), Parke-Davis, Division of Warner-Lambert Co., License No. 1.

[1] **Note.**—Prices subject to change; additional charges for rush handling or personal pickup.

b. *The following products were recommended for Category IIIA for all labeled indications by the Panel on Review of Bacterial Vaccines and Toxoids:*

Pertussis Immune Globulin (Human), Cutter Laboratories, Inc., License No. 8;

Streptokinase—Streptodornase (Varidase, Jelly) (revoked), Lederle Laboratories, Division American Cyanamid Company, License No. 17;

Pertussis Immune Globulin (Human), Travenol Laboratories, Inc., Hyland Therapeutics Division, License No. 140.

c. *The following products were recommended for Category I when used for booster immunization and for Category IIIA when used for primary immunization, by the Panel on Review of Bacterial Vaccines and Toxoids:*

Diphtheria and Tetanus Toxoids Adsorbed (revoked), Diphtheria and Tetanus Toxoids and Pertussis Vaccine Adsorbed (with potassium alum) (revoked), Tetanus Toxoid (revoked), Tetanus Toxoid Adsorbed (revoked), Dow Chemical Company, License No. 110;

Diphtheria and Tetanus Toxoids (revoked), Diphtheria and Tetanus Toxoids Adsorbed (revoked), Tetanus and Diphtheria Toxoids Adsorbed (For Adult Use) (revoked), Tetanus Toxoid (revoked), Tetanus Toxoid Adsorbed (revoked), Eli Lilly and Company, License No. 56;

Tetanus Toxoid, Istituto Sieroterapico Vaccinogeno Toscano Sclavo, License No. 238;

Diphtheria and Tetanus Toxoids Adsorbed, Diphtheria and Tetanus Toxoids and Pertussis Vaccine Adsorbed, Tetanus and Diphtheria Toxoids Adsorbed (For Adult Use), Tetanus Toxoid, Tetanus Toxoid Adsorbed, Lederle Laboratories, Division American Cyanamid Company, License No. 17;

Tetanus Toxoid Adsorbed, Merck Sharp & Dohme, Division of Merck & Co., Inc., License No. 2;

Diphtheria and Tetanus Toxoids and Pertussis Vaccine, Tetanus and Diphtheria Toxoids Adsorbed (For Adult Use), Tetanus Toxoid, Tetanus Toxoid Adsorbed, Merrell-National Laboratories, Division of Richardson-Merrell, Inc., License No. 101 (see below);

Diphtheria and Tetanus Toxoids Adsorbed, Tetanus Toxoid Adsorbed, Michigan Department of Public Health, License No. 99;

Diphtheria and Tetanus Toxoids (revoked), Diphtheria and Tetanus

Toxoids Adsorbed (revoked), Diphtheria and Tetanus Toxoids and Pertussis Vaccine (revoked), Tetanus Toxoid (revoked), Tentanus Toxoid Adsorbed (revoked), Parke-Davis, Division of Warner-Lambert Company, License No. 1;

Tetanus Toxoid Adsorbed, Swiss Serum and Vaccine Institute Berne, License No. 21;

Diphtheria and Tetanus Toxoids Adsorbed (revoked), Diphtheria and Tetanus Toxoids and Pertussis Vaccine Adsorbed (revoked), Diphtheria Toxoid (revoked), Tetanus and Diphtheria Toxoid Adsorbed (For Adult Use) (revoked), Tetanus Toxoid (revoked), Texas Department of Health Resources, License No. 121;

Diphtheria and Tetanus Toxoids Adsorbed, Diphtheria and Tetanus Toxoids and Pertussis Vaccine Adsorbed, Tetanus and Diphtheria Toxoids Adsorbed (For Adult Use), Tetanus Toxoid, Tetanus Toxoid Adsorbed, Wyeth Laboratories, Inc., License No. 3.

Merrell-National Laboratories, Division of Richardson-Merrel, Inc., transferred its manufacturing processes and facilities for manufacturing Diphtheria and Tetanus Toxoids and Pertussis Vaccine, Tetanus and Diphtheria Toxoids Adsorbed (For Adult Use), Tetanus Toxoid, and Tetanus Toxoid Adsorbed to Connaught Laboratories, Inc. Connaught was issued License No. 711 on January 3, 1978.

34. The agency has decided to retain §§ 601.25(e)(3) and (f)(3) in the biologics regulations which define Categories IIIA and IIIB and provide for the interim marketing of Category IIIA products, pending the completion of additional studies. The agency is appending a footnote to these paragraphs noting that the provisions permitting the interim marketing of certain biological products (Category IIIA products) no longer apply and are superseded by the reclassification procedures in § 601.26. The agency had originally proposed to delete these paragraphs from the regulations. By retaining these paragraphs and noting that certain provisions are no longer operative, the definitions and criteria for Categories IIIA and IIIB are preserved. In general, the agency believes that retention of these paragraphs is necessary to preserve the continuity and clarity of the procedures described under § 601.25.

35. The agency is amending the regulations by inserting requirements concerning the institutional review of clinical investigations involving human subjects. These requirements were added to § 601.25 by a final rule in the Federal Register of January 27, 1981 (46 FR 8942) and effective on July 27, 1981. In this final rule, they are being moved from § 601.25 to § 601.26 by revising paragraph (f)(1) and addding a new paragraph (i).

36. FDA is hereby requesting interested persons to submit, for review and evaluation by the appropriate advisory review panel, published and unpublished data and information pertinent to the reclassification of Category IIIA products. Data already submitted in support of an amendment to a product license will be considered in reclassifying the product and need not be resubmitted. Data and information submitted under this notice, and falling within the confidentiality provisions of 5 U.S.C. 552(b), 18 U.S.C. 1905, or 21 U.S.C. 331(j) will be handled as confidential. Data and information not falling within the confidentiality provisions of one or more of the above statutes will be made publicly available 30 days after publication of the proposed order to reclassify the Category IIIA biological products under review, issued under § 601.26.

The agency has examined the economic impact of this rule and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354). Specifically, this rule provides procedures for the review and reclassification of certain biological products previously placed in Category IIIA. This rule places no additional restrictions, requirements, or other economic burdens upon manufacturers of biological products, physicians, or consumers. Any future actions proposed in accordance with these procedural regulations will be assessed separately under Executive Order 12291 and the Regulatory Flexibility Act to determine the economic impact of the proposed action. Therefore, the agency concludes that the final rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 21 CFR Part 601

Biologics.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 502, 701, 52 Stat. 1040-1042 as amended, 1050-1051 as amended, 1055-1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321, 352, 371)), the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)), and the Administrative Procedure Act (secs. 4, 10, 60 Stat. 238 and 243 as amended) (5 U.S.C. 553, 702, 703, 704) and 21 CFR 5.11 as amended (see 47 FR 16010; April 14, 1982), Part 601 is amended as follows:

PART 601—LICENSING

1. In § 601.25, by adding a footnote to paragraphs (e)(3) and (f)(3) and by deleting paragraph (h) and designating it "reserved" and by deleting paragraph (1), as follows:

§ 601.25 Review procedures to determine that licensed biological products are safe, effective, and not misbranded under prescribed, recommended, or suggested conditions of use.

* * * * *

(e) * * *

(3) * * * [2]

(f) * * *

(3) * * * [2]

(h) [Reserved]

* * * * *

2. By adding new § 601.26 to Subpart C, to read as follows:

§ 601.26 Reclassification procedures to determine that licensed biological products are safe, effective, and not misbranded under prescribed, recommended, or suggested conditions of use.

This regulation establishes procedures for the reclassification of all biological products that have been classified into Category IIIA. A Category IIIA biological product is one for which an advisory review panel has recommended under § 601.25(e)(3), the Commissioner of Food and Drugs (Commissioner) has proposed under § 601.25(f)(3), or the Commissioner has finally decided under § 601.25(g) that available data are insufficient to determine whether the product license should be revoked or affirmed and which may be marketed pending the completion of further testing. All of these Category IIIA products will either be reclassified into Category I (safe, effective, and not misbranded) or Category II (unsafe, ineffective, or misbranded) in accordance with the procedures set forth below.

(a) *Advisory review panels.* The Commissioner will appoint advisory review panels and use existing advisory review panels to (1) evaluate the safety and effectiveness of all Category IIIA biological products; (2) review the

[2] Note—As of November 6, 1982, the provisions under paragraphs (e)(3) and (f)(3) of this section for the interim marketing of certain biological products pending completion of additional studies have been superseded by the review and reclassification procedures under § 601.26 of this chapter. The superseded text is included for the convenience of the user only.

labeling of such products; and (3) advise the Commissioner on which Category IIIA biological products are safe, effective, and not misbranded. These advisory review panels will be established in accordance with procedures set forth in § 601.25(a).

(b) *Deliberations of advisory review panels.* The deliberations of advisory review panels will be conducted in accordance with § 601.25(d).

(c) *Advisory review panel report to the Commissioner.* An advisory review panel shall submit to the Commissioner a report containing the panel's conclusions and recommendations with respect to the biological products falling within the category of products reviewed by the panel. The panel report shall include:

(1) A statement designating the biological products in the category under review in accordance with either § 601.25(e)(1) or § 601.25(e)(2).

(2) A statement identifying those biological products designated under § 601.25(e)(2) that the panel recommends should be designated as safe and presumptively effective and should remain on the market pending completion of further testing because there is a compelling medical need and no suitable alternative therapeutic, prophylactic, or diagnostic agent that is available in sufficient quantities to meet current medical needs. For the products or categories of products so recommended, the report shall include: (i) A description and evaluation of the available evidence concerning effectiveness and an explanation why the evidence shows that the product has any benefit; and (ii) a description of the alternative therapeutic, prophylactic, or diagnostic agents considered and a statement of why such alternatives are not suitable. In making this recommendation the panel shall also take into account the seriousness of the condition intended to be treated, prevented, or diagnosed by the product, the risks involved in the continued use of the product, and the likelihood that, based upon existing data, the effectiveness of the product can eventually be established by further testing and new test development. The report shall also recommend with as much specificity as possible the type of further testing required and the time period within which it might reasonably be concluded.

(d) *Proposed order.* After reviewing the conclusions and recommendations of the advisory review panels, the Commissioner shall publish in the **Federal Register** a proposed order containing:

(1) A statement designating the biological products in the category under review in accordance with either § 601.25(e)(1) or 601.25(e)(2);

(2) A notice of availability of the full panel report or reports. The full panel report or reports shall be made publicly available at the time of publication of the proposed order.

(3) A proposal to accept or reject the findings of the advisory review panel required by § 601.26(c)(2)(i) and (ii).

(4) A statement identifying those biological products that the Commissioner proposes should be designated as safe and presumptively effective under § 601.26(c)(2) and should be permitted to remain on the market pending completion of further testing because there is a compelling medical need and no suitable alternative therapeutic, prophylactic, or diagnostic agent for the product that is available in sufficient quantities to meet current medical needs. In making this proposal, the Commissioner shall take into account the seriousness of the condition to be treated, prevented, or diagnosed by the product, the risks involved in the continued use of the product, and the likelihood that, based upon existing data, the effectiveness of the product can eventually be established by further testing.

(e) *Final order.* After reviewing the comments on the proposed order, the Commissioner shall publish in the **Federal Register** a final order on the matters covered in the proposed order. Where the Commissioner determines that there is a compelling medical need and no suitable alternative therapeutic, prophylactic, or diagnostic agent for any biological product that is available in sufficient quantities to meet current medical needs, the final order shall provide that the product license for that biological product will not be revoked, but will remain in effect on an interim basis while the data necessary to support its continued marketing are being obtained for evaluation by the Food and Drug Administration. The final order shall describe the tests necessary to resolve whatever effectiveness questions exist.

(f) *Additional studies and labeling.* (1) Within 60 days following publication of the final order, each licensee for a biological product designated as requiring further study to justify continued marketing on an interim basis, pursuant to paragraph (e) of this section, shall submit to the Commissioner a written statement intended to show that studies adequate and appropriate to resolve the questions raised about the product have been undertaken. The Federal Government may undertake the studies. Any study involving a clinical investigation that involves human subjects shall be conducted in compliance with the requirements for informed consent under Part 50 of this chapter. Such a study is also subject to the requirements for institutional review under Part 56 of this chapter unless exempt under § 56.104 or § 56.105. The Commissioner may extend this 60-day period if necessary, either to review and act on proposed protocols or upon indication from the licensee that the studies will commence at a specified reasonable time. If no such commitment is made, or adequate and appropriate studies are not undertaken, the product license or licenses shall be revoked.

(2) A progress report shall be filed on the studies by January 1 and July 1 until completion. If the progress report is inadequate or if the Commissioner concludes that the studies are not being pursued promptly and diligently, or if interim results indicate the product is not a medical necessity, the product license or licenses shall be revoked.

(3) Promptly upon completion of the studies undertaken on the product, the Commissioner will review all available data and will either retain or revoke the product license or licenses involved. In making this review the Commissioner may again consult the advisory review panel which prepared the report on the product, or other advisory committees, professional organizations, or experts. The Commissioner shall take such action by notice published in the **Federal Register.**

(4) Labeling and promotional material for those biological products requiring additional studies shall bear a box statement in the following format:

> Based on a review by the (*insert name of appropriate advisory review panel*) and other information, the Food and Drug Administration has directed that further investigation be conducted before this product is conclusively determined to be effective for labeled indication(s).

(5) A written informed consent shall be obtained from participants in any additional studies required under paragraph (f)(1) of this section, explaining the nature of the product and the investigation. The explanation shall consist of such disclosure and be made so that intelligent and informed consent be given and that a clear opportunity to refuse is presented.

(g) *Court appeal.* The final order(s) published pursuant to paragraph (e) of this section constitute final agency action from which appeal lies to the courts. The Food and Drug Administration will request

consolidation of all appeals in a single court. Upon court appeal, the Commissioner of Food and Drugs may, at the Commissioner's discretion, stay the effective date for part or all of the final order or notice, pending appeal and final court adjudication.

(h) [Reserved]

(i) *Institutional review and informed consent.* Information and data submitted under this section after July 27, 1981, shall include statements regarding each clinical investigation involving human subjects, that it was conducted in compliance with the requirements for informed consent under Part 50 of this chapter. Such a study is also subject to the requirements for institutional review under Part 56 of this chapter, unless exempt under § 56.104 or § 56.105.

Effective date. This regulation becomes effective November 6, 1982.

(Secs. 201, 502, 701, 52 Stat. 1040–1042 as amended, 1050–1051 as amended, 1055–1056 as amended (21 U.S.C. 321, 352, 371); sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262); secs. 4, 10, 60 Stat. 238 and 243 as amended; 5 U.S.C. 553, 702, 703, 704)

Mark Novitch,

Acting Commissioner of Food and Drugs.

Dated: September 3, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

[FR Doc. 82-27314 Filed 10-4-82; 8:45 am]

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Federal Register

Tuesday
October 5, 1982

Part IV

Department of Energy

Office of the Secretary

Financial Assistance Rules

DEPARTMENT OF ENERGY

Office of the Secretary

10 CFR Part 600

Financial Assistance Rules

AGENCY: Department of Energy (DOE).

ACTION: Final rule.

SUMMARY: The final rule being issued today amends 10 CFR Part 600, Financial Assistance Rules, Subparts A and B, and makes technical and conforming amendments to Subpart C of that part. Subpart A contains the general policies and procedural requirements applicable to the award and administration of DOE grants and cooperative agreements. Subpart B establishes specific policy and procedural requirements for grants. Subpart C sets forth policy and procedural requirements that apply to cooperative agreements. This rule is issued to clarify, update, and, in some cases, develop policies to govern actions of DOE staff, applicants/recipients of financial assistance, and other parties. The rule provides a uniform basis for making and administering DOE financial assistance awards consistent with government-wide policies.

The Department has determined there is good cause for making October 1, 1982 the effective date of this rule. The administrative task of implementing this new procedural rule will be greatly simplified by having the effective date coincide with the beginning of the new fiscal year. In addition, making these comprehensive procedures available for use on October 1 will benefit applicants for new financial assistance awards as well as existing financial assistance recipients.

EFFECTIVE DATE: October 1, 1982.

FOR FURTHER INFORMATION CONTACT:

Frank Slezak, Financial Assistance Policy Branch (MA-931.2), Procurement and Assistance Management Directorate, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-8191

Carol A. Cowgill, Office of the Assistant General Counsel for Procurement and Incentives (GC-44), Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-6902

SUPPLEMENTARY INFORMATION:

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I. Background

On March 19, 1982 (47 FR 12038), DOE published proposed financial assistance rules containing policies and procedural requirements applicable to the award and administration of grants and cooperative agreements. A 30-day comment period was provided. The deadline for comments was April 19, 1982. However, due to the significance of the proposed rule and its length, DOE offered the possibility of extending the deadline, if so requested. DOE received a request for an additional 30 days for review and comment from the Arizona Public Service Company, Phoenix, Arizona. The deadline for comments was subsequently extended to May 19, 1982 (47 FR 19154, May 4, 1982).

In response to the notice, DOE received comments from a nonprofit association of research universities' representatives and from an investor-owned utility. Written comments were also submitted by the Office of Management and Budget (OMB). DOE has evaluated the comments, and has adopted the commenter's recommendation, made a responsive modification, or decided not to adopt the recommendation, as indicated below. Based on continuing internal review, DOE has on its own initiative made modifications which clarify the original meaning of the proposed rule or which eliminate redundancies. Changes in this category are also described below.

As indicated in the preamble to the proposed rule (47 FR 12039), DOE sought the approval of the Director of the Federal Register to incorporate by reference in this rule those OMB Circulars applicable to financial assistance. The formal DOE request was made in a letter dated March 5, 1982. By letter dated March 19, 1982, the Director of the Federal Register confirmed earlier informal advice that because the OMB Circulars have been published in the **Federal Register**, approval of their incorporation by reference in 10 CFR Part 600 "would be inappropriate." Accordingly, DOE did not incorporate the OMB Circulars by reference in either the proposed or the final rule.

The Director of the Federal Register provided the following additional advice:

> Circulars are directions to the Federal agencies and they are written in that way. If you wish to make certain requirements mandatory for the public, I recommend that you extract those requirements, write them so they are addressed to the public and publish them in the **Federal Register** and *Code of Federal Regulations.*

DOE is of the opinion that the manner in which this rule implements the OMB Circulars is consistent with the advice received from the Director of the Federal Register. OMB Circulars A-102, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments," and A-110, "Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," contain both mandatory and discretionary directions to Federal agencies regarding the administration of financial assistance agreements. To the extent feasible, the final rule provides cross-references rather that extensive quotations for subjects covered by mandatory A-102 or A-110 requirements. Cross-references are not used, however, for subject areas covered by discretionary requirements. In such cases, the final rule fully states DOE's implementation of the discretionary requirements.

DOE notes that even though OMB has published the Circulars only in the **Federal Register** and not in the Code of Federal Regulations, the Circulars have become widely available and well understood by the major categories of Federal assistance recipients. Consequently, DOE is of the opinion that the careful use of cross-references to and quoted text from the Circulars communicates efficiently and unambiguously the requirements that are being made applicable to the public.

For these reasons, DOE has decided that, as proposed, the OMB Circulars and other governmentwide guidance should be quoted or cross-referenced, as appropriate in the final rule (complete citations to all cross-referenced documents are provided in § 600.2(e)), and that, as with other generally applicable requirements over which DOE has no control, future amendments to the Circulars shall become effective as provided in § 600.12.

II. Discussion of Comments on Proposed Rule

A. General Requirements—Subpart A

One commenter requested modification of the definition of "applicant" in § 600.3, stating that the definition was imprecise as written. DOE has modified this definition by adding the parenthetical phrase "for a subaward" after "recipient" in order to

make clear that DOE is using "applicant" to refer to applicants for subawards under grants or cooperative agreements as well as to refer to applicants that apply directly to DOE.

DOE has also corrected or modified several definitions. The definition of "socially and economically disadvantaged individuals" was corrected and now includes Asian-Pacific Americans as one of the covered minorities. The definitions of "Contracting Officer," "Head of Procuring Activity," and "Secretary" have been modified to indicate more accurately the responsibilities of those officials and to relate them clearly to this rule. The phrase "and non-program aspects" has been added to the definition of Contracting Officer. The definition of "Head of Procuring Activity" has been modified by deleting the adjective "business" and indicating that this official has senior management authority for the award and administration of financial assistance instruments within one or more DOE organizational elements. The definition of "Secretary" has been clarified so that it now means the Secretary of Energy or his or her designee.

The term "Director" has been added to the list of definitions in § 600.3 and is defined to mean the Director, Procurement and Assistance Management Directorate, DOE.

The definitions of "continuation award" and "renewal award" were also modified to clarify DOE intent, and a definition of "extension" has been added. These changes more accurately describe and distinguish the attributes of continuation awards, renewal awards, and extensions. Within the project period system of funding established by § 600.106, a project will, in general, be funded in increments called budget periods. Within a project period, each budget period after the initial budget period will be funded by a continuation award. If a project period is renewed, that process and the initial budget period would be termed a "renewal." Subsequent awards would be contination awards. In contrast, an extension is a means of allowing for orderly phaseout of DOE support of a project. An extension adds time (limited by § 600.106 to 18 months) and, if appropriate, funds under a grant or cooperative agreement that would otherwise expire.

DOE has made several changes in proposed § 600.4 to clarify the policy and procedures of that section. One of the proposed criteria (in § 600.4(b)(4)) for authorizing a deviation was "necessary to achieve an equitable situation for one or more recipients." This criterion was not broad enough to indicate DOE intent because it referred to recipients only and not to applicants and subrecipients. Section 600.4(b)(4) has, therefore, been modified to read "necessary to achieve equity." Language has also been added to proposed § 600.4 (c)(2)(i) and (c)(3) to make it clear that the Assistant General Counsel for Patents is required to concur only in deviations concerning patent or technical data requirements since the proposed rule did not contain this qualification.

In § 600.7(b), DOE has clarified its intent with respect to the requirement for a justification of restricted eligibility. DOE intended that the explanatory information concerning why a restriction of eligibility is considered necessary (required by § 600.7(b) to be in the solicitation) be backed up by a file document justifying the restriction. Therefore, DOE has modified § 600.7(b) to require that any restriction of eligibility be supported by a written determination approved by the responsible program Assistant Secretary or designee and the Contracting Officer and concurred in by the Office of General Counsel.

In view of recent clarifications of the interpretation of 18 U.S.C. 203, a new paragraph (c)(4) has been added to § 600.7 which provides that in reviewing proposed financial assistance awards, the Assistant General Counsel for Standards of Conduct shall consider the prohibition of 18 U.S.C. 203. This criminal statutory provision makes it unlawful for a Federal employee to seek or receive any compensation from persons other than the United States for services "rendered or to be rendered either by himself or another in relation to any proceeding, application * * * or other particular matter in which the United States is a party or has a direct and substantial interest, before any department * * *." 18 U.S.C. 203(a). A person who offers or pays compensation to a Federal employee for such services is also criminally liable. 18 U.S.C. 203(b). The effect of paragraph (c)(4) is to ensure review of proposed DOE financial assistance awards with respect to the application of 18 U.S.C. 203.

DOE has reconsidered proposed § 600.9(c)(8) which provided that a solicitation include both the name of a responsible program official and the responsible Contracting Officer. Having more than one contact point may result in inconsistent advice and in inequities. Therefore, § 600.9(c)(8) has been modified to indicate that the responsible Contracting Officer will serve as the single DOE point of contact under a solicitation.

DOE has added a requirement at § 600.9(c)(9) that each solicitation indicate whether loans are available under the DOE Minority Economic Impact (MEI) loan program, 10 CFR Part 800 (46 FR 44686, September 4, 1981). Under this program, a minority business enterprise applicant could receive a direct loan to finance up to 75% of the allowable costs (as defined in 10 CFR 800.200) of preparing an application for a grant or cooperative agreement. The statutory authority for the MEI loan program is found in section 211 (e) and (f) of the Department of Energy Organization Act, as amended, 42 U.S.C. 7141 (e) and (f).

DOE has reevaluated the concept of a "mixed solicitation" as described in proposed § 600.9(d) and is deleting that paragraph and substituting § 600.6(a). As required by the Federal Grant and Cooperative Agreement Act, Pub. L. 95-224, the revision to § 600.6(a) provides that, in general, before issuing a solicitation, DOE will determine whether applications or proposals are to be solicited for projects for the direct use or benefit of DOE or for a statutorily authorized public purpose of support or stimulation (resulting in a grant or cooperative agreement). If applications for financial assistance awards are solicited, the solicitation must meet the requirements of § 600.9. If a Program Opportunity Notice or a Program Research and Development Announcement is used as a solicitation in accordance with 41 CFR 9-4.57 or 4.58, a financial assistance award may be made if DOE subsequently determines that a grant or cooperative agreement is the appropriate award instrument for a particular transaction.

One commenter objected to the proposed requirement in § 600.10(c) that the Standard Form 424 be used by every applicant as the application face page, pointing out that applicants/recipients covered by OMB Circular A-110 are not required by that Circular to use this form. Since DOE must record the types of information included in the SF-424 to meet the requirements of the Federal Assistance Awards Data System and DOE's financial assistance management information system, DOE has concluded that a single standard form would minimize the potential burden for applicants/recipients and for DOE. Accordingly, the SF-424 is being retained as the standard face page for all financial assistance applications.

With respect to the proposed requirement for a general assurance of compliance and legal authority to apply for financial assistance, as provided in proposed § 600.10(c)(4), one commenter

indicated that such an assurance would be redundant and cause unnecessary paperwork. In response to this comment, DOE has deleted this as a separate requirement and will, as indicated in § 600.10(b), rely on the applicant's signature on the application, which is the equivalent of such a general assurance.

The language of proposed § 600.10(e) which stated that DOE might require the submission of additional information if reasonable and necessary to evaluate an otherwise complete application has been modified in the final rule to state that DOE may request additional information only if the information is essential to evaluation of the application.

On July 14, 1982, President Reagan issued Executive Order 12372, "Intergovernmental Review of Federal Programs" (47 FR 30959, July 16, 1982). The Executive Order establishes a new Federal policy concerning consultation with State and local governments in the administration of Federal financial assistance and direct development activities. As provided in E.O. 12372, OMB on July 19, 1982 rescinded OMB Circular A–95 "Evaluation, Review, and Coordination of Federal and Federally Assisted Programs and Projects." Also on July 19, 1982, OMB issued Bulletin No. 82–15 instructing Federal agencies to continue to comply with the requirements of A–95 until new implementing regulations, which are required by E.O. 12372 to be in effect by no later than April 30, 1983, are issued. As a result, proposed § 600.11, which implements the requirements of OMB Circular A–95, is being issued unchanged as a part of this final rule. DOE intends, however, to propose timely and appropriate amendments which are consistent with the policies of E.O. 12372.

On reconsideration, DOE noted that the consequences of submitting an untimely and/or incomplete application were not explicitly stated in proposed § 600.13. A new paragraph (b) has been added to that section in order to make DOE intent explicit. Paragraph (b) indicates that DOE shall not consider and shall return any application that is not timely and complete.

The criteria for selection of an unsolicited application in proposed § 600.14(e)(1)(ii), *i.e.* "* * * which would not be eligible for financial assistance under a recent, pending, or planned solicitation" unnecessarily restricted competition. Accordingly, an additional criterion has been included which provides that an unsolicited application may not be selected for award if DOE determines that a competitive solicitation would be appropriate.

DOE noticed an omission in the proposed rule, *i.e.* the requirement in proposed § 600.14(g) for return of unsuccessful unsolicited applications had no counterpart in proposed § 600.23. In deciding how to conform these sections, DOE reconsidered whether a requirement to return all unsolicited applications is realistic. Accordingly, DOE has modified §600.14(g) and § 600.23 to provide options for disposing of unsuccessful unsolicited and solicited applications, and has made a corresponding change to § 600.9(c)(18). The final § 600.14(g) indicates that DOE will return unsuccessful unsolicited applications only if requested by the applicant either at the time of application or up to 30 days after the applicant has been notified that the application was unsuccessful. Section 600.9(c)(18) now requires a solicitation to indicate whether and for what period of time unsuccessful solicited applications will be retained by DOE or whether they will be returned to the applicant.

DOE has modified proposed § 600.18, Authorized uses of information. The entire section has been rewritten to parallel more closely the provisions of the DOE Procurement Regulations (41 CFR 9–3.150). These modifications do not change the intent of § 600.18, *i.e.* to handle application information in a manner which protects that information to the extent appropriate and legally permissible. These changes were made to assure common treatment for proposals/applications since this is a consideration which transcends differences between financial assistance and procurement. The final § 600.18 specifies the Notice that an applicant should place on any application which contains data which the applicant wants DOE to protect and how DOE will treat such applications. This section also consolidates the "Rights of Data in Application" requirements that were in proposed §§ 600.118 and 600.231.

One commenter requested that DOE not use the dual signature requirement in proposed § 600.22 and in its place adopt the National Science Foundation (NSF) and Department of Health and Human Services (DHHS) practice of considering the request of funds from the payment system as evidence of recipient acceptance of an award. Although the proposed procedure requires an additional signature and document transmittal, DOE has found that because of the variety of recipients of DOE financial assistance, such an acknowledgment is necessary. Many DOE recipients, in contrast to those of NSF and DHHS, have never received Federal awards and are relatively unfamiliar with the administrative processes of award. The recipient acknowledgment requirement provides DOE an early and unambiguous indication of whether the selected applicant is willing and able to perform in accordance with the award terms and conditions. Therefore, DOE has not accepted the commenter's suggestion.

DOE has modified § 600.24 to clarify what constitutes the maximum DOE obligation to a recipient. DOE has deleted the language of proposed § 600.24 which appeared to limit DOE's obligation to the funds obligated in the specified budget period. Rather, the maximum DOE financial obligation is the amount of funds DOE has obligated for a particular grant or cooperative agreement, as shown on the Notice of Financial Assistance Award. When these funds may be used and for what purposes is also governed by the award.

One commenter suggested that proposed § 600.25(d) be modified so that the "access right" apply only for as long as records are required to be retained by the recipient. DOE has not accepted this comment. For purposes of access, DOE believes there should be no distinction between records that are actually kept beyond the required retention period and those records "required to be maintained."

In this final rulemaking, § 600.26 on disputes and appeals, and § 600.27 on debarment, and the respective applicability provisions in § 600.2(c) and (d) have been designated as "reserved." These sections will be issued separately as final rules in the very near future.

B. Requirements for Grants—Subpart B

The applicability provisions of proposed § 600.100(b) contained a reference to "the suspension and termination procedures of § 600.121 and § 600.122." Since suspension and termination are only two of several "noncompliance" procedures enumerated in § 600.121, the reference in the final § 600.100(b) has been corrected by substituting the word "noncompliance" for the phrase "suspension and termination." The effect of this correction is to remove any possible ambiguity concerning the applicability of noncompliance procedures other than suspension and termination.

DOE received comments on the definitions in proposed § 600.101. The definitions of "cognizant agency" and "indirect cost rate" have been modified to make them consistent with OMB

Circulars A–88 and A–21, respectively. In the preamble to the proposed rule, DOE invited suggestions on criteria for classifying an educational institution as a small organization. No specific criteria were suggested. One commenter stated a preference that educational institutions be defined as a separate category of small entity or small organization drawing from OMB Circular A–110 for specific language. This suggestion was not adopted since A–110 provides no criteria which distinguish small and large educational institutions. As a result, DOE has decided that the "small entity" provisions of this Subpart will be applied to educational institutions which meet the definition of "small organization" in § 600.101.

DOE has modified proposed § 600.102(a)(1)—redesignated § 600.102(a)(2) in the final rule—to provide that if a solicitation requires that applicants complete the listed forms, the solicitation must explain how the information to be provided relates to the objectives of the financial assistance program.

DOE received a comment criticizing the requirement of proposed § 600.102(b)(1), that all applicants use the budget format contained in OMB Circular A–102, as an unnecessary attempt at uniformity. This commenter indicated that since OMB Circular A–110 does not specify any such formats, recipients covered by A–110 should not be made subject to A–102 provisions. DOE has decided to retain this provision as originally proposed for several reasons. An applicant's submission of budget information is a critical factor in DOE's selection and negotiation of grant awards. DOE considers the A–102 budget formats to provide the necessary budget information for making selection and negotiation decisions while at the same time limiting the burden placed on the applicant. Additionally, the A–102 budget formats were thoroughly evaluated during the development of the "DOE Uniform Reporting System for Federal Assistance" (DOE/MA–0001). This system was developed by DOE over a two-year period involving consultations with affected groups and in accordance with OMB forms clearance procedures.

DOE has clarified the requirements of § 600.103(b) with respect to the cost principles applicable to grants, subgrants, and contracts to individuals. DOE continues to believe that an individual who is not part of a for-profit organization should be made subject to OMB Circular A–122. In order to maintain the distinction originally sought, DOE has deleted the word "unincorporated" from proposed § 600.103(b)(3) and added the phrase "including corporations, partnerships, and sole proprietorships" to § 600.103(b)(5).

On May 21, 1982, President Reagan signed into law the Prompt Payment Act (PPA), Pub. L. 97–177, 31 U.S.C. 1801–1806. Section 2(d) of the PPA authorizes Federal grantees to pay interest penalties for late payments to contractors, but prohibits (1) the use of Federal funds to pay such penalties and (2) the inclusion of such payments in satisfying any matching requirement under the grant. These new statutory prohibitions are implemented in § 600.103 in a new paragraph (i) which provides that interest penalties for late payment under a contract (as defined in § 600.3) shall not be an allowable cost under a grant or subgrant, and in § 600.119(e) which specifies that a contract may, by mutual agreement of the parties, provide for interest penalties for late payments but that the costs of such penalties shall not constitute an obligation of the Federal government nor are they allowable costs of the DOE grant or subgrant under which the contract was let.

DOE has clarified the intent of proposed §§ 600.106 and 600.108 with respect to the terms "unobligated balance" and "carryover." DOE has deleted the term "carryover," which was undefined, from § 600.108 and substituted the term "unobligated balance." As used in these sections, the term "unobligated balance" means the portion of the funds authorized by DOE that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized." This definition is incorporated in this rule by means of § 600.116(g).

In response to a comment on proposed § 600.106(c), DOE has clarified its intent and simplified the concept of "renewal awards." This paragraph now (1) states the process for renewing a discretionary grant and (2) indicates the basis on which DOE may renew a formula grant. A commenter criticized the renewal award process because "there are projects that are envisioned to last longer than an initial grant period." This comment misconstrues DOE's budget period/project period system which is intended to award grants for project periods based on the time necessary to perform the projects. A renewal award involves an unanticipated addition of one or more budget periods to the original project period. The same commenter took exception to the requirement for a solicitation, including a justification of restricted eligibility, as unnecessarily burdensome and suggested that DOE adopt the practices of the National Science Foundation and the U.S. Public Health Service. DOE considers the issuance of a solicitation and the resulting application evaluation process to be a prerequisite to a decision as to whether to renew a grant award. The requirement for a justification of restricted eligibility assures that DOE's decision to renew a grant award will undergo the same rigorous consideration as any other decision to limit competition.

Proposed § 600.106(d) has been changed to clarify DOE's policy on grant extensions. As indicated above, a definition of "extension" has been added to § 600.3. The maximum time period for an extension has been increased to 18 months in the final § 600.106(d)(1) to provide additional flexibility in completing projects without requiring use of renewal procedures. Proposed § 600.106(d)(2) provided that extensions could be made if "no additional funds or a minimal amount of additional funds are necessary." This limitation has been deleted. Proposed § 600.106(d)(3)—redesignated § 600.106(d)(2) in the final rule—has been changed to require that any extension request be submitted prior to the expiration date of the existing project period.

DOE has decided to delete proposed paragraphs § 600.106 (f) and (g), which treated funding of subgrants and contracts under grants or subgrants. Although proposed § 600.106(f) contained an accurate statement on subgrant funding, DOE decided that this subject should receive more comprehensive treatment in the program rules under which subgranting is authorized. § 600.106(g) has been deleted because it merely restated, in more specific terms, the general principles established in §§ 600.24 and 600.103.

One comment criticized proposed § 600.107 for not providing a detailed description of the basis for negotiating nonstatutory cost sharing. By requiring that the program rule or solicitation explain why cost sharing is being required and whether the amount or percentage may be negotiated, DOE believes the applicant will be fully informed for purposes of preparing an application and any subsequent negotiation. DOE's objective during negotiation will be to assure that the resources available from all sources are reasonable and sufficient to carry out

the project. For these reasons § 600.107 has not been revised.

In response to a suggestion by OMB, § 600.109 has been modified to provide that, in all cases, the awarding party shall rely, to the extent possible, on readily available sources of information to make preaward determinations of the adequacy of financial management systems. As proposed, this provision would have been applicable only to small entities expected to receive $25,000 or less during the project period.

DOE received two comments on proposed § 600.112. One commenter indicated that this section did not clearly encourage the use of advance payment methods under grants. DOE believes that the rule satisfies the commenter's concern because § 600.112(a) states that "DOE *shall* use the appropriate advance payment method described in paragraph (b) * * *" (emphasis added). The other comment, from OMB, concerned the statement in proposed § 600.112(h) that advance payments to subgrantees shall be by check rather than by a letter of credit. OMB indicated that the letter-of-credit option should be available to subgrantees. DOE agrees and has deleted this restriction.

Proposed § 600.112(b)(1)(i) would have authorized payment by letter of credit whenever a grantee was to be advanced, during at least a 12-month period, a minimum of $120,000 in DOE financial assistance. The final rule removes the "financial assistance" limitation on the funds that may be aggregated for purposes of establishing the letter of credit threshold. Proposed § 600.112(c)(2) provided that State governments, local governments, and Indian tribal governments would not be reimbursed for amounts that are withheld from contractors to assure satisfactory completion of contractual work under a grant or subgrant until final payment has been made to the contractor. In the final § 600.112(c)(2), this limitation has been made applicable to all grantees and subgrantees.

DOE has made changes in § 600.113 (a) and (e). In addition to income resulting from DOE grant support, paragraph (a) now provides that grantees and subgrantees shall also "be required to account for income earned from activities supported by a grant or subgrant * * *" Paragraph (e) of the final § 600.113 has been clarified by the addition of language indicating that general program income also results "if the activity from which the income was earned was treated, in whole or in part, as a direct cost of the grant or subgrant and either funded by DOE or counted toward meeting a cost sharing requirement of the award." As proposed in paragraph (e)(3), the general rule that "DOE [would] have no right to any portion of general program income earned or accrued after the project period ends or the grant is terminated" could have been overridden by providing for DOE entitlement in the terms and conditions of the award. In the final rule, this exception has been made more stringent by providing that DOE's right to any portion of such income must be required by statute or program rule. See, § 600.113(e)(2).

One commenter stated that DOE should minimize the requirements for prior approval of budget changes as such requirements represent a nonproductive, nonconstructive Federal control. In particular, this commenter objected to the requirement for prior approval of cumulative budget transfers expected to exceed 5% (proposed § 600.114(b)(1)(iv)). DOE believes that it has minimized such prior approval requirements and that the requirements of § 600.114 should be the general rule for DOE grantees and subgrantees. If, under certain programs or under awards with certain classes of recipients, these requirements are considered burdensome, the deviation provisions of § 600.4 may be used.

DOE has deleted proposed § 600.114(b)(4) because it duplicated the coverage of § 600.114(d)(1). Rather than single out several types of expenditures not requiring DOE approval (as had been proposed in § 600.114(b)(4)), DOE will rely on § 600.114(b) for those budget changes requiring prior DOE approval and § 600.114(d)(1) for the limitation of additional requirements for prior approval of budget changes.

DOE has clarified proposed § 600.116(b)(2). As originally stated, in the absence of DOE direction, this provision appeared to limit a grantee to financial status reporting on the same accounting basis as used in its accounting system. DOE did not intend such a restriction and, therefore, has modified this paragraph to indicate that when not specified by DOE, the grantee may complete the Financial Status Report on either a cash or accrual basis.

DOE has added language to proposed § 600.116(c) with respect to grantees paid under the Regional Disbursing Office (RDO) system to make this paragraph consistent with OMB Circular A-102. OMB Circular A-102 specifies that grantees under the RDO system shall not be required to submit the Report of Federal Cash Transactions (SF-272).

DOE has deleted specific reference to the Request for Payment on Letter of Credit and Status of Funds Report (SF-183) from proposed § 600.116(d) and substituted a generic reference to requests for payment under a letter of credit. Due to the fact that DOE does not directly administer payments under a letter of credit and because the form required to request payment is subject to change, this provision now requires the grantee to comply with payment instructions from the administering payment office.

OMB made three comments on proposed § 600.117 which contains the property management requirements. OMB recommended against the exclusion for property donated by a third party (whether or not counted as a third party in-kind contribution) from the property management requirements. OMB stated that "if a grantee uses the value of a donated piece of property as matching share, we believe the Federal government should retain an interest in the property just as it would if the grantee purchased the property and charged it to the grant." OMB cited no legal authority which would allow the Federal government to assert an interest in property donated by a third party to a grantee. DOE is of the opinion that asserting an interest in donated property would serve as a disincentive to make or accept third party in-kind contributions, thus increasing costs to the Federal government and/or the grantee. Additionally, in some cases, such a provision could affect whether an award is made or accepted. DOE considers the application of the use, management, and disposition requirements to donated property to be inappropriate. Thus, in the interest of cost-effectiveness and equity, DOE has decided to retain the provision which excludes property donated by a third party from the requirements of § 600.117.

OMB's second comment concerned proposed § 600.117(d)(2) which states that "DOE may transfer ownership of any item of exempt or nonexempt equipment having a unit acquisition cost of $1,000 or more * * *" OMB indicated that this language appeared to conflict with the provisions of the Circulars which state that a Federal agency may reserve such a right subject to, among other things, a requirement that the property be identified in the grant or otherwise made known to the grantee in writing. DOE believes that, as proposed, § 600.117(d)(2) does not conflict with the OMB Circulars. Although DOE intends to exercise the right to transfer ownership only in limited circumstances, the reservation of that right must be accomplished on a more general basis. The need to transfer a project and related property cannot be

predicted either at the time of award or when any postaward approval to purchase equipment is granted. By putting grantees on notice that any such equipment is subject to transfer under the conditions specified, § 600.117(d)(2) represents a practical approach to an administrative problem which would be almost impossible to deal with on a case-by-case basis. Therefore, this paragraph has not been modified.

The third OMB comment concerned paragraphs (d)(1) and (d)(4) of proposed § 600.117. OMB stated that these paragraphs call for grantees to submit inventories of all equipment annually and at the end of the project period, including equipment that the grantee intends to use as well as equipment that the grantee no longer needs. OMB observed that, since the grantee is authorized to use equipment for as long as needed, it is not clear why equipment that will be used must be reported. The OMB comment is based, in part, on a misreading of § 600.117. An annual property listing was proposed as a requirement for federally owned property only. In the final rule, the annual listing is required only for equipment provided by DOE. With respect to a property listing at closeout, both the proposed and final § 600.117(d)(4) require an inventory only of nonexempt equipment with a unit acquisition cost of $1000 or more. DOE considers the identification of such equipment and the grantee's indication of continued use or disposition to be essential to DOE's closeout responsibilities. Closeout represents an accounting point at which DOE must make certain determinations concerning property (*e.g.*, whether the continued use proposed by the grantee is consistent with the requirements of the DOE rules, whether DOE's right to transfer ownership should be exercised). The inventory provides the information DOE needs to make these determinations, and to identify items of equipment which may be the subject of future disposition actions. Accordingly, § 600.117(d) (1) and (4) have not been modified in response to the OMB comment.

Proposed § 600.117, Property management, contained several references to calculation of reimbursement due upon the sale of property. As proposed, these provisions did not indicate how to determine the base to which the formula would apply (*e.g.*, applying the percentage of participation in project costs to the current fair market value of the property). DOE has corrected this omission by adding a definition of "allowable costs of the project" to § 600.117(a) and, in each subsequent paragraph of this section in which reimbursement is treated, has modified the formula to read "* * * in an amount computed by applying the percentage of * * * participation in the allowable costs of the project to the * * *" current fair market value of the property or sales proceeds.

DOE has added language in § 600.117(d)(1) which, in the absence of other requirements in the award, sets minimum management standards for federally owned property, *i.e.* those standards in OMB Circulars A–102 and A–110. Paragraph § 600.117(d)(1) now parallels the treatment of the other types of equipment in this section by indicating the requirements for use, management, and disposition. DOE has, in addition, distinguished for purposes of reporting, between property provided by DOE and property required to be owned by DOE which is acquired under a grant. Grantees must annually submit a listing of equipment which has been provided by DOE; for other federally owned equipment, the grantee is required to report the results of a biennial inventory. DOE has also added a statement to § 600.117(e) indicating that federally owned supplies are to be used, managed, and disposed of as specified in the award.

DOE has included a reference in § 600.118(b)(3) to other technical data clauses than the Rights in Technical Data (Short Form), which does not provide protection for proprietary data. Although the existence and availability of the appropriate clauses of 41 CFR Part 9–9 was included in proposed § 600.118 (a) and (b), DOE thought that a specific reference would, in this case, serve to protect recipients' interests. DOE has also deleted the "Rights to Data in Grant Application" clause of proposed § 600.118(b)(7) and moved this coverage to § 600.18(c)(5).

In order to make the range of actions which DOE may take in noncompliance situations consistent with the provisions of this rule, DOE has added another action, *i.e.* "determine that the grantee is not responsible as provided in § 600.104," to the listing in proposed § 600.121(b).

DOE has added a new paragraph (a) to § 600.122 in order to make clear that a noncompliance determination under § 600.121 may be the basis for suspending or terminating a grant for cause. The new paragraph also provides that DOE may suspend or terminate a grant for cause if the grantee is the subject of a debarment action under § 600.27. As proposed, § 600.122 was silent on whether debarment of a grantee could be the basis for suspension or termination of an ongoing grant. Since a new grant award cannot be made to a debarred individual or organization, DOE must have the discretionary authority to discontinue an existing grant, subgrant, or contract with the debarred party whenever necessary to protect the public interest. Paragraphs (a)–(e) of proposed § 600.122 have been redesignated (b)–(f) in the final rule. The title of paragraph (d) (proposed paragraph (c)) of § 600.122 has been changed from the proposed "Termination by the grantee or by mutual agreement" to "Termination by mutual agreement." DOE may unilaterally terminate a grant only when there is cause for termination (*see*, §§ 600.121(b)(4) and 600.122(d)). However, even when termination is requested by a grantee, a DOE Contracting Officer is the only one who is authorized to terminate a grant award. The Department decided, therefore, that it was inaccurate to suggest, as in proposed § 600.122(d), that a grantee could unilaterally terminate a grant. Although there has been no change in the grantee's right to request an early termination of a grant, the final § 600.122(d) reflects the fact that in such a situation DOE and the grantee must reach a common understanding on the timing, scope and other conditions of the termination before the grant award can be terminated by the DOE Contracting Officer. The Department's intention to honor all grantee requests for grant award terminations remains unchanged.

C. Technical and Conforming Amendments to Requirements for Cooperative Agreements—Subpart C

One commenter made several comments on the proposed technical and conforming amendments to Subpart C. One of the comments criticized § 600.211(c)(6), in both its current and proposed form, contending that this provision is vague because it contains references to various OMB Circulars without any descriptive or explanatory text. As noted above, § 600.2 contains complete citations to all the OMB Circulars which are implemented by the rule. A fuller discussion of the manner in which the requirements of the applicable OMB Circulars and other governmentwide guidance have been implemented appears above in the section of this preamble which responds to the recommendation of the Director of the Federal Register. Part IV of this preamble identifies the sections of the rule that contain information collection requirements along with references to

the corresponding cost principles and OMB Circular requirements. DOE concludes that, in the context of the entire rule, the references to OMB Circulars in § 600.211(c)(6) are not vague.

This commenter also indicated that it was unclear as to when a cooperative agreement would be used rather than a contract. As provided in section 4(1) of the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224 (41 U.S.C. 503(1)), a procurement contract shall be used when the principal purpose of the relationship is the acquisition by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal government. A grant or cooperative agreement shall be used when the principal purpose of the relationship is the transfer of money, property, services, or anything of value (for purposes of this rule, money or property only) to accomplish a public purpose of support or stimulation authorized by Federal statute. A cooperative agreement is the appropriate instrument when substantial involvement is anticipated between the executive agency and the recipient during performance of the contemplated activity. DOE shall make these determinations in accordance with § 600.5. The revised Subpart C, when issued as a Notice of Proposed Rulemaking, will contain additional guidance on when it is appropriate to use a cooperative agreement rather than a grant.

The commenter also inquired about the meaning and intended purpose of "non-standard provision," a phrase used in the preamble to the proposed rule. This phrase refers to the deviation procedures of § 600.4 and to the use of special restrictive conditions under § 600.105. The circumstances under which a deviation might be requested would vary; however, DOE would be required to make known to applicants/recipients any requirement which represents a deviation from these rules. No change has been made in the rules as a result of this comment.

DOE has removed §600.231 in its entirety rather than removing paragraph (d) and revising paragraphs (a) and (c), as proposed. Treatment of proposal data and rights of proposal data are now fully covered in § 600.18 which applies to both grant and cooperative agreement applications/awards.

III. Review Under Executive Order 12291

In accordance with the requirements of Executive Order 12291 (46 FR 13193, February 17, 1981), this final rule has been reviewed by OMB.

Prior to publication of the proposed rule, DOE concluded that this 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 the United States-based enterprises to compete in domestic or export markets. No comments were received which disagreed with this determination.

IV. Review Under the Paperwork Reduction Act

DOE has determined that this final rule imposes information collection requirements, as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511), including reporting and recordkeeping, on individuals, businesses and private institutions, and State and local governments insofar as they are subject to this rule. The forms specified in this rule include both standard Federal forms and DOE forms that have been approved by OMB. The forms specified in this rule that applicants or grantees may be required to complete are:

Preapplication for Federal Assistance (OMB No. 0348–0008);
Application for Federal Assistance—Nonconstruction (OMB No. 0348–0007);
Application for Federal Assistance—Short Form (OMB No. 0348–0006);
Application for Federal Assistance—Construction (OMB No. 0348–0005);
Standard Form 424 (OMB No. 0348–0009);
Federal Assistance Budget Information Forms—Nonconstruction or Construction (Forms EIA 459C and D) (OMB No. 1900–0127);
Notice of Energy R&D Project (Form DOE 538) (OMB No. 1900–0127);
Federal Assistance Program/Project Status Report (Form EIA 49F) (OMB No. 1900–0127);
Financial Status Report (SF–269) (OMB Nos. 0348–0001 and 1900–0127);
Request for Advance or Reimbursement (SF–270) (OMB No. 0348–0004);
Outlay Report and Request for Reimbursement for Construction Programs (SF–271) (OMB No. 0348–0002);
Report of Federal Cash Transactions (SF–272) (OMB No. 0348–0003).

In addition to information collection by means of these forms, this rule contains other information collection requirements. In all cases, these requirements are derived from the OMB Circulars and other governmentwide guidance which this rule implements. The sections of this rule containing such requirements and the OMB Circulars and other guidance on which they are based are listed below.

Section 600.25—Access to records—OMB Circulars A–102, A–110.

Section 600.103(f)—Indirect cost proposals—OMB Circulars A–102, A–110, A–88, applicable cost principles.

Section 600.107(d)—Records of in-kind contributions—OMB Circulars A–102, A–110.

Section 600.113(f)—Records of program income—OMB Circulars A–102, A–110.

Section 600.115(e)—Interim reports—OMB Circulars A–102, A–110.

Section 600.117(d)(1)—Listing of federally owned property—OMB Circulars A–102, A–110.

Section 600.117(d)(1) and (d)(3)—Property management standards—OMB Circulars A–102, A–110.

Section 600.117(d)(4) and 600.123(c)—Property listing at closeout—OMB Circulars A–102, A–110.

Section 600.118(c)—Reporting of royalties—applicable cost principles.

Section 600.119(d)(1)—Record retention by contractors—OMB Circulars A–102. A–110.

Section 600.120 (d) and (c)—Reporting of audit results—OMB Circulars A–102, A–110.

Section 600.123—Closeout requirements—OMB Circulars A–102, A–110.

Section 600.124—Record retention requirements—OMB Circulars A–102, 110.

The information collection requirements of the patent, data, and copyright provisions of § 600.118 are derived from OMB Circular A–124, Pub. L. 96–517, and DOE regulations (41 CFR Part 9–9).

V. Review Under the Regulatory Flexibility Act

As indicated in the preamble to the proposed rule (47 FR at 12047), the proposed rule was reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354). DOE certified that this rule would not have a significant economic impact on a substantial number of small entities, and, therefore, no initial regulatory flexibility analysis was prepared.

In the absence of any public comment on the DOE certification in the proposed rule, DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no final regulatory flexibility analysis has been prepared.

VI. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this wholly procedural rule 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 1500–1508), and the DOE guidelines (45 FR 20694, March 28, 1980) and, therefore, does not require an environmental impact statement pursuant to NEPA.

List of Subjects in 10 CFR Part 600

Administrative practice and procedure, Applications, Cooperative agreements/energy, Copyright, Educational institutions, Eligibility, Energy, Financial assistance, For-profit organizations, Grants/energy, Hospitals, Individuals, Intentions and patents, Management standards, Nonprofit organizations, Reporting requirements, Solicitation, Small businesses, State, local, and Indian tribal governments, Technical data.

Issued in Washington, D.C. on September 27, 1982.

Hilary J. Rauch,

Director, Procurement and Assistance, Management Directorate.

10 CFR Part 600 is amended as follows:

1. The table of contents for Part 600 is revised to read as follows:

PART 600—FINANCIAL ASSISTANCE RULES

Subpart A—General

Subpart B—Grants

Subpart C—Cooperative Agreements

Appendix A to Part 600—Generally Applicable Requirements

Authority: Secs. 644 and 646, Pub. L. 95–91, 91 Stat. 599, (42 U.S.C. 7254 and 7256); Pub. L. 95–224, 92 Stat. 3 (41 U.S.C. 501).

2. Subparts A and B are revised to read as follows:

Subpart A—General

§ 600.1 Purpose and scope.

The purposes of this Part are to implement the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224 (41 U.S.C. 501 *et seq.*), and to establish uniform policies and procedures for the award and administration of DOE grants and cooperative agreements. This subpart (Subpart A) sets forth the policies and procedures applicable to both grants and cooperative agreements.

§ 600.2 Applicability.

(a) Except as otherwise provided by Federal statute or program rule, this Part applies to any unsolicited application received and any solicitation issued on or after the effective date of this Part, and to any new, continuation, or renewal award (and any subsequent subaward) with a beginning date on or after the effective date of this Part.

(b) Any new, continuation, or renewal award (and any subsequent subaward) shall comply with any applicable requirement of a Federal statute or a Federal rule if the award is made on or after the effective date of the applicable statutory or regulatory requirement. Unless otherwise specified by DOE, any new, continuation, or renewal award (and any subsequent subaward) shall comply with any applicable Office of Management and Budget (OMB) Circular or governmentwide guidance in effect as of the date of such award.

(c)–(d) [Reserved].

(e) *OMB Circulars.* (1) The following OMB Circulars apply as provided in paragraphs (a) and (b) of this section and the sections of this Part where specific reference to any of the material is made:

(i) OMB Circular A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments (42 FR 45828, September 12, 1977, as amended by 44 FR 47874, August 15, 1979; 44 FR 60958, October 22, 1979; 45 FR 59668, September 10, 1980).

(ii) OMB Circular A–110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (41 FR 32016, July 30, 1976).

(iii) OMB Circular A–95, Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects (41 FR 2052, January 13, 1976).

(iv) OMB Circular A–124, Patents—Small Business Firms and Nonprofit Organizations (47 FR 7556, February 19, 1982).

(v) OMB Circular A–21, Cost Principles Applicable to Grants, Contracts and Other Agreements with Institutions of Higher Education (44 FR 12368, March 6, 1979 as amended by 47 FR 33658, August 3, 1982).

(vi) OMB Circular A–87, Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments (46 FR 9548, January 28, 1981).

(vii) OMB Circular A–122, Cost Principles Applicable to Grants,

Contracts, and Other Agreements with Nonprofit Organizations (45 FR 46022, July 8, 1980).

(2) Copies of the OMB publications listed in paragraph (e)(1) may be obtained from the Office of Management and Budget, Office of Administration, Publications Unit, Washington, D.C. 20503 or from the Department of Energy, Financial Assistance Policy Branch (MA-931.2), 1000 Independence Avenue, S.W., Washington, D.C. 20585.

§ 600.3 Definitions.

The following definitions are provided for purposes of this Part—

"Applicant" means any individual, organization, agency, or entity which files a written application or preapplication for financial assistance with DOE or with a recipient (*i.e.* for a subaward).

"Application" means a written request for financial assistance.

"Approved budget" means a budget and any revision thereto which has been approved in writing by DOE for carrying out the purposes of a project.

"Assistance" means the transfer of money, property, services or anything of value to a recipient to accomplish a public purpose of support or stimulation authorized by Federal statute.

"Award" means the written document executed by a DOE Contracting Officer, after an application is approved, which contains the terms and conditions for providing financial assistance to the recipient.

"Awarding party" means DOE or a recipient who makes a subaward.

"Budget" means the applicant's financial expenditure plan for carrying out the proposed project. The budget shall include any cost sharing which is required by statute, rule, or the award.

"Budget period" means the interval of time, specified in the award, into which a project is divided for budgeting and funding purposes.

"Continuation award" means an award for a succeeding or subsequent budget period after the initial budget period of either an approved project period or renewal thereof.

"Contract" means a written procurement contract with a third party for the acquisition of property or services under a financial assistance award.

"Contracting Officer" means the DOE official authorized to execute awards on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.

"Cooperative agreement" means a financial assistance instrument used by DOE to transfer money or property when the principal purpose of the transaction is accomplishment of a public purpose of support or stimulation authorized by Federal statute and substantial involvement is anticipated between DOE and the recipient during performance of the contemplated activity. For purposes of this Part, the term "cooperative agreement" does not include nonfinancial assistance.

"Cost sharing" refers to the share of project costs required to be contributed by the recipient. Depending on the source and nature of the requirement, terms such as "matching" and "cost participation" may also be used to denote cost sharing.

"Department" or "DOE" means the United States Department of Energy.

"Director" means the Director, Procurement and Assistance Management Directorate, DOE.

"Discretionary financial assistance" means financial assistance provided under a Federal statute which authorizes DOE to select the recipient and the project to be supported and to determine the amount to be awarded.

"Extension" means an amendment of an award, which would otherwise expire, to provide additional time, and if appropriate, additional funds for completion of project activities.

"Federally recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation or other organized group or community (including any Native village as defined in Section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688).

"Financial assistance" means the transfer of money or property to a recipient or subrecipient to accomplish a public purpose of support or stimulation authorized by Federal statute. For purposes of this Part, financial assistance instruments are grants and cooperative agreements, and subawards.

"Grant" means a financial assistance instrument used by DOE to transfer money or property when the principal purpose of the transaction is accomplishment of a public purpose of support or stimulation authorized by Federal statute and no substantial involvement between DOE and the grantee during the performance of the contemplated activity is anticipated. For purposes of this Part, the term "grant" does not include nonfinancial assistance.

"Head of a Procuring Activity (HPA)" means a DOE official with senior management authority for the award and administration of financial assistance instruments within one or more DOE organizational elements.

"Local government" means a local unit of government including specifically a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under State law), sponsor group representative organization (as defined in 7 CFR 620.2, 40 FR 12472, March 19, 1975), any other regional or interstate government entity, or any agency or instrumentality of a local government exclusive of local institutions of higher education and hospitals.

"Nonprofit organization" means any corporation, trust, foundation, or institution which is entitled to exemption under Section 501(c)(3) of the Internal Revenue Code, or which is not organized for profit and no part of the net earnings of which inure to the benefit of any private shareholder or individual (except that the definition of "nonprofit organization" in the patent clause of § 600.118(b)(1) shall apply for purposes of the applicability of that clause).

"OMB" means the Office of Management and Budget.

"Project" means the set of activities described in an application, State plan, or other document that is approved by DOE for financial assistance (whether such financial assistance represents all or only a portion of the support necessary to carry out those activities).

"Project period" means the total period of time indicated in an award during which DOE expects to provide financial assistance. A project period may consist of one or more budget periods and may be extended by DOE.

"Recipient" means the organization, individual, or other entity that receives an award from DOE and is financially accountable for the use of any DOE funds or property provided for the performance of the project, and is legally responsible for carrying out the terms and conditions of the award.

"Renewal award" means an award which extends a project period by adding one or more additional budget periods and which makes an award of DOE financial assistance for the first budget period of the extended project period.

"Secretary" means the Secretary of the United States Department of Energy or designee.

"Small business" means a business concern, including its affiliates, which is independently owned and operated, is not dominant in its field of operation, and can qualify under the criteria concerning number of employees,

average annual receipts, and other criteria as prescribed by the Small Business Administration (except that the definition of "small business" in the patent clause of § 600.118(b)(1) shall apply for purposes of the applicability of that clause).

"Socially and economically disadvantaged individuals" means individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities and/or those whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. Such individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and other specified minorities, or any other individual found to be disadvantaged by the Small Business Administration under section 8(a) of the Small Business Act.

"Socially and economically disadvantaged small business concern" means any small business concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals, and whose management and daily business operations are controlled by one or more such individuals.

"Solicitation" means a document which requests the submission of applications and which describes program objectives, recipient and project eligibility requirements, evaluation criteria, award terms and conditions, and other information about the financial assistance opportunity.

"State" or "State government" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory, possession or trust territory of the United States, or any agency or instrumentality of a State. The term does not include local governments, State hospitals, or State institutions of higher education.

"State plan" means a document required by statute to be submitted by a State in order to demonstrate compliance with the legal prerequisites for an award of nondiscretionary financial assistance.

"Subaward" means an award of financial assistance by a recipient to an eligible subrecipient when specifically authorized by statute or program rule. The term does not include a contract under a financial assistance award.

"Subrecipient" means the organization, individual, or other entity that receives a subaward.

"Terms and conditions" means the rights and obligations of the awarding party and the recipient or subrecipient set forth in a statute, this Part, other rules, or otherwise set forth or incorporated by reference in the award or subaward document.

§ 600.4 Deviations.

(a) *Definitions.* (1) "Deviation" means the use of any policy, procedure, form, standard, term, or condition which varies from a requirement of this Part, or the waiver of any such requirement, unless such use or waiver is authorized by Federal statute. The use of optional or discretionary provisions of this Part, including special restrictive conditions used in accordance with § 600.105, are not deviations. The waiver provisions of the patent requirements of § 600.118 are not subject to the requirements of this section and shall be administered in accordance with 41 CFR Part 9–9.

(2) "Single-case deviation" means a deviation which applies to one financial assistance transaction and one applicant, recipient, or subrecipient only.

(3) "Class deviation" means a deviation which applies to more than one financial assistance transaction, applicant, recipient, or subrecipient.

(b) *General.* The DOE officials specified in paragraph (c) of this section may authorize a deviation only upon a written determination that the deviation is—

(1) Necessary to achieve program objectives;

(2) Necessary to conserve public funds;

(3) Otherwise essential to the public interest; or

(4) Necessary to achieve equity.

(c) *Approval procedures.* (1) A deviation may be requested by DOE staff, an applicant for an award or subaward, a recipient, or a subrecipient. Such a request must be in writing and must be submitted to the responsible DOE Contracting Officer. An applicant for a subaward or a subrecipient shall submit any such request through the recipient.

(2) Except as provided in paragraph (c)(3) of this section—

(i) A single-case deviation may be authorized by the responsible Head of a Procuring Activity (HPA). Any proposed single-case deviation from the requirements of § 600.118 or § 600.290 concerning patents or technical data shall be referred to the Assistant General Counsel for Patents for review and concurrence prior to submission to the HPA.

(ii) A class deviation may be authorized by the Director or his or her designee.

(3) Whenever the concurrence of OMB, other Federal agency, or other DOE office is required to authorize a deviation, only the Director or his or her designee may authorize a single-case deviation. Any proposed class deviation from the requirements of § 600.118 or § 600.290 concerning patents or technical data shall be forwarded through the Assistant General Counsel for Patents.

(d) *Notice.* Whenever a request for a class deviation is approved, DOE shall publish a notice in the **Federal Register** at least 15 days before the class deviation becomes effective. Whenever a class deviation is contained in a proposed program rule, the preamble to the proposed rule shall describe the purpose and scope of the deviation.

(e) *Subawards.* A recipient may use a deviation in a subaward only with the prior written approval of a DOE Contracting Officer. If prior approval is not obtained, the use of a deviation in a subaward shall be a violation of the terms and conditions of the DOE award.

§ 600.5 Selection of award instrument.

If DOE has administrative discretion in the selection of the award instrument, the DOE determination as to whether a program is principally one of procurement or assistance pursuant to Pub. L. 95–224 shall be based on the purpose of the program and the authorizing statute. This determination shall be either made or reviewed at a policy level within DOE. DOE shall review individual transactions that differ from this determination for consistency with Pub. L. 95–224. A grant or cooperative agreement shall be the appropriate instrument, in accordance with this Part, when the principal purpose of the relationship is the transfer of money or property to accomplish a public purpose of support or stimulation authorized by Federal statute. DOE shall determine whether a grant or a cooperative agreement is the appropriate instrument in accordance with Pub. L. 95–224 and this Part. DOE shall limit involvement between itself and the recipient in the performance of a project to the minimum necessary to achieve DOE program objectives.

§ 600.6 Discretionary awards.

(a) DOE may make discretionary financial assistance awards on the basis of:

(1) Applications submitted in response to a financial assistance solicitation (see § 600.9);

(2) Unsolicited applications (see § 600.14); or

(3) Applications submitted in response to a Program Opportunity Notice or a Program Research and Development Announcement (see 41 CFR 9–4.57 and 9–4.58) if, after an application is selected for award, DOE determines that a grant or cooperative agreement is the appropriate award instrument.

(b) DOE shall solicit applications for discretionary financial assistance in a manner which provides for the maximum amount of competition feasible.

§ 600.7 Eligibility.

(a) *General.* The eligibility of recipients and subrecipients and of projects for DOE financial assistance shall be determined in accordance with the applicable Federal statute or program rule, and paragraphs (b) and (c) of this section.

(b) *Restricted eligibility.* If DOE restricts eligibility in a solicitation to less than all otherwise eligible applicants under paragraph (a) of this section, an explanation of why the restriction of eligibility is considered necessary shall be included in the solicitation. Any restriction of eligibility shall be supported by a written determination approved by the responsible program Assistant Secretary or his or her designee and the Contracting Officer and concurred in by the Office of General Counsel.

(c) *DOE employees.* (1) An applicant individual who is a former DOE employee or an applicant organization that is substantially owned or controlled by one or more former DOE employees may be declared ineligible for DOE financial assistance if such applicant does not comply with the requirements of 10 CFR Part 1010, Subpart C.

(2) Except as provided in paragraph (c)(3) of this section, a current DOE employee and a business concern or organization substantially owned or controlled by one or more current DOE employees are not eligible for DOE financial assistance.

(3) The Director, with the concurrence of the Assistant General Counsel for Standards of Conduct, may exempt an applicant from the restriction of paragraph (c)(2) of this section if the applicant is determined to have unique expertise or technical resources and if it is determined that providing financial assistance to the applicant would be in the public interest. DOE shall publish in the **Federal Register** a notice of any exemption under this paragraph at least 30 days prior to making an award to the exempted applicant. No exemption may be granted to a DOE employee who is or was involved in initiating, developing, reviewing or administering the financial assistance program under which assistance is being sought, or to a DOE employee who is considered "supervisory" under the Department of Energy Organization Act (42 U.S.C. 7211(a)).

(4) In reviewing any proposed financial assistance award, the Assistant General Counsel for Standards of Conduct shall consider the prohibition of 18 U.S.C. 203 (Section 203 prohibits a Government employee from receiving compensation from persons other than the United States for services rendered by the employee or another before a Government agency in relation to a particular matter in which the United States is a party or has a direct and substantial interest.)

§ 600.8 Small and disadvantaged business participation.

(a) DOE shall provide adequate opportunities for small businesses, including socially and economically disadvantaged small business concerns, to compete for DOE financial assistance awards consistent with the program statute or other Federal law, implementing rules, and program needs.

(b) DOE may use small business preferences or set-asides in DOE financial assistance programs only when authorized or required by Federal statute. DOE shall include a citation to such statutory authority in any solicitation that provides for small business preference or a set-aside.

(c) DOE shall require recipients and subrecipients to take affirmative action with regard to small and disadvantaged businesses in contracts under financial assistance awards and subawards only as authorized by Federal statute, program rules, and this Part.

§ 600.9 Solicitation.

(a) *General.* A solicitation for financial assistance applications shall be in the form of a program rule or other publicly available document which invites the submission of applications by a common due date or within a prescribed period of time.

(1) A solicitation (other than a program rule which serves to solicit applications) may be issued only by a DOE Contracting Officer.

(2) DOE shall publish either a copy or a notice of the availability of a financial assistance solicitation in the **Federal Register**. If the potential applicants are limited to State governments, DOE may, in advance of **Federal Register** publication, mail a copy of the solicitation simultaneously to each potential applicant. DOE shall publish solicitations or notices in the *Commerce Business Daily* when potential applicants include for-profit organizations or when there is the potential for significant contracting opportunities under the resulting financial assistance awards. In order to reach the widest possible audience of potentially interested applicants, DOE may also publish notices or copies of solicitations in trade and professional journals, news media, and use other means of communication, as appropriate.

(b) *Subawards.* In accordance with the provisions of the applicable statute and program rules, if a DOE financial assistance program involves the award of financial assistance by a recipient to a subrecipient, the recipient shall provide sufficient advance notice so that potential subrecipients may prepare timely applications and secure prerequisite reviews and approvals.

(c) *Contents of solicitation.* Each solicitation shall include the following types of information and such other information as may be necessary to allow potential applicants to decide whether to submit an application, to understand how applications will be evaluated, and to know what the obligations of a recipient would be:

(1) A control number assigned by the issuing DOE office;

(2) The amount of money available for award and, if appropriate, the expected size of individual awards broken down by areas of priority or emphasis, and the expected number of awards;

(3) The type of award instrument or instruments to be used;

(4) Catalog of Federal Domestic Assistance number for the program;

(5) Who is eligible to apply (see § 600.7);

(6) The expected duration of DOE support or the period of performance;

(7) Application form or format to be used, location for application submission, and number of copies required;

(8) The name of the responsible DOE Contracting Officer to contact for additional information, and, as appropriate, an address where application forms may be obtained;

(9) Whether loans are available under the DOE Minority Economic Impact (MEI) loan program, 10 CFR Part 800, to finance the cost of preparing a financial

assistance application, and, if MEI loans are available, a general description of the eligibility requirements for such a loan, a reference to Catalog of Federal Domestic Assistance Number 81.063, and the name and address of the DOE office from which additional information and loan application forms can be obtained;

(10) A deadline for submission of applications and a statement describing the consequences of late submission;

(11) The types of projects or activities eligible for support;

(12) Evaluation criteria (and the weight or relative importance of each), which may include one or more of the following or other criteria, as appropriate:

(i) Qualifications of the applicant's personnel who will be working on the project;

(ii) Adequacy of the applicant's facilities and resources;

(iii) Cost-effectiveness of the project;

(iv) Adequacy of the project plan or methodology;

(v) Management capability of the applicant;

(vi) Sources of financing (other than DOE financial assistance) available to the project;

(vii) Relationship of the proposed project to the objectives of the solicitation;

(13) A listing of program policy factors, if any, indicating the relative importance of each, if appropriate (see § 600.19(a));

(14) References to or copies of:

(i) Statutory authority for the program;

(ii) Applicable rules, including the appropriate subparts of this Part;

(iii) Other terms and conditions applicable to awards to be made under the solicitation, including allowable and unallowable costs and reporting requirements;

(iv) Policies and procedures for patents, technical data, copyrights, audivoisual productions and exhibits;

(v) Any required assurances not included in the application form;

(15) The deadline for submission of required or optional preapplications;

(16) Date, time, and location of any briefing for applicants;

(17) Required presubmission reviews and clearances, including a statement as to whether review under OMB Circular A–95 ("Review, Evaluation, and Coordination of Federal and Federally Assisted Projects and Programs"), Attachment A, part I, is required and, if required, the consequences of noncompliance (see § 600.11);

(18) Dates by which selections and awards are expected to be made and whether unsuccessful applications will be returned to the applicant or be retained by DOE and for what period of time;

(19) A statement that DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made. If an award is made, such costs may be allowable as provided in the applicable cost principles (see § 600.103 and § 600.283);

(20) A statement that DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to the solicitation; and

(21) Any other relevant information, including explanatory information or justifications required by this Part.

§ 600.10 Form and content of applications.

(a) *Forms.* Applications or preapplications shall be on the form or in the format and in the number of copies specified by DOE either in this Part, in a program rule, or in the applicable solicitation, and must include all required information. For State governments, local governments, or Indian tribal governments, applications shall be made on the forms prescribed by OMB Circular A–102, Attachment M. Such applicant shall not be required to submit more than the original and two copies of the application or preapplication. (Approved by OMB under OMB control numbers 0348–0005–0348–0009.)

(b) *Signature.* The application and any preapplication must be signed by the individual who is applying or by an individual who is authorized to act for the applicant organization and to commit the applicant to comply with the terms and conditions of the financial assistance instrument, if awarded.

(c) *Contents.* In general, a financial assistance application shall include:

(1) A facesheet containing basic identifying information. The facesheet shall be the Standard Form (SF) 424 (approved by OMB under OMB control number 0348–0009);

(2) A narrative description of the proposed project, including the objectives of the project and the applicant's plan for carrying it out;

(3) A budget with supporting justification (approved by OMB under OMB control number 1900.0127);

(4) Any required preaward assurances.

(d) *Incomplete applications.* DOE may return an application which does not include all information and documentation required by statute, program rule, and the solicitation, if, in the judgment of the DOE Contracting Officer, the nature of the omission precludes review of the application.

(e) *Supplemental information.* During the review of a complete application, DOE may request the submission of additional information only if the information is essential to evaluate the application.

§ 600.11 Requirements of OMB Circular A–95.

(a) *General.* (1) In the solicitation, DOE shall specify whether review under OMB Circular A–95 is required for applications for financial assistance awards and subawards, if any. In the case of unsolicited applications, DOE shall, if possible, advise potential applicants of the need for OMB Circular A–95 review during preapplication contact (see § 600.14(b)). If such determination cannot be made during preapplication contact, an applicant who intends to submit unsolicited application should contact the appropriate State and areawide clearinghouse(s) to determine their interest in reviewing the proposed project.

(2) Unless otherwise requested by the clearinghouse, only an application or preapplication for an initial or renewal award and any other application that includes new substantive activities or substantial changes in activities originally proposed shall be required to comply with OMB Circular A–95.

(b) *Notification of intent.* In the absence of any contrary instructions from clearinghouses, applicants for support under DOE programs subject to Attachment A, Part I of the Circular shall use Standard Form (SF) 424 as the Notification of Intent to Apply for Federal Assistance to be submitted to the clearinghouse(s). The applicant should notify the clearinghouse as soon as useful information is available concerning the proposed project and the program under which support will be sought, including the date a completed application is scheduled to be filed with DOE or the recipient. (Approved by OMB under OMB control number 0348–0009.)

(c) *Complete applications.* Any application subject to review under OMB Circular A–95, Attachment A, Part I must, when submitted to DOE or the recipient, be accompanied by:

(1) All comments and recommendations made by or through the clearinghouse(s) and a statement that the applicant has considered such comments; or

(2) The clearinghouse(s)' statement of no comment, or physical evidence, such as a dated transmittal letter

accompanied by mailing receipts, that the required procedures of A–95 have been followed and that no comments or recommendations have been received. If Part I review is required, applications that do not include the information required by this paragraph (c) shall be returned to the applicant without any further action. An application returned to an applicant for this reason may be resubmitted after meeting the requirements of OMB Circular A–95, Attachment A, Part I. If the application was submitted in response to a DOE solicitation, the resubmitted application must be timely in accordance with § 600.13.

(d) *OMB Circular A–95, Attachment A, Part III.* Applicants for DOE financial assistance under programs which require a State plan as a precondition to the award of that assistance shall comply with OMB Circular A–95, Attachment A, Part III.

§ 600.12 Generally applicable requirements.

(a) "Generally applicable requirement" means Federal policies of administrative requirements that apply to (1) more than one DOE financial assistance award, or (2) a DOE financial assistance program and one or more other Federal assistance programs. Generally applicable requirements include, but are not limited to, the requirements of this Part, Federal statutes, the OMB Circulars and other governmentwide guidance implemented by this Part, Executive Orders, and the requirements identified in Appendix A of this Part.

(b) Except as expressly exempted by Federal statute or program rule, recipients and subrecipients of DOE financial assistance shall comply with all generally applicable requirements to which, by the terms of such requirements, they are subject. DOE may require the submission of preaward assurances of compliance with one or more generally applicable requirements and may conduct preaward and postaward compliance reviews only to the extent such actions are authorized by this Part, Federal statute or rule, Executive Order, or OMB directive.

§ 600.13 Application deadlines.

(a) Each solicitation shall include a deadline date for submission of applications. The established deadline shall also apply to any amendment to an application initiated by an applicant. An application or amendment shall be timely if it is:

(1) Received at the location specified in the solicitation on or before the established deadline date and time; or

(2) Received after the deadline date, and the application or amendment was sent by first class mail, was postmarked on or before the deadline date, and is received by DOE before technical evaluation of all acceptable applications submitted in response to the solicitation begins. Applicants should obtain a legibly dated mailing receipt from the U.S. Postal Service or use certified or registered mail to enable them to substantiate the date of mailing. Private metered postmarks shall not be acceptable proof of the date of mailing; and

(3) Complete (see § 600.10(d) and § 600.11(c)).

(b) DOE shall not consider and shall return any application that does not meet the requirements of paragraphs (a)(1) or (a)(2) and (a)(3) of this section.

(c) If necessary, DOE may extend an established application deadline by publishing a timely notice of the extension in the same manner as the solicitation was publicized. The extension of time shall apply to all applicants.

§ 600.14 Unsolicited applications.

(a) *General.* An unsolicited application is an application from DOE financial assistance which is not submitted in response to a solicitation or which is submitted in response to a Notice of Program Interest (see § 600.15). DOE may award financial assistance to an applicant who submits an unsolicited application for support of a project that involves an innovative idea, method or approach. DOE shall determine whether the application would result in a procurement contract or in a grant or cooperative agreement. An unsolicited application may be considered for DOE financial assistance only if the application is relevant to a public purpose of support or stimulation authorized by Federal statute.

(b) *Preapplication contact.* Anyone who is contemplating submitting an unsolicited application is encouraged, before expending extensive effort in preparing a detailed application or submitting any proprietary information to DOE, to make preliminary inquiries of DOE program staff as to DOE interest in the type of project contemplated. The potential applicant should not construe any such discussion as either encouragement to submit an unsolicited application or a promise of an award.

(c) *Preparation and submission of application.* A guide for preparing unsolicited applications/proposals is available from the Unsolicited Proposals Management Section, Reports and Analysis Branch (MA–942), Procurement and Assistance Management Directorate, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

(1) Unsolicited applications shall be in the format set forth in "The Guide for Submission of Unsolicited Proposals," except that a State government, local government, or Indian tribal government shall use one of the application forms prescribed by OMB Circular A–102, Attachment M, as appropriate. (Approved by OMB under OMB control numbers 0348–0005–0348–0009.)

(2) An unsolicited application must be submitted to the Unsolicited Proposals Management Section at the address specified in paragraph (c) of this section. If there have been prior discussions with a particular DOE program office, and the applicant wants the application to be considered by that office, the applicant should indicate "For consideration by (*Name of appropriate program*)" on the face of the application.

(d) *General evaluation.* DOE shall make a general evaluation of an unsolicited application based on the following types of factors:

(1) The overall merit of the proposed project or activity.

(2) The anticipated objectives to be achieved and the probability of achieving the stated objectives.

(3) The facilities or techniques which the applicant proposes to make available to achieve the proposed project's objectives.

(4) The qualifications of the proposed project director or key personnel who are considered to be critical to the achievement of the proposed project's objectives.

(e) *Criteria for selection of an unsolicited application.*

(1) DOE may select an unsolicited application only if:

(i) The application is meritorious based on the general evaluation as in paragraph (d) of this section; and

(ii) The proposed project represents a unique or innovative idea, method, or approach which would not be eligible for financial assistance under a recent, current, or planned solicitation, or if, as determined by DOE, a competitive solicitation would be appropriate.

(2) Any request for continuation, renewal, or supplemental funding of a project which was originally funded as the result of an unsolicited application shall be evaluated in the same manner as any other request for such funding and shall not be subject to the selection criterion of paragraph (e)(1)(ii) of this section. (See § 600.106 for requirements concerning funding of grants.)

(f) *Funding.* An award based on an unsolicited application may be made

only if sufficient appropriated funds are available.

(g) *Unsuccessful applications.* DOE shall promptly notify in writing each applicant whose application which does not satisfy the requirements of this section. DOE will return unsuccessful unsolicited applications only if requested by the applicant. This request may be made at the time of application or up to 30 days after the date of the written notification required by this paragraph.

§ 600.15 Notice of program interest.

(a) *General.* (1) DOE may publish a periodic Notice of Program Interest in the **Federal Register** and other media, as appropriate, which describes broad, general, technical problems and areas of investigation for which DOE may award grants or cooperative agreements.

(2) DOE shall evaluate any application submitted under a Notice of Program Interest as an unsolicited application (see § 600.14).

(b) *Contents.* In addition to the information required under § 600.9(c), the notice shall include the following:

(1) A brief description of the areas of interest for which DOE may provide financial assistance.

(2) A statement about how resulting applications will be evaluated and the criteria for selection and funding as specified in § 600.14.

(3) An expiration date with an explanation that such a date does not represent a common deadline for applications but rather that applications may be submitted at any time before the notice expires.

(4) The location for application submission, which shall be the Unsolicited Proposals Management Section, Reports and Analysis Branch (MA–942), Procurement and Assistance Management Directorate, Department of Energy, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, unless the notice specifies otherwise.

§ 600.16 Reviewer affiliations.

(a) *General.* New and renewal applications for discretionary financial assistance, whether solicited or unsolicited, shall be evaluated by reviewers appointed by the responsible DOE program official. The DOE program official may supplement DOE review resources with personnel from other Federal agencies or employees of Government-owned contractor-operated facilities, and, when necessary, may use external review, such as peer review, instead of or in addition to internal evaluation, with the objective of having the technical/scientific evaluation conducted by the most qualified individuals available.

(b) *Solicitation information.* For solicited applications, if the types of reviewers are known at the time of solicitation, or if there is a potential for the use of non-DOE evaluators, this information shall be included in the solicitation.

(c) *Outside evaluators.* An outside evaluator shall be required to sign a written statement agreeing to use the application information only for evaluation and to treat it in confidence except to the extent that the information is available to the general public without restriction as to its use from any source, including the applicant. Further, the evaluator shall be required to agree to comply with any notice or restriction placed on the application; upon completion of the evaluation, the evaluator shall return all copies of the application (or abstracts, if any) to DOE; and unless authorized by DOE, the evaluator shall not contact the applicant concerning any aspect of the application.

§ 600.17 Conflict of interest.

Any person who participates in the review of applications for DOE financial assistance or in the administration of DOE financial assistance shall comply with § 1010.101(a) and § 1010.302(a)(1) of the DOE rules on the conduct of employees at 10 CFR Part 1010. Current and former DOE employees who participate in any aspect of the financial assistance process shall comply with all applicable requirements of 10 CFR Part 1010.

§ 600.18 Authorized uses of information.

(a) *General.* Information contained in applications shall be used only for evaluation purposes unless such information is generally available to the public, is already the property of the Government or the Government already has unrestricted use rights, or is or has been made available to the Government from any source, including the applicant, without restriction.

(b) *Definitions.* For purposes of this section—

(1) "Proprietary data" means technical data which embody trade secrets developed at private expense, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data:

(i) Are not generally known or available from other sources without obligation concerning their confidentiality;

(ii) Have not been made available by the owner to others without obligation concerning their confidentiality; and

(iii) Are not already available to the Government without obligation concerning their confidentiality.

(2) "Technical data" means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, demonstration, or engineering work or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents, or computer software (including computer programs, computer software data bases, and computer software documentation). Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical data, as used in this section, does not include financial reports, cost analyses, and other information incidental to financial assistance administration.

(c) *Treatment of application information.* (1) An application may include technical data and other data, including trade secrets and/or privileged or confidential commercial or financial information, which the applicant does not want disclosed to the public or used by the Government for any purpose other than application evaluation. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies.

Notice

The data contained in pages —— of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data herein to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant.

(2) Unless a solicitation specifies otherwise, DOE shall not refuse to

consider an application solely on the basis that the application is restrictively marked.

(3) Data (or abstracts of data) marked with the Notice under paragraph (c)(1) shall be retained in confidence and used by DOE or its designated representatives as specified in § 600.16 solely for the purpose of evaluating the proposal. The data so marked shall not be disclosed or used for any other purpose except to the extent provided in any resulting award, or to the extent required by law, including the Freedom of Information Act (5 U.S.C. 552) (10 CFR Part 1004). The Government shall not be liable for disclosure or use of unmarked data and may use or disclose such data for any purpose.

(4) The Government shall obtain unlimited rights in the technical data contained in any application which results in an award except those portions of the technical data which the applicant asserts and properly marks as proprietary data, or which are not directly related to or will not be utilized in the project and are deleted from the application with the concurrence of DOE.

(5) The following clause, which applies only to technical data and not to other data such as privileged or confidential commercial or financial information shall apply to every award.

Rights to Data in Application

Except for technical data contained in pages —— of the recipient's application, dated ——, which are asserted by the recipient as being proprietary data, it is agreed that as a condition of this award, and notwithstanding the provisions of any notice appearing on the application, the Government shall have the right to use, duplicate, disclose and have others do so for any purpose whatsoever the technical data not identified in the above blanks contained in the application upon which this award is based.

§ 600.19 Application selection.

(a) In deciding which new applications (other than unsolicited applications) or renewal applications for discretionary financial assistance to select for award, DOE shall consider the results of the application evaluation conducted in accordance with established DOE directives, any clearinghouse comments under OMB Circular A–95 (see § 600.11), and other available advice or information as well as published program policy factors, if any. The selection of applications under any given solicitation shall be made by a DOE official at an organizational level which shall be determined based on the aggregate amount available for award under the solicitation.

(b) Program policy factors are factors which the selection official may use to select a range of projects that would best serve program objectives. DOE shall describe in the solicitation any program policy factor that may be used in making selections, the justification for its use, and, if appropriate, the relative priority of each such factor. Examples of program policy factors are:

(1) Geographic distribution;

(2) Diverse types and sizes of applicant entities;

(3) A diversity of methods, approaches, or kinds of work; and

(4) Projects which are complementary to other DOE programs or projects.

(c) After the selection of an application, DOE may, if necessary, enter into negotiations with an applicant. Such negotiations are not a commitment that DOE will make an award.

(d) See § 600.106 for the selection process for continuation applications for grants and § 600.14 for the selection process for unsolicited applications.

§ 600.20 Legal authority and effect of an award.

(a) A DOE financial assistance award is valid only if it is in writing and is signed by a DOE Contracting Officer.

(b) An award may be made only if DOE approves an application and/or State plan, and if there are sufficient appropriated funds.

(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. 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.

§ 600.21 Contents of award.

Each financial assistance award shall be made on a Notice of Financial Assistance Award which includes the following, as applicable:

(a) Identification information for the project being supported, including a unique instrument number.

(b) The dates of the budget period covered by the award, and if additional funding is contemplated after such period, the expected duration of the project period.

(c) The class of recipient (*e.g.* state government, educational institution, individual).

(d) The source and amount of DOE funds authorized for obligation by the recipient during the budget period specified; the amount and/or the percentage of any required cost sharing; and estimates of total project costs for the duration of DOE support.

(e) General terms and conditions of the award, including or incorporating by reference the applicable program statute and rules, the applicable subparts of this Part, and, as appropriate, generally applicable requirements.

(f) Special terms or conditions of award, including those necessary to protect DOE interests or to achieve program objectives, and those which may be required to be included on an instrument-by-instrument basis, (*e.g.* reporting requirements and payment method).

(g) The approved budget for the budget period, including any modifications resulting from negotiation.

(h) A reference to or inclusion of the approved application and/or State plan, or other statement of the purpose and objectives of the approved project (*e.g.* statement of work).

(i) The names, addresses and telephone numbers of recipient and DOE staff with responsibilities for the project.

(j) Any other provisions necessary to establish the respective rights, duties, obligations, and responsibilities of DOE and the recipient, consistent with the requirements of this Part.

§ 600.22 Recipient acknowledgement of award.

(a) After signature by the DOE Contracting Officer, the award shall be sent to the applicant. The applicant shall be required to return a signed copy of the award acknowledging acceptance.

(b) The award, when mailed to the applicant, shall be accompanied by a transmittal letter or other written notice indicating the date by which the award must be acknowledged and returned. The date established by DOE shall be not less than two weeks from the date of the notice. No DOE funds shall be disbursed until the award document signed by the recipient is received by DOE.

(1) In the event an applicant declines an award or fails to acknowledge acceptance of an award, DOE shall deobligate the funds obligated by the award after providing the applicant with at least two weeks written notice of DOE's intention to deobligate.

(2) In the event a recipient acknowledges acceptance of an award but does not commence performance under the award within a reasonable period of time, DOE may terminate the

award in accordance with the applicable provisions of this Part.

(c) After the recipient acknowledges the award, the terms and conditions of the award may be amended only upon the written request or with the written concurrence of the recipient unless the amendment is one which DOE may make unilaterally in accordance with a program rule or this Part.

§ 600.23 Notification to unsuccessful applicants.

(a) DOE shall promptly notify in writing each applicant whose application has not been selected for award or whose application cannot be funded because of the unavailability of appropriated funds. If the application was not selected, the written notice shall briefly explain why the application was not selected and shall offer the unsuccessful applicant the opportunity for a more detailed explanation upon request. DOE shall dispose of unsuccessful applications as provided in the solicitation or in § 600.14(g).

(b) In the case of a State plan disapproval, DOE shall follow the notification procedures contained in the applicable statute or program rule.

§ 600.24 Maximum DOE obligation.

The maximum DOE obligation to the recipient is—

(a) For monetary awards, the amount shown in the award as the amount of DOE funds obligated, and

(b) Any designated property.

DOE shall not be obligated to make any additional, supplemental, continuation, renewal, or other award for the same or any other purpose.

§ 600.25 Access to records.

(a) *Recipient records.* DOE and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of a recipient that are directly pertinent to the DOE financial assistance award, in order to make audit, examination, excerpts, and transcripts.

(b) *Subrecipient records.* DOE, the Comptroller General of the United States, and the recipient, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of a subrecipient which are directly pertinent to the financial assistance subaward, in order to make audit, examination, excerpts, and transcripts.

(c) *Contractor and subcontractor records.* With respect to any negotiated contract or subcontract in excess of $10,000 under a grant or cooperative agreement, DOE, the Comptroller General of the United States, the recipient and (if the contract was awarded under a financial assistance subaward) the subrecipient, or any of their authorized representatives shall have the right of access to any books, documents, papers, or other records of the contractor or subcontractor which are directly pertinent to that contract or subcontract, in order to make audit, examination, excerpts, and transcripts.

(d) *Duration of access right.* The right of access may be exercised for as long as the applicable records are retained by the recipient, subrecipient, contractor, or subcontractor. (See § 600.124 and § 600.271 for record retention requirements for grants and cooperative agreements, respectively.)

§ 600.26 Disputes and appeals. [Reserved]

§ 600.27 Debarment. [Reserved]

§§ 600.28–600.99 [Reserved]

Subpart B—Grants

§ 600.100 Scope and applicability.

(a) This subpart establishes requirements for the award and administration of grants and subgrants. For grants, subgrants, and contracts under grants and subgrants, this subpart implements OMB Circulars A–102, A–110, and the Federal cost principles.

(b) The requirements of this subpart shall apply as indicated in § 600.2. In addition, the noncompliance procedures of §§ 600.121 and 600.122 and the closeout procedures of § 600.123 shall apply to any active grant and, in the case of the closeout procedures, to any terminated or expired grant which has not been closed out prior to the effective date of this Part, provided, however, that any noncompliance determination involving an active grant is initiated on or after the effective date of this Part. With the concurrence of the affected party or parties, DOE may follow the procedures set forth in § 600.122 in any suspension or termination action initiated before the effective date of this Part.

§ 600.101 Definitions.

For purposes of this subpart—

"Closeout" of a grant means the process by which DOE determines that all applicable administrative actions and all required work under the grant have been completed by the grantee and by DOE.

"Cognizant agency" means the Federal department or agency responsible for negotiating indirect cost rates, conducting audits, correcting systems deficiencies, and resolving questioned costs of a particular grantee organization.

"Cost-reimbursement contract" means a contract, or subcontract under a cost-reimbursement contract, under which payment is made on the basis of allowable costs incurred during performance up to a maximum amount set forth in the contract or subcontract.

"Direct cost" means any cost that can be specifically identified with a particular project or activity, including salaries, travel, equipment and supplies directly benefiting the project or activity.

"Formula grant" means a grant DOE is required to make to any one or more eligible applicants who meet statutory prerequisites for award. The amount of a formula grant award is determined in accordance with a formula specified either in the authorizing statute or in implementing program rules.

"Grantee" means the government, nonprofit corporation, individual, or other entity to whom DOE awards a grant and who is financially accountable to DOE for the use of the funds awarded and legally responsible for the performance of the project or activity(ies). An organizational grantee shall be the entire organization even if the activity or project is performed by a component part of the organization.

"Indirect cost" means a cost incurred by an organization for common or joint objectives and which cannot be identified specifically with a particular project or activity.

"Indirect cost rate" means the ratio, expressed as a percentage, of an organization's total indirect costs to its direct cost base as specified in the applicable cost principles.

"In-kind contribution" means property, services, or other noncash contribution, made by the grantee, subgrantee, or non-Federal third party, which directly benefits and can be specifically identified with a project or activity, and to which a value is assigned for purposes of cost sharing.

"Small entity" means a "small business" (as defined in § 600.3), "small governmental jurisdiction," or "small organization."

"Small governmental jurisdiction" means a government of a city, county, town, township, village, school district, or special district with a population of less than fifty thousand.

"Small organization" means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

"Subgrant" means an award of funds or other type of financial assistance

authorized by statute by a grantee to an eligible subrecipient.

§ 600.102 Grant applications.

(a) *General.* An application for a grant shall be on the form or in the format specified in a program rule, in the solicitation, or in this Part (see § 600.10). DOE may also require applicants to complete—

(1) The Notice of Energy RD&D Project (DOE Form 538) if the application is for a research, development, or demonstration project; or

(2) The Management Summary Report (EIA–459E) or the Milestone Plan (EIA–459B) as a baseline plan in accordance with the Uniform Reporting System for Federal Assistance (Grants and Cooperative Agreements) (DOE/MA–0001) if required by program rule or the solicitation. If a solicitation other than a program rule requires the use of one or both of these forms, the solicitation shall contain an explanation of how the information to be provided relates to the objectives of the program. (Approved by OMB under OMB control number 1900–0127.)

(b) *Budgetary information.* DOE may request and the applicant shall submit the minimum budgetary information necessary to evaluate the costs of the proposed project.

(1) All applicants shall use the budget formats contained in OMB Circular A–102, as duplicated in the DOE Uniform Reporting System for Federal Assistance. (Approved by OMB under OMB control number 1900–0127.)

(2) DOE may, subsequent to receipt of an application, request additional information from an applicant when necessary for clarification or to make informed preaward determinations under § 600.103.

(c) *Continuation and renewal applications.* DOE may require that an application for a continuation or renewal award (see § 600.106 (b) and (c)) be made in the format or on the forms authorized by paragraphs (a) and (b) of this section. However, when applying for a continuation award, grantees that are State governments, local governments, or Indian tribal governments are required to submit only those pages of the application form that contain information different from that provided in the original application. (Approved by OMB under OMB control numbers 0348–0005—0348–0009.)

§ 600.103 Cost determinations.

(a) *General.* Except as otherwise specified by the governing program statute, program rule, or other terms and conditions of an award, costs allowable under DOE grant awards shall be determined in accordance with the applicable cost principles cited in paragraph (b) of this section. As part of an acceptable financial management system under § 600.109(b), grantees and subgrantees must have procedures for determining the reasonableness, allowability, and allocability of costs in accordance with the applicable Federal cost principles and the terms and conditions of the award.

(b) *Cost principles.* The following cost principles shall apply to grants as specified.

(1) OMB Circular A–21—Cost Principles Applicable to Grants, Contracts and Other Agreements with Institutions of Higher Education.

(2) OMB Circular A–87—Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments. These cost principles shall also apply to grants to Indian tribal governments and to foreign governments to the extent appropriate.

(3) OMB Circular A–122—Cost Principles Applicable to Grants, Contracts and Other Agreements with Nonprofit Organizations. Nonprofit organization in this context refers to a private, nonprofit organization other than a nonprofit institution of higher education or hospital. However, a few nonprofit organizations, as specifically listed in Attachment C to OMB Circular A–122, are subject to the commercial cost principles as specified in paragraph (b)(5) of this section. OMB Circular A–122 shall also apply to grants to individuals.

(4) 45 CFR Part 74, Appendix E, Cost Principles for Hospitals.

(5) 41 CFR Subpart 1–15.2 (Federal Procurement Regulations) as modified by 41 CFR 9–15.2 (DOE Procurement Regulations) for grants to for-profit organizations (other than for-profit hospitals), including corporations, partnerships, and sole proprietorships.

(c) *Subgrantees and contractors.* For subgrants, the grantee shall use the cost principles cited in this section that apply to the subgrantee. The grantee or subgrantee shall specify in any cost-reimbursement contract the applicable cost principles, which shall be the cost principles cited in this section that apply to the contractor.

(d) *Deviations.* Unless required by program statute, the awarding party may deviate from the requirements of the cost principles only after obtaining approval in accordance with § 600.4.

(e) *Approval requirements.* Costs that, by the terms of the cost principles or other terms or conditions of the award, subaward, or contract, require the approval of the awarding party shall be considered to have met the requirement for approval if they are included in the approved direct cost budget or in an approved indirect cost amount, proposal, or cost allocation plan. If the costs are to be charged as direct costs and they are not in the approved budget, specific prior written approval must be obtained from the designated DOE Contracting Officer, the grantee, or the subgrantee, as appropriate, before such costs are incurred by the grantee, subgrantee, or cost-type contractor (see § 600.114). No approval may be given which is inconsistent with the purpose of the grant or which deviates without authorization from the terms and conditions of the DOE award (see § 600.4). See § 600.114 for procedures for requesting prior approval under this paragraph. See paragraph (f) of this section with respect to indirect costs.

(f) *Indirect costs.* Unless restricted by Federal statute or program rule, DOE shall provide for the reimbursement of appropriate indirect costs.

(1) DOE shall include an amount for indirect costs in an award only if the application requests reimbursement of such costs and—

(i) Submits evidence that the applicant has been assigned to cognizant Federal agency responsible for establishment of indirect cost rates and indicates or provides evidence that—

(A) A current agreement containing an applicable approved indirect cost rate(s) covering all or part of the budget period for which DOE may provide funding has been established; or

(B) An indirect cost proposal has been submitted to the cognizant agency in order to establish an applicable approved indirect cost rate(s) covering all or part of the budget period for which DOE may provide funding; or

(C) An indirect cost proposal covering all or part of the budget period and applicable to the activities for which DOE may provide funding will be submitted to the cognizant agency for approval no later than three months after the beginning date of the initial budget period of the DOE award or, for subsequent budget periods, in accordance with any schedule established by the cognizant agency; or

(ii) If not assigned to a cognizant agency, the applicant includes, in the application, data that is current, complete, accurate, and sufficient to allow the DOE Contracting Officer to determine a rate(s) for indirect costs. If the total approved budget will not exceed $100,000 or if the amount requested for indirect costs does not exceed $5,000, DOE may waive the requirement for negotiation of a rate

and, in lieu thereof, provide a reasonable allowance for such costs.

(2) Indirect cost proposals shall be prepared and submitted in accordance with the applicable Federal cost principles and instructions from the cognizant agency or from DOE, as appropriate.

(3) If a subgrant or contract under a grant or subgrant provides for the payment of indirect costs, the grantee or subgrantee shall be responsible for negotiating appropriate indirect costs, using the cost principles applicable to the subgrantee or contractor, unless the subgrantee or contractor has negotiated an applicable rate directly with DOE or another Federal department or agency. DOE may review and audit the procedures a grantee or subgrantee uses in conducting indirect cost negotiations.

(g) *Preaward costs.* Costs incurred prior to the beginning date of a new or renewal award are allowable only if approved in writing, prior to incurrence, by a DOE Contracting Officer.

(h) *Fee or profit.* No increment above cost may be paid to a grantee or subgrantee under a DOE grant or subgrant. A fee or profit may be paid to a contractor providing goods or services under a contract with a grantee or subgrantee.

(i) Interest penalties for late payment under a contract shall not be an allowable cost of a grant or subgrant (see § 600.119(e)).

§ 600.104 Responsible applicant.

(a) The signature of the applicant or an authorized official of the applicant organization on the application shall represent the applicant's preaward assurance that it is in compliance with or shall comply with—

(1) The standards for management of funds, property, and other assets, and the procurement of goods and services, as specified in this subpart and in the solicitation, if any;

(2) Generally applicable requirements which require such an assurance except that a separate signed assurance is required by 10 CFR § 1040.4; and

(3) The terms and conditions of the award as described in the program rule, the solicitation, and this Part.

(b) DOE reserves the right to make a preaward review of the applicant's ability to manage and account for a DOE grant, if awarded, or to determine compliance with generally applicable requirements. (See § 600.120 for postaward audit requirements.) If the applicant is not in compliance or cannot or will not comply with the standards and requirements, DOE shall determine that the applicant is not responsible and may use special restrictive conditions (see § 600.105) or disapprove the application.

(c) The grantee shall assure that applicants for subgrants comply with applicable management standards and generally applicable requirements as provided in paragraphs (a) and (b) of this section.

§ 600.105 Special restrictive conditions of award.

(a) *General.* DOE may, in accordance with this section and without following the deviation procedures of § 600.4, use award conditions which are more restrictive than those specified in this subpart.

(b) *DOE procedures.* Before or at the time of award, DOE shall advise the applicant/grantee whenever DOE has determined that the applicant/grantee is not responsible on the basis of one or more of the following:

(1) Financial instability;

(2) A history of poor performance; or

(3) A management system which does not meet the requirements of this subpart.

DOE shall provide the applicant/grantee with an explanation of why any special restrictive condition is necessary and shall indicate what corrective action must be taken. If the applicant/grantee is one covered by OMB Circular A–102 or A–110 and if the condition is more restrictive than is allowed by those Circulars, the Director or his or her designee shall notify OMB and other interested parties.

(c) *Subgrantees.* A grantee may place a special restrictive condition, as specified in paragraphs (a) and (b) of this section, in a subgrant award. In any such case, the grantee must notify DOE in writing within 15 days of the subgrant award. DOE shall decide whether to notify OMB and other interested parties.

§ 600.106 Funding.

(a) *General.* The project period during which DOE expects to provide grant support for an approved project shall be specified on the Notice of Financial Assistance Award (DOE Form 4600.1). For formula grant programs, the project period is the period of time covered by an approved State plan. As indicated in paragraphs (b) and (e) of this section, a project period may consist of one or more budget periods.

(b) *Budget period and continuation awards.* If the project period is 12 months or less, the budget period and the project period shall be coextensive. Except as provided in paragraph (e) of this section, multiyear grants, including formula grants, shall be funded annually within the approved project period. Funding for each budget period within the project period shall be contingent on DOE approval of a continuation application submitted in accordance with a schedule specified by DOE (see § 600.102(c)). A continuation application shall include—

(1) A statement of technical progress or status of the project to date (see § 600.115(d)(1));

(2) A detailed description of the grantee's plans for the conduct of the project during the coming year; and

(3) A detailed budget for the upcoming budget period, including an estimate of unobligated balances (see § 600.108(c)). DOE shall review a continuation application for the adequacy of the grantee's progress and planned conduct of the project in the subsequent budget period. DOE shall not require a continuation application to compete against any other application. The amount and award of continuation funding is subject to the availability of appropriations.

(c) *Renewal awards.* DOE shall issue a solicitation before making any discretionary renewal award. If DOE proposes to restrict eligibility to apply to the incumbent grantee, the restriction of eligibility shall be justified as in § 600.7(b). Renewal applications must be submitted no later than five months prior to the scheduled expiration of the project period unless the solicitation establishes a different application deadline. Before DOE may make a renewal award for a formula grant, the grantee must submit a revised or amended State plan in accordance with program rules and other instructions from DOE.

(d) *Extensions.* In order to allow a grantee to complete a project, DOE may extend the project period and final budget period by revising the scheduled expiration date without the need for competition or a detailed application if:

(1) The additional time necessary to complete the project is less than 18 months in total, and

(2) The grantee submits a written request for such an extension prior to the expiration date of the project period and includes a budget for the use of any remaining funds or any additional funds requested.

(e) *Exceptions.* A single budget period exceeding 12 months may be coextensive with the project period only if:

(1) Required by statute; or

(2) The project is primarily for construction, alteration and renovation, or acquisition of real property, or other type of activity that requires an extended funding commitment by DOE

and for which an annual continuation review is inappropriate; or

(3) At the time of award, the total period of DOE support is expected to be less than 18 months.

§ 600.107 Cost sharing.

(a) *General.* DOE shall specify in the solicitation or in the program rule, if any, and in the award document, the minimum amount or percentage of any required cost sharing.

(b) *Nonstatutory cost sharing.* If DOE requires that a grantee provide cost sharing which is not required by statute or which exceeds a statutory minimum, DOE shall state in the program rule or solicitation the reasons for requiring such cost sharing, recommended or required levels of cost sharing, and the circumstances under which the requirement for cost sharing may be waived or adjusted during any negotiation.

(c) *Negotiation.* Whenever DOE negotiates the amount of cost sharing, DOE may take into account such factors as the use of program income (see § 600.113), patent rights, and rights in data. Foregone fee or profit shall not be considered in establishing the extent of cost sharing.

(d) *Composition and source of cost sharing.*

(1) Cost sharing may be derived from any of the following—

(i) Costs incurred by the grantee (or subgrantee) whether or not they require a cash outlay;

(ii) Cash contributed to the grantee or subgrantee(s) by non-Federal public or private organizations and individuals; or

(iii) The value of goods, including the use of property, or services donated to the grantee or subgrantee(s) by non-Federal public or private organizations and individuals (third-party in-kind contributions).

(2) To be allowable as cost sharing, a cash or in-kind contribution must:

(i) Be verifiable from the records of the grantee, subgrantees, or third parties, as applicable. Such records must show how the value placed on an in-kind contribution was determined (see paragraph (e) of this section);

(ii) Not be included as a cost or contribution for satisfying a cost sharing or matching requirement of another project or program receiving Federal funding, whether as financial assistance, under a procurement contract, or otherwise;

(iii) Be allowable under the terms and conditions of the award and meet the applicable cost principle tests of allowability (see § 600.103(b)); and

(iv) The source of the contribution may not be costs supported by another Federal assistance award unless such use is permitted by Federal statute. This restriction does not apply to:

(A) General program income, as defined in § 600.113, earned by a grantee or subgrantee under a contract under another Federal assistance award; and

(B) General revenue sharing funds under 31 U.S.C. 122 *et seq.* or countercyclical revenue sharing funds under 42 U.S.C 6721 *et seq.*

(3) General program income may be used to meet a cost sharing requirement of the grant under which the income was earned only if such use is authorized by the award (see § 600.113(e)).

(e) *Valuation of in-kind contributions.* A grantee or subgrantee that is a State government, local government, or Indian tribal government shall determine the value of services or property donated by non-Federal third parties in accordance with OMB Circular A–102, Attachment F, Paragraph 5. Any other grantee or subgrantee shall make such determinations in accordance with OMB Circular A–110, Attachment E, Paragraph 5.

§ 600.108 Calculation of award.

(a) *Total approved budget.* "Total approved budget" means the amount of costs authorized to be incurred during the budget period, as shown on the Notice of Financial Assistance Award, by a grantee and any subgrantee or contractor as well as the estimated value of in-kind contributions, to carry out an approved project. The total approved budget consists of DOE funds for both direct and indirect costs and any required cost sharing. The total approved budget shall indicate the maximum amount of funds DOE shall provide and the minimum amount or percentage of any cost sharing the grantee is required to provide.

(b) *Excess funds.* 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 five percent of the DOE award, whichever is greater. DOE may reduce the DOE award by an amount which does not exceed the total amount of excess funds.

(c) *Unobligated balances.* DOE may authorize all or a portion of any unobligated balance remaining at the end of a budget period (see § 600.116) for expenditure by a grantee in the subsequent budget period. Unobligated balances may be used after the end of a budget period only if authorized by DOE in the total approved budget shown in an amended Notice of Financial Assistance Award.

(1) DOE's authorization to a grantee to expend an unobligated balance in the subsequent budget period may either offset or increase the new DOE funding provided for the subsequent budget period. In either case, any maximum DOE share established by statute or program rule shall not be exceeded. If an estimated unobligated balance is used in determining the total approved budget for the succeeding budget period, DOE may make an appropriate downward adjustment if the funding available to the grantee exceeds the DOE share of the total approved budget for that budget period. An upward adjustment may be made only if the grantee needs additional DOE funds and sufficient appropriated funds are available.

(2) Funds paid to the grantee which are unobligated at the end of the project period or when the grant is terminated shall be returned to DOE or be accounted for in accordance with DOE instructions.

(d) *Adjustments.* Whenever DOE adjusts the amount of an award under this subpart, it shall also make an appropriate upward or downward adjustment to the amount of required cost sharing in order that the adjusted award maintain any required percentage of DOE and non-Federal participation in the costs of the project.

§ 600.109 Financial management systems.

(a) *General.* Except as provided in paragraph (c) of this section, grantees and sugrantees shall have financial management systems which meet the minimum standards set forth in paragraph (b) of this section.

(b) *Minimum standards.* At a minimum, grantee and subgrantee financial management systems must provide for:

(1) Accurate, current, and complete disclosure of the financial results of each project (see§ 600.116 for financial reporting requirements for grantees).

(2) Records that identify adequately the source and application of funds for the financially assisted project, including information pertaining to Federal awards, subgrant awards, authorizations, obligations, unobligated balances, assets, outlays, income, and liabilities.

(3) Effective control over and accountability for all funds, property, and other assets. Grantees and subgrantees shall adequately safeguard all such funds, property, and assets and shall assure that they are used solely for authorized purposes. The requirements of this paragraph (b)(3) with respect to control and safeguarding of property

shall apply to all property, including exempt property, which is required to be managed in accordance with § 600.117.

(4) Comparison of actual expenditures with approved budget amounts for each grant or subgrant, and, if required by the terms and conditions of the award, the relation of financial information to performance and unit cost data.

(5) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and their disbursement for grant or subgrant purposes (see § 600.112).

(6) Procedures for determining the reasonableness, allowability, and allocability of costs in accordance with the provisions of the applicable Federal cost principles and other terms and conditions of the award or subaward.

(7) Accounting records that are supported by source documentation, such as cancelled checks, paid bills, payrolls, contract documents, etc.

(8) A systematic method to assure timely and appropriate resolution of audit findings and recommendations (see§ 600.120 for postaward audit requirements).

(c) *Individuals.* Individuals whose financial management systems do not meet the minimum standards of paragraph (b) of this section shall maintain a separate bank account for deposit of grant or subgrant funds. Disbursements by the grantee or subgrantee from this account shall be supported by source documentation such as cancelled checks, paid bills, receipts, payrolls, etc.

(d) *System reviews.* The awarding party may review the adequacy of an applicant's financial management system as part of a preaward review or at any time subsequent to award (see §§ 600.104 and 600.120). The awarding party shall rely, to the extent possible, on readily available sources of information, such as previous audit reports, to make any preaward assessment of the adequacy of the applicant's financial management system. The awarding party shall seek additional information from the applicant or perform an on-site preaward review only if necessary to assure prudent management of DOE funds.

§ 600.110 Cash depositories.

Grantees and subgrantees shall comply with the standards governing cash depositories for advance payments (see § 600.112(b)) contained in Attachments A of OMB Circulars A–102 and A–110.

§ 600.111 Bonding and insurance.

(a) The grantee or subgrantee shall use its regular bonding and insurance requirements unless the awarding party specifies either or both of the following requirements in the award:

(1) If the cost of a contract or subcontract for construction or facility improvement, including alteration and renovation of real property, exceeds $100,000, a bid guarantee, performance bond, and payment bond, as defined in Attachments B of OMB Circulars A–102 and A–110, shall be required.

(2) A nongovernmental grantee or subgrantee may be required to obtain or acquire additional fidelity bond coverage if the risk without such coverage would be unacceptable.

(b) Any bonds required under paragraph (a)(1) or (a)(2) of this section shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR Part 223.).

§ 600.112 Payment.

(a) *General.* The awarding party shall select the payment method under a grant or subgrant with the objective of minimizing the time elapsing between the transfer of funds from the U.S. Treasury and their disbursement by the grantee or subgrantee for grant or subgrant purposes. DOE shall use the appropriate advance payment method described in paragraph (b) of this section in making payments to a grantee except that payments to a foreign organization shall be made in accordance with Department of Treasury policy applicable to such transactions.

(b) *Advance payment methods.* Advance payments may be made either through a letter of credit or by Treasury check.

(1) *Letter of credit.* A letter of credit is an instrument certified by an authorized Federal official that authorizes a grantee to draw funds needed for immediate disbursement in accordance with the provisions of Treasury Circular 1075. The grantee must comply with Treasury Circular 1075 guidelines (31 CFR Part 205) and instructions from the administering payment office in making withdrawals under the letter of credit and in reporting on cash disbursements and balances. Except as provided in paragraph (c) of this section, a letter of credit shall be used by DOE when:

(i) There is or will be a continuing relationship between a grantee and DOE for at least a 12-month period and the total amount of funds to be advanced by DOE to the grantee within that period is $120,000 or more; and

(ii) The grantee's financial management system meets the standards for fund control and accountability specified in § 600.109(b), including procedures or planned procedures that will minimize the time elapsing between the transfer of funds from the U.S. Treasury and their disbursement by the grantee.

(2) *Advance by Treasury check.* Advance by Treasury check is a payment made upon request before the grantee makes cash outlays. DOE shall use this method when the grantee meets the requirements of paragraph (b)(1)(ii) of this section but not those of paragraph (b)(1)(i).

(i) The timing and amount of cash advances to the grantee shall be as close as is administratively feasible to the actual disbursement of funds by the grantee.

(ii) If a grantee meets the requirements for advance payment, the duration of the project is 12 months or less, and the amount of the DOE award is less than $10,000, DOE may advance the entire award amount in a single Treasury payment.

(c) *Reimbursement by Treasury check.* DOE may use a reimbursement by Treasury check method of payment if the grantee does not meet the requirements of paragraph (b)(1)(ii) of this section. DOE may also use the reimbursement method if the major portion of the project or activity will be financed by private financing or Federal loans, with the DOE grant representing 25 percent or less of the total cost.

(1) For construction grants, DOE may use the reimbursement method unless DOE has an agreement with the grantee to use a letter of credit for all DOE grants, including construction grants.

(2) Grantees and subgrantees shall not be reimbursed for amounts that are to be withheld from contractors to assure satisfactory completion of contractual work under a grant or subgrant. Such amounts shall be paid only after the grantee or subgrantee makes the final payment to the contractor, including the amount withheld.

(3) DOE shall make payment within 30 days of a request for reimbursement, unless the request is improper or questionable.

(d) *Conversion from advance payment method.* DOE may convert a grantee from advance payment to reimbursement whenever the grantee no longer meets the criteria for advance payment specified in paragraph (b)(1)(ii) of this section. Any such conversion may be accomplished only after DOE has advised the grantee in writing of the reasons for the proposed action and has provided a period of at least 30 days within which the grantee may take

corrective action or provide satisfactory assurances of its intention to take such action.

(e) *Requests for payment.* Grantees shall request payment on the forms specified in § 600.116.

(f) *Withholding of payment.* Unless otherwise required by statute, DOE shall not withhold payment for proper charges unless:

(1) DOE has made a determination of noncompliance in accordance with § 600.121. If DOE withholds payment without suspension or termination of the grant, DOE shall release withheld payments to the grantee after compliance is achieved. If the grant has been suspended or terminated, payment adjustments shall be governed by § 600.122; or

(2) The grantee owes money to the United States and collection of the debt by withholding grant payments would not impair the accomplishment of program objectives. Payment of the debt may also be accomplished by accounting adjustments to cash balances in the possession of the grantee for which the grantee is accountable to the Federal government.

(3) Before withholding any payment, DOE shall notify the grantee that payments shall not be made for obligations incurred after a specified date, which shall ordinarily be no sooner than 30 days from the date of the notice, until the grantee corrects the noncompliance or pays the indebtedness to the Federal government. (See also § 600.121 for notification of noncompliance.)

(g) *Assignment of payments.* (1) With prior DOE approval and in accordance with written DOE instructions, a grantee may assign to a bank, trust company or other financing institution, including any Federal lending agency, reimbursement by Treasury check due from DOE under the following conditions:

(i) The grant provides for reimbursement totaling $1,000 or more;

(ii) The assignment covers all amounts payable under the grant that have not already been paid;

(iii) Reassignment is prohibited; and

(iv) The assignee files a written notice of grant payment assignment and a true copy of the instrument of assignment with DOE.

(2) Any interest costs resulting from a loan obtained on the basis of an assignment are unallowable charges to DOE grant funds or any required cost sharing.

(h) *Payments to subgrantees.* Grantees shall observe the requirements of this section in making or withholding payments to subgrantees except that the forms used by grantees are not required to be used by subgrantees when requesting advances or reimbursement.

§ 600.113 Program income.

(a) *General.* Grantees and subgrantees shall be required to account for income earned from activities supported by a grant or subgrant and income resulting from DOE grant support as indicated in paragraphs (b) through (f) of this section.

(b) *Income resulting from advances of DOE funds.* With the exception of States and instrumentalities of a State, as defined in the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213), and their subgrantees, a grantee shall remit to DOE any interest or other investment income earned on advances of DOE funds.

(c) *Proceeds from the sale of real or tangible personal property.* The grantee or subgrantee shall account for proceeds from the sale of real property, equipment, and supplies in accordance with § 600.117.

(d) *Royalties.* The awarding party shall have no right to any royalties received by a grantee or subgrantee as a result of a copyright or a patent obtained on copyrightable material or an invention produced under the grant or subgrant unless required by the terms and conditions of the grant or subgrant award.

(e) *General program income.*—(1) *Scope.* The grantee or subgrantee shall retain all ther program income (exclusive of the types of program income covered by paragraphs (b), (c) and (d) of this section), which shall be treated as general program income. Such income includes, but is not limited to, income in the form of fees for services, proceeds from the sale of energy, and usage or rental fees if the activity from which the income was earned was treated, in whole or in part, as a direct cost of the grant or subgrant and either funded by DOE or counted toward meeting a cost sharing requirement of the award. General program income does not include revenue such as taxes raised by a government under its governing power, tuition and related fees received by an institution of higher education for a regularly offered course taught by an employee performing under a grant or subgrant, or internal reimbursements or transfers of funds between components of the same legal entity (*e.g.* between agencies of a State government).

(2) *Grantee accountability.* The grantee shall report general program income on the Financial Status Report (SF–269) (OMB Nos. 0348–0001 and 1900–0127) or equivalent for the period earned or received (depending on the accounting basis used) and for the period used (see § 600.116). The grantee shall account for general program income as prescribed in the terms and conditions of the award, which may specify the use of one or more of the options listed in (i), (ii), and (iii) of paragraph (e)(2) of this section, and which may distinguish between sources, kinds, and amounts of income in determining the option(s) to be applied. If the award does not authorize a grantee to use general program income as indicated in paragraphs (e)(2)(ii) and/or (e)(2)(iii), such program income shall be used as provided in paragraph (e)(2)(i). Unless required by statute or program rule, DOE shall have no right to any portion of general program income earned or accrued after the project period ends or the grant is terminated.

(i) General program income may be deducted from the total approved budget to determine the net costs upon which the DOE share of costs shall be calculated. If the project period consists of more than one budget period, DOE may specify that the deduction be made in a subsequent or later budget period rather than in the budget period during which the general program income was earned or received.

(ii) General program income may be used to pay all or part of the grantee's share of allowable project costs. When used in this way, the income shall be applied to the grantee's share during the current budget period unless DOE authorizes, in writing, deferral to a later budget period.

(iii) The income may be used for costs not included in the total approved budget, if DOE determines such costs are directly related to the objectives of the Federal statute under which the grant was awarded.

(3) *Subgrantee accountability.* A subgrantee shall account to the grantee for general program income in accordance with the terms and conditions of the subgrant award. Such terms and conditions shall be consistent with the provisions of this paragraph.

(f) *Records.* A grantee or subgrantee shall maintain records of the source, amount, and disposition of any income for which it is accountable to the awarding party. The access and retention requirements of §600.25 and § 600.124 apply to program income records.

§ 600.114 Budget and project revisions.

(a) *General.* Subsequent to award, grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited

program changes to the approved project. However, certain types of postaward changes in budgets and projects shall require the prior written approval of the awarding party.

(b) *Budget changes.*—(1) *Nonconstruction projects.* The grantee or subgrantee shall obtain the prior written approval of the awarding party whenever any of the following changes is anticipated under a nonconstruction award:

(i) The rebudgeting of funds either within or between budget categories for a type of cost for which approval is required under the applicable cost principles (see § 600.103).

(ii) Any revision which would result in the need for additional DOE funding.

(iii) The transfer of funds allotted for training allowances (*i.e.* direct payments to trainees, to other expense categories).

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

(2) *Construction projects.* The grantee shall obtain DOE prior written approval for any budget revision which would result in the need for additional DOE funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides DOE funding for both construction and nonconstruction activities, the grantee or subgrantee shall obtain prior written approval from the awarding party before making any fund or budget transfer from one activity classification to another.

(c) *Project changes.* The grantee or subgrantee shall obtain the prior written approval of the awarding party whenever any of the following actions is anticipated:

(1) Any revision of the scope or objective of the project (regardless of whether there is an associated budget revision requiring prior approval under paragraphs (b)(1), (b)(2) or (b)(3) of this section).

(2) Designation of a new project director or principal investigator or a significant change in responsibilities of the designated project director or principal investigator under a grant award for a research project.

(3) Under nonconstruction projects, contracting or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award if such activities are treated as direct costs. This approval requirement is in addition to the approval requirements of § 600.119(c), but does not apply to the procurement of equipment, supplies, and general support services.

(d) *Additional prior approval requirements.* (1) Except as may be authorized under § 600.4 or § 600.105, the awarding party may not require prior approval for any budget revision which is not described in paragraph (b) of this section.

(2) The awarding party may require prior written approval for project revisions other than those described in paragraph (c) of this section.

(e) *Requesting prior approval.* (1) Except as provided in paragraph (e)(2) of this section, a request for prior DOE approval of any budget revision shall be on the same budget format the grantee used in its application to DOE and must be accompanied by a narrative justification for the proposed revision.

(2) A request for a budget revision which, under the applicable Federal cost principles (see § 600.103), requires DOE prior approval may be made by letter.

(3) DOE approval or disapproval of a request for a budget or project revision shall be in writing and signed by a DOE Contracting Officer.

(4) A request by a subgrantee for prior approval shall be addressed in writing to the grantee. The grantee shall promptly review such request and shall approve or disapprove the request in writing. A grantee shall not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the DOE grant award. If the revision requested by the subgrantee would result in a change to the grantee's approved budget or approved project which requires DOE prior approval, the grantee shall obtain DOE approval before approving such revision.

(5) Within 30 days after receiving a request for prior approval, the awarding party shall send the requesting party a written notice stating whether the proposed revision has been approved or disapproved, or the date when a decision is expected to be made.

§ 600.115 Performance reports.

(a) *General.* A grantee shall periodically assess and report to DOE progress in meeting the project objectives of the grant award. The requirements for such performance reports shall be described in any solicitation and shall be set forth in the terms and conditions of the award. The award shall specify the objectives the grantee is to achieve in performing the project, the report form or format to be used, and the frequency of required performance reports, and shall indicate whether performance shall be reported on a project, function, or activity basis.

(b) *Contents of performance reports.* Performance reports shall include:

(1) A comparison of the grantee's accomplishments with the objectives established for the reporting period, including quantification related to cost or other data if required by the terms and conditions of the award, as well as the findings of the investigator, if applicable;

(2) Reasons why established objectives were not met; and

(3) Other pertinent information, including, when appropriate, analysis and explanation of cost overruns or high unit costs.

DOE may specify in the award that the grantee provide this information on the Program/Project Status Report (Form EIA–459F), the technical reporting formats, or the Management Summary Report (see paragraph (f) of this section) contained in the DOE Uniform Reporting System for Federal Assistance (Grants and Cooperative Agreements) (DOE/MA–0001). (Approved by OMB under OMB control number 1900–0127).

(c) *Frequency.* Performance reports shall be submitted at least annually (*i.e.* once for every 12-month period elapsed) and may be required to be submitted no more frequently than quarterly. A final report shall be required after the project period ends or the grant is terminated. The deadlines for performance reports shall be as follows:

(1) Quarterly and semiannual reports shall be submitted within 30 days after the end of the quarter or six-month period covered by the report.

(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.

(3) Final performance reports shall be submitted within 90 days after the project period ends or the grant is terminated.

(4) DOE may extend the deadline date for any report if the grantee submits a written request before the deadline which adequately justifies an extension.

(d) *Relationship to Financial Status Report (FSR) (OMB Nos. 0348–0001 and 1900–0127) and other financial reports.* (1) If the FSR is used (see § 600.116), the grantee shall submit its performance reports and FSRs simultaneously for coextensive periods unless:

(i) DOE requires the grantee to submit a performance report with its continuation or renewal application; or

(ii) DOE determines that on-site technical inspections by or on behalf of DOE and certified completion data submitted by the grantee would be

sufficient to evaluate construction projects; or

(iii) In order to prepare a required annual report for the Congress, DOE must receive performance reports on a date that is different from an otherwise applicable deadline.

(2) If the grantee will be using the Request for Advance or Reimbursement (SF–270) (OMB No. 0348–0004) instead of the FSR (See § 600.116(b)), DOE shall specify in the award deadlines for performance reports.

(e) *Interim reports.* The grantee shall report the following events to DOE as soon after they occur as possible:

(1) Problems, delays, or adverse conditions which will materially affect the ability to attain project objectives, or prevent the meeting of time schedules and goals. The report must describe the remedial action the grantee has taken or plans to take and any action DOE should take to alleviate the problem. (See § 600.114(e) for the procedures to be followed if additional DOE funding is required.)

(2) Favorable developments or events which enable meeting time schedules and goals sooner or at less cost than anticipated or producing more beneficial results than originally projected. (See § 600.108(b) and (c) in the event that an excess authorization of funds occurs.)

(f) *Management Summary Report.* DOE may require that the Management Summary Report (EIA–459E) (OMB No. 1900–0127) be used as a performance report in accordance with the Uniform Reporting System for Federal Assistance (Grants and Cooperative Agreements) (DOE/MA–0001) only when such use is authorized by program rule or the need for this form is explained in the solicitation. The requirements of this section concerning reporting frequency and deadlines shall apply to the Management Summary Report. (See also § 600.102(a) with regard to use of this form as part of the grant application.)

(g) *Required copies.* The grantee shall submit an original and two copies of each required performance report unless the award specifies that the grantee may submit fewer copies.

(h) *DOE review of grantee performance.* DOE or its authorized representatives may make site visits, at any reasonable time, to review the project and to provide such technical assistance as may be necessary.

(i) *Subgrantee performance reporting.* Grantees may place performance reporting requirements on subgrant awards consistent with the provisions of this section and shall require interim reports in accordance with paragraph (e) of this section.

§ 600.116 Financial reports.

(a) *General.* A grantee shall report financial information to DOE and, if other than DOE, the administering payment office, on one or more of the forms indicated in paragraphs (b) through (f) of this section, as specified by DOE in the terms and conditions of the award. The grantee shall submit an original and two copies of each required form unless the award specifies that the grantee may submit fewer copies. The particular form(s) specified for use shall be appropriate for the payment method used (see § 600.112) and for DOE information requirements. The grantee may provide the required information in machine usable format or computer printout instead of on the prescribed report forms. A grantee is not required to use these forms to obtain financial information from a subgrantee.

(b) *Financial Status Report (SF–269).* (1) A grantee shall use the Financial Status Report (FSR) to report the status of funds for all nonconstruction projects unless DOE specifies in the award that the Request for Advance or Reimbursement (SF–270) or the Report of Federal Cash Transactions (SF–272) shall be used for this purpose. Whenever the Request for Advance or Reimbursement form is used only for advances, even if no interim FSRs are required as provided in this paragraph, the grantee shall submit a final FSR after the project period ends or the grant is terminated. (Approved by OMB under OMB control numbers 0348–0001 and 1900–0127; 0348–0003; and 0348–0004.)

(2) Unless specified by DOE, a grantee may complete the FSR on a cash or accrual basis. DOE may require accrual reporting only if such reporting is required by program statute or rule. In any such case, the grantee shall base its financial reports to DOE on an analysis of available financial records but shall not be required to convert to an accrual accounting system.

(3) DOE may require FSRs only in the frequency specified in § 600.115(c). The grantee shall follow the deadline requirements described in § 600.115(c). Unless otherwise specified in the award, the grantee shall submit an FRS annually or, if the project period is one year or less, the grantee shall submit only a final FSR.

(4) If a grantee has unliquidated obligations when the final FRS is due, the grantee shall ask the DOE Contracting Officer whether a provisional final FSR should be submitted to be followed by a complete final FRS at a later date.

(c) *Report of Federal Cash Transactions (SF–272).* When funds are advanced to a grantee through a letter of credit or by Treasury check, the grantee shall submit to DOE a Report of Federal Cash Transactions and, when necessary, its continuation sheet (SF–272a) except that grantees under the Regional Disbursing Office system shall not be required to submit this report. For these grantees, DOE shall use information contained in the payment request to monitor grantee cash balances and to obtain disbursement information. (Approved by OMB under OMB control number 0348–0003.)

(1) The Federal Cash Transactions Report shall be submitted within 15 working days following the end of each quarter.

(2) DOE may require that grantees receiving advances totaling $1 million or more per year submit monthly SF–272 reports.

(3) DOE may waive the SF–272 requirement whenever total monthly advances to a grantee do not exceed $10,000 and DOE determines that the grantee's accounting controls are adequate to minimize excessive advances.

(4) Grantees who receive a single payment of less than $10,000 in accordance with § 600.112(b)(2)(ii) shall not be required to submit an SF–272.

(d) *Payment requests under a letter of credit.* A grantee shall use the forms specified by the administering payment office to request payment under a letter of credit (see § 600.112(b)(1)).

(e) *Request for Advance or Reimbursement (SF–270).* A grantee who does not have a letter of credit shall use the Request for Advance or Reimbursement (SF–270) for any nonconstruction project.

(1) Requests for advances by Treasury check may be submitted as necessary; however, such requests shall not be made in excess of reasonable estimates of cash outlays for a 30-day period.

(2) Requests for reimbursement shall be submitted monthly unless more frequent submission is authorized by the award. (Approved by OMB under OMB control number 0348–0004.)

(f) *Outlay Report and Request for Reimbursement for Construction Programs (SF–271).* Unless DOE specifies in the award that the grantee shall use the SF–270, the grantee shall use the Outlay Report and Request for Reimbursement for Construction Programs to request reimbursement for a construction project in the frequency specified in paragraph (e)(2) of this section. (Approved by OMB under OMB control number 0348–0002.)

(g) *Standard forms.* Standard financial report forms, instructions for their completion, and applicable definitions,

are contained in OMB Circular A-102, Attachment H and OMB Circular A-110, Attachment G, and, with respect to the SF-269, in the Uniform Reporting System for Federal Assistance (DOE/MA-0001). All DOE grantees shall use these forms and instructions, except as provided in paragraph (a) of this section. Use of any nonstandard form or instructions shall be considered a deviation subject to the deviation procedures of § 600.4. (Approved by OMB under OMB control numbers 0348-0001—0348-0004 and 1900-0127.)

§ 600.117 Property management.

(a) *Definitions.* (1) "Acquired with DOE grant funds" means that all or a portion of the acquisition cost of an item of property is a direct charge to DOE grant funds (whether the cost is incurred under the grant, a subgrant, or a cost-reimbursement contract) or all or a portion of the acquisition cost is a direct cost being used to meet a cost sharing requirement.

(2) "Acquisition cost" of an item of purchased equipment means the net invoice unit price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the equipment usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty, or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

(3) "Acquisition of property" means the purchase, construction, or fabrication of property but does not include rental of property or minor alteration or renovation of real property.

(4) "Allowable cost of the project" means, when used for purposes of determining the amount of reimbursement due under this section, the DOE (or non-Federal) share of the allowable costs which were either chargeable to DOE grant funds or counted toward meeting a cost sharing requirement of the grant during the project period. For property acquired by a subgrantee, the DOE share of the grantee's costs shall be multiplied by the grantee's share of the subgrantee's costs to determine the DOE share of the subgrantee's costs.

(5) "Equipment" means an article of tangible personal property that has a useful life of more than two years and an acquisition cost of $500 or more. A grantee or subgrantee may use its own definition of equipment provided the definition would include all articles of equipment as defined in this paragraph.

(6) "Exempt property" means equipment and supplies acquired with DOE grant funds for which the grantee or subgrantee is not required to account to DOE except as provided in paragraph (d)(2) of this section. The exempt status must be authorized by a Federal statute.

(7) "Federally owned property" means any real or tangible personal property (equipment or supplies) owned by DOE which is furnished by DOE to a grantee for use during the project period, and any such property acquired under a grant which DOE is required by statute or by a determination made in accordance with this Part to own.

(8) "Nonexempt property" means equipment and supplies acquired with DOE grant funds which are subject to the conditions for use, management, and disposition under paragraphs (d) and (e) of this section. For purposes of this section, nonexempt property includes excess personal property which has been made available to a grantee under authority of the Federal Property and Administrative Services Act, as amended by 40 U.S.C. 483, and the implementing Federal Property Management Regulations (41 CFR § 101-43.320).

(9) "Real property " means land, land improvements, structures and anything attached to these so as to become a part of them. This term does not include movable machinery and other types of equipment.

(10) "Supply" means any tangible personal property other than equipment.

(b) *Applicability.*

(1) Except as provided in paragraph (b)(2) and (b)(3), this section applies to real property equipment, and supplies acquired with DOE grant funds, and to real property, equipment, and supplies furnished by DOE under a grant.

(2) The requirements of this section apply to grantees and subgrantees. The requirements of this section apply to equipment and supplies acquired by a contractor under a grant or subgrant only when the contract requires ownership of the property to remain with the grantee, subgrantee, or DOE.

(3) The requirements of this section do not apply to:

(i) Property for which only use or depreciation allowances are charged;

(ii) Property donated by a third party (whether or not counted as a third- party in-kind contribution); and

(iii) Property acquired for sale or rental rather than for use in the grant project.

(4) Grantees and subgrantees may use their own property management standards and procedures if the requirements of this section are included.

(c) *Real property.* (1) Federally owned real property shall be managed and disposed of in accordance with the terms and conditions of the award.

(2) Real property may be acquired with DOE grant funds only when authorized by Federal statute or program rule and only if DOE specifically authorizes such costs in the award. Except as otherwise required by Federal statute or program rule, the following shall apply whenever real property is acquired with DOE grant funds.

(i) Subject to the conditions in paragraphs (c)(2)(ii) and (c)(2)(iii), the grantee shall have title to such real property during and after the period of DOE grant support. A subgrantee may have title to such real property only if authorized by Federal statute or program rule.

(ii) Except as provided in paragraph (c)(2)(iv), the grantee shall notify DOE at any time if the real property becomes unnecessary for the purpose authorized under the grant or subgrant under which it was acquired. The grantee must obtain written DOE approval to use the property for any other purpose. Such use shall be limited to federally assisted projects, or to programs, projects or activities that have purposes consistent with those authorized in the statute under which the grant was awarded.

(iii) Except as provided in paragraph (c)(2)(iv) of this section, whenever real property is no longer needed or used as provided in paragraph (c)(2)(ii) of this section, the grantee must request disposition instructions from DOE. DOE shall instruct that the real property be disposed of in one of the following ways, any one of which shall result in satisfaction of the grantee's accountability:

(A) The grantee or subgrantee may be permitted to retain the real property after compensating DOE in an amount computed by applying the percentage of DOE participation in the allowable costs of the project to the current fair market value of the property.

(B) The grantee or subgrantee may be directed to sell the real property and pay DOE an amount computed by applying the percentage of DOE participation in the allowable costs of the project to the proceeds from sale (after deducting actual, reasonable selling expenses from the sales proceeds).

(C) The grantee or subgrantee may be directed to transfer title to the Federal government or to a non-Federal third party specified by DOE (although the grantee or subgrantee may suggest a potential third party transferee). The

grantee or subgrantee shall be compensated in an amount computed by applying the grantee's percentage of participation in the allowable costs of the project to the current fair market value of the real property.

(D) If the real property was not wholly acquired with DOE grant funds, the proportionate shares shall be adjusted by multiplying the percentage of the acquisition cost of the property (or if donated, the market value at the time of donation) which was attributable to DOE grant funds by the percentage of DOE, grantee, or subgrantee participation in the allowable costs of the project. This requirement also applies to reimbursement due under paragraphs (d) or (e) of this section.

(iv) If real property is acquired under a grant or subgrant of $10,000 or less, the grantee shall not be required to—

(A) Obtain DOE approval for any alternative use or disposition of the property after the end of the project period.

(B) Compensate DOE for its share of the acquisition cost of the real property.

(d) *Equipment.*—(1) *Federally owned equipment.* Unless otherwise specified in the award, the grantee or subgrantee shall manage federally owned equipment provided by DOE or acquired with DOE grant funds in accordance with the property management standards in OMB Circular A–102, Attachment N, Paragraph 6.d. or OMB Circular A–110, Attachment N, Paragraph 6.d., as applicable. The OMB Circular A–110 requirements shall also apply to individuals, for-profit organizations, and foreign organizations. However, if federally owned equipment has been provided under a grant, the grantee must submit annually an inventory to DOE which lists such equipment in the custody of the grantee, any subgrantee, or contractor under the grant. For federally owned equipment acquired with DOE grant funds, the grantee shall provide DOE written notification of the results of the inventory(ies) under OMB Circular A–102, Attachment N, Paragraph 6.d. or OMB Circular A–110, Attachment N, Paragraph 6.d., as applicable.

(i) During the period of DOE support, the grantee shall notify DOE as soon as practicable whenever federally owned equipment is no longer needed for the project. For expired or terminated grants, the grantee shall report any federally owned equipment upon request by DOE as part of closeout (see § 600.123). Thereafter, DOE shall issue disposition instructions to the grantee in accordance with applicable law and regulations.

(2) *Transfer of equipment.* DOE may transfer ownership of any item of exempt or nonexempt equipment having a unit acquisition cost of $1,000 or more to the Federal government or to an eligible third party named by DOE, subject to the following:

(i) DOE must notify the grantee in writing of its intent to transfer ownership within 120 days following the end of the project period or the termination of the DOE grant under which the equipment was acquired, and must specifically identify the equipment to be transferred. DOE shall arrange for transfer as soon as possible after the notice.

(ii) DOE may transfer ownership only when the equipment is no longer needed for the project for which it was acquired, or if the grantee or subgrantee agrees to relinquish the equipment.

(iii) The grantee shall be paid any reasonable storage or shipping costs incurred plus an amount computed by multiplying the current fair market value of the equipment by the non-Federal share, if any, in the allowable costs of the project. A grantee may, in the terms of a subgrant, reserve the right to transfer equipment acquired under the subgrant as provided in this paragraph. Without DOE approval, this right may be exercised only if the project for which the equipment was acquired is transferred to another subgrantee and the equipment is to be transferred for continued use in the project. Any other exercise of this right by the grantee requires the prior written approval of DOE.

(3) State governments, local governments, and Indian tribal governments shall comply with the provisions of OMB Circular A–102, Attachment N, Paragraphs 6.b, c, and d for the use, disposition and management of nonexempt equipment. All other types of grantees and subgrantees shall comply with OMB Circular A–110, Attachment N, Paragraphs 6.b, c, and d for use, disposition and management of such equipment.

(4) At the end of the project period or at the termination of DOE support for the project, the grantee shall provide an inventory of nonexempt equipment with a unit acquisition cost of $1,000 or more acquired by the grantee or subgrantee along with a statement of the grantee's or subgrantee's plans for continued use or recommendations for disposing of such equipment. If nonexempt equipment is acquired under a grant of $10,000 or less, and DOE does not transfer ownership under paragraph (d)(2) of this section, the grantee shall have no further obligation to DOE with respect to the use, management, or disposition of such property.

(e) *Supplies.* (1) Federally owned supplies shall be used, managed, and disposed of in accordance with the terms and conditions of the award.

(2) If, at the end of the project period or upon termination of the grant or subgrant for which supplies (other than federally owned supplies) were acquired, unused supplies exceeding $1,000 in total aggregate current fair market value remain, they may be used for any other federally funded activity of the grantee or subgrantee without compensation to DOE. Unless otherwise exempted by Federal statute, if they are not needed for any federally funded activity, the grantee or subgrantee must compensate DOE. If the supplies are retained for use on non-Federal activities, the amount due DOE shall be computed by multiplying the DOE share in the allowable costs of the project for which the supplies were acquired by the current fair market value of the supplies. If sold, the DOE share shall be multiplied by the sales proceeds or the current fair market value, whichever is greater, to determine the amount due DOE. The grantee or subgrantee may retain $100 or ten percent of the proceeds, whichever is greater, for selling and handling expenses.

§ 600.118 Patents, data, and copyrights.

(a) *General.* Grants shall be awarded and administered by DOE in compliance with the patent, data, and copyright provisions of this section, 41 CFR Part 9–9 and, for grants to small business firms and domestic nonprofit organizations, with OMB Circular A–124, which contains the definitions of "small business firm" and "nonprofit organization" applicable to this section. DOE shall specify, in each award, the applicable patent, data, and copyright provisions.

(b) *Required clauses.* DOE shall determine which of the clauses listed in this paragraph or in 41 CFR Part 9–9 applies, based on DOE review of the application, other information submitted by the applicant, and any negotiations. These clauses may be modified by DOE Patent Counsel, in accordance with the procedures of 41 CFR Part 9–9, for a particular grant or, in the case of a class waiver of patent rights under 41 CFR Part 9–9, for a class of grants such as those for the "Appropriate Technology" program and the program for development of inventions referred to DOE by the National Bureau of Standards under Sec. 14 of the Federal Non-Nuclear Energy Research and Development Act of 1974.

(1) *Patent Rights (Small Business Firm or Nonprofit Organization).* This clause shall apply to grants to small business firms and domestic nonprofit organizations where such grants have as a purpose the conduct of experimental, developmental, demonstration, or research work and where the small business firm or domestic nonprofit organization states in writing that it qualifies as a small business firm or domestic nonprofit organization. In exceptional circumstances, DOE may, as determined by Patent Counsel, use a patent rights clause other than the clause specified in this paragraph (b)(1).

Patent Rights (Small Business Firm or Nonprofit Organization)

(a) Definitions

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code (USC).

(2) "Subject invention" means any invention of the grantee conceived or first actually reduced to practice in the performance of work under this grant.

(3) "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(4) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) "Small Business Firm" means a small business concern as defined at Section 2 of Public Law 85–536 (15 USC 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standard for small business concerns involved in Government procurement, contained in 13 CFR 121.3–8, and in subcontracting, contained in 13 CFR 121.3–12, will be used.

(6) "Nonprofit Organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 USC 501(c)) and exempt from taxation under Section 501(a) of the Internal Revenue Code (26 USC 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(7) "Patent Counsel" means the Department of Energy (DOE) patent counsel assisting the DOE contracting activity.

(b) Allocation of Principal Rights

The grantee may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 USC 203. With respect to any subject invention in which the grantee retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention Disclosure, Election of Title and Filing of Patent Applications by Grantee

(1) The grantee will disclose each subject invention to the Patent Counsel (with notification by the Patent Counsel to the Contracting Officer) within two months after the inventor discloses it in writing to grantee personnel responsible for the administration of patent matters. The disclosure to the Patent Counsel shall be in the form of a written report and shall identify the grant under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Patent Counsel, the grantee will promptly notify the Patent Counsel of the acceptance of any manuscript describing the invention or of any on sale or public use planned by the grantee.

(2) The grantee will elect in writing whether or not to retain title to any invention by notifying the Patent Counsel within twelve months of disclosure to the grantee; provided that in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title terminates sixty days prior to the end of the statutory period.

(3) The grantee will file its initial patent application on an elected invention within two years after election or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The grantee will file patent applications in additional countries within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to the Patent Counsel, election, and filing, may, at the discretion of the Patent Counsel be granted.

(d) Conditions When the Government May Obtain Title

(1) The grantee will convey to DOE, upon written request, title to any subject invention:

(i) If the grantee fails to disclose or elecet the subject invention within the times specified in (c) above, or elects not to retain title.

(ii) In those countries in which the grantee fails to file patent applications within the times specified in (c) above; provided, however, that if the grantee has filed a patent application in a country after the times specified in (c) above but prior to its receipt of the written request of the Patent Counsel, the grantee shall continue to retain title in that country; or

(iii) In any country in which the grantee decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum Rights to Grantee

(1) The grantee will retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title except if the grantee fails to disclose the subject invention within the times specified in (c) above. The grantee's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the grantee is a part and includes the right to grant sublicenses of the same scope to the extent the grantee was legally obligated to do so at the time the grant was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the grantee's business to which the invention pertains.

(2) The grantee's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 10 CFR 781. This license will not be revoked in that field of use or the geographical areas in which the grantee has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the grantee, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign county.

(3) Before revocation or modification of the license, DOE will furnish the grantee a written notice of its intention to revoke or modify the license, and the grantee will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the grantee) after the notice to show cause why the license should not be revoked or modified. The grantee has the right to appeal, in accordance with 10 CFR 781, any decision concerning the revocation or modification of its license.

(f) Grantee Action to Protect Government's Interest

(1) The grantee agrees to execute or to have executed and promptly deliver to the Patent Counsel all instruments necessary to:

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions for which the grantee retains title, and

(ii) Convey title to DOE when requested under (d) above and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The grantee agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the

administration of patent matters and in a format suggested by the grantee each subject invention made under this grant in order that the grantee can comply with disclosure provisions of (c) above and to execute all papers necessary to file patent applications on subject inventions. The disclosure format should require, as a minimum, the information requested by (c)(1) above. The grantee shall instruct such employees through the employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The grantee will notify the Patent Counsel of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) The grantee agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the grant) awarded by the Department of Energy. The Government has certain rights in this invention."

(5) The grantee agrees to:

(i) Provide a report prior to the close-out of the grant listing all subject inventions;

(ii) Provide notification of all contracts and subgrants under the grant for experimental, developmental, demonstration, or research work, the identity of the patent rights clause therein, and copy of each such contract or subgrant upon request:

(iii) Provide promptly a copy of the patent application, filing date, and serial number, and patent number and issue date for any subject invention in any country in which the grantee has applied for a patent.

(g) Contracts and Subgrants Under the Grant

(1) The grantee will include this clause, suitably modified to identify the parties, in all contracts and subgrants under the grant, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or a domestic nonprofit organization. The contractor or subgrantee will retain all rights provided for the grantee in this clause, and the grantee will not, as part of the consideration for awarding the contract or subgrant, obtain rights in the contractor's or subgrantee's subject inventions.

(2) The grantee will include in all other contracts or subgrants under the grant, regardless of tier, for experimental, developmental, demonstration, or research work the patent rights clause of 41 CFR § 9–9.107–5(a) or 41 CFR § 9–9.107–6, as appropriate, modified to identify the parties.

(3) In the case of a contract or subgrant under the grant at any tier, DOE, the contractor or subgrantee, and the grantee agree that the mutual obligations of the parties created by the clause constitute a contract between the contractor or subgrantee and DOE with respect to those matters covered by this clause.

(h) Reporting on Utilization of Subject Inventions. The grantee agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the grantee or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the grantee, and such other data and information as DOE may reasonably specify. The grantee also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this clause. To the extent data or information supplied under this section is considered by the grantee, its licensee or assignee to be privileged and confidential and is so marked, DOE agrees that, to the extent permitted by 35 U.S.C 202(c)(5), it will not disclose such information to persons outside the Government.

(i) Preference for United States Industry. Notwithstanding any other provision of this clause, the grantee agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the grantee or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in Rights. The grantee agrees that with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in OMB Circular A–124 to require the grantee, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the grantee, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that:

(1) Such action is necessary because the grantee or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the grantee, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by federal regulations and such requirements are not reasonably satisfied by the grantee, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special Provisions for Grants to Nonprofit Organizations.

If the grantee is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of DOE, except where such assignment is made to an organization which has as one of its primary functions the management of inventions and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention (provided that such assignee will be subject to the same provisions as the grantee);

(2) The grantee may grant exclusive licenses under United States patents or patent applications in subject inventions to persons other than small business firms for a period in excess of the earlier of:

(i) five years from first commercial sale or use of the invention; or

(ii) eight years from the date of the exclusive license excepting that time before regulatory agencies necessary to obtain premarket clearance, unless on a case-by-case basis, DOE approves a longer exclusive license. If exclusive field of use licenses are granted, commercial sale or use in one field of use will not be deemed commercial sale or use as to other fields of use, and a first commercial sale or use with respect to a product of the invention will not be deemed to end the exclusive period to different subsequent products covered by the invention;

(3) The grantee will share any royalties collected on a subject invention with the inventor; and

(4) The balance of any royalties or income earned by the grantee with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education.

(l) Communication.

The DOE central point of contact for communications or matters relating to this clause is the Patent Counsel.

(2) *Patent Rights (Short Form).* This clause shall apply to grants awarded to grantees other than small business firms or domestic nonprofit organizations, where such grants have as a purpose the conduct of experimental, developmental, demonstration, or research work. Prior to award or within 30 days after an award is signed by the DOE Contracting Officer, or such longer period as may be authorized by the Patent Counsel for good cause shown in writing by the applicant or grantee, the applicant or grantee may petition DOE for an advance waiver of the Government's rights to inventions conceived or first

actually reduced to practice under the grant in accordance with 41 CFR Part 9–9. DOE shall consider and dispose of any such request in accordance with the waiver provisions of 41 CFR Part 9–9. If a waiver is granted, the appropriate waiver clause shall be substituted for the Patent Rights (Short Form) clause. DOE also may authorize an advance waiver for a class of awards when appropriate and shall specify the applicable patent rights clause in every award covered by such a waiver.

Patent Rights (Short Form)

(a) Definitions.

(1) "Subject invention" means any invention or discovery of the grantee conceived or first actually reduced to practice in the course of or under this grant and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plants, whether patented or unpatented, under the patent laws of the United States of America or any foreign country.

(2) "Patent Counsel" means DOE Patent Counsel assisting the procuring activity.

(b) Invention disclosures and reports.

(1) The grantee shall furnish the Patent Counsel (with notification by Patent Counsel to Contracting Officer):

(i) A written report containing full and complete technical information concerning each subject invention within 6 months after conception or first actual reduction to practice but in any event prior to any sale, public use, or public disclosure of such invention known to the grantee. The report shall identify the grant and inventor and shall be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains, a clear understanding of the nature, purpose, operation and, to the extent known, the physical, chemical, biological or electrical characteristics of the invention;

(ii) Upon request, but not more than annually, interim reports on a DOE-approved form listing subject inventions for that period and certifying that all subject inventions have been disclosed or that there were no such inventions; and

(iii) A final report on a DOE-approved form within 3 months after completion of the grant work listing all subject inventions and certifying that all subject inventions have been disclosed or that there were no such inventions.

(2) The grantee agrees that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to the grant.

(c) Allocation of principal rights.

(1) Assignment to the Government.

The grantee agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the grantee under paragraphs (c)(2) and (d) of this clause.

(2) Greater rights determination. The grantee, or the employee-inventor with authorization of the grantee, may request greater rights than the nonexclusive license and the foreign patent rights provided in paragraph (d) of this clause on identified inventions in accordance with the procedure and criteria of 41 CFR 9.109–6. A request for a determination of whether the grantee or the employee-inventor is entitled to retain such greater rights must be submitted to the Patent Counsel (with notification by Patent Counsel to the Contracting Officer) at the time of the first disclosure of the invention pursuant to paragraph (b)(1) of this clause or not later than 9 months after conception or first actual reduction to practice, whichever occurs first, or such longer period as may be authorized by the Patent Counsel (with notification by Patent Counsel to the Contracting Officer) for good cause shown in writing by the grantee. The information to be submitted for greater rights determination is specified in 41 CFR § 9–9.109–6(e).

(d) Minimum rights to the Grantee. The Grantee reserves a revocable, nonexclusive, paid-up license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title. Revocation shall be in accordance with the procedures of paragraphs (c)(2) and (3) of the clause in 41 CFR § 9–9.107–5(a). The grantee also has the right to request foreign rights in accordance with the procedures of paragraph (c)(4) of the clause in 41 CFR § 9–9.107–5(a).

(e) Employee and contractor or subgrantee agreements. Unless otherwise authorized in writing by the Contracting Officer, the grantee shall:

(1) Obtain patent agreements to effectuate the provisions of the Patent clause from all persons who perform any part of the work under this grant except nontechnical personnel, such as clerical employees and manual laborers.

(2) The grantee shall include this clause or the Patent Rights clause of 41 CFR § 9–9.107–5(a) or the clause of § 600.118(b)(1), as appropriate, modified to identify the parties in any contract or subgrant hereunder having as a purpose the conduct of experimental, research, development, or demonstration work; and

(3) Promptly notify the Contracting Officer in writing upon the award of any contract or subgrant containing a Patent Rights clause by identifying the contractor or subgrantee, the work to be performed under the contract or subgrant, and dates of award and estimated completion. Upon the request of the Contracting Officer, the grantee shall furnish a copy of the contract or subgrant to such requestor.

(f) Atomic energy.

(1) No claim for pecuniary award or compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted by the grantee or its employees with respect to any inventions or discovery made or conceived in the course of or under this grant.

(2) Except as otherwise authorized in writing by the Contracting Officer, the grantee will obtain patent agreements to effectuate the provisions of paragraph (f)(1) of the clause from all persons who perform any part of the work under this grant except nontechnical personnel, such as clerical employees and manual laborers.

(g) Publication. In order that information concerning scientific or technical developments conceived or first actually reduced to practice in the course of or under the grant is not prematurely published so as to adversely affect patent interest of DOE, the grantee agrees to submit to the Patent Counsel for patent review a copy of each paper 60 days prior to its intended publication date. The grantee may publish such information after expiration of a 60-day period following such submission or prior thereto if specifically approved by the Patent Counsel, unless the grantee is informed (in writing within the 60-day period) that in order to protect patentable subject matter, publication must further be delayed. In this event, publication shall be delayed up to 100 days beyond the 60-day period or such longer period as mutually agreed to.

(3) *Rights in Technical Data (Short Form).* This clause shall apply to all grants other than those having as a purpose the conduct of a conference, symposium, or training. However, this clause does not provide protection for proprietary data. If proprietary data may be utilized under a grant, other appropriate technical data clauses (as provided in 41 CFR § 9–9.202) may be included in the award.

Rights in Technical Data (Short Form)

(a) Definitions. The definitions of terms set forth in 41 CFR § 9–9.201 apply to the extent these terms are used herein.

(b) Allocation of rights.

(1) The Government shall have:

(i) Unlimited rights in technical data first produced or specifically used in the performance of this grant.

(ii) The right of the Contracting Officer or his representatives to inspect at all reasonable times up to three years after final payment under this grant all technical data first produced or specifically used in the grant (for which inspection the grantee or its contractor or subgrantee shall afford proper facilities to DOE); and

(iii) The right to have any technical data first produced or specifically used in the performance of this grant delivered to the Government as the Contracting Officer may from time to time direct during the progress of the work, or in any event as the Contracting Officer shall direct upon completion or termination of this grant.

(2) The grantee shall have: The right to use for its private purposes, subject to patent, security or other provisions of this grant, technical data it first produces in the performance of this grant provided the data requirements of this grant have been met as of the date of the private use of such data. The grantee agrees that to the extent it receives or is given access to proprietary data or other technical, business or financial data in the form of recorded information from DOE or a DOE contractor or subcontractor, the grantee shall treat such data in

accordance with any restrictive legend contained thereon, unless use is specifically authorized by prior written approval of the Contracting Officer.

(c) Copyrighted material.

(1) The grantee agrees to and does hereby grant to the Government and to others acting on its behalf:

(i) A royalty-free, nonexclusive, irrevocable, world-wide license for Governmental purposes to reproduce, distribute, display, and perform all copyrightable material first produced or composed in the performance of this grant by the grantee, its employees or any individual or concern specifically employed or assigned to originate and prepare such material and to prepare derivative works based thereon;

(ii) A license as aforesaid under any and all copyrighted or copyrightable work not first produced or composed by the grantee in the performance of this grant but which is incorporated in the material furnished under the grant, provided that such license shall be only to the extent the grantee now has, or prior to completion or closeout of the grant may acquire the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(2) The grantee agrees that it will not knowingly include any material copyrighted by others in any written or copyrightable material furnished or delivered under this grant without a license as provided for in subparagraph (1)(ii) hereof, or without the consent of the copyright owner, unless it obtains specific written approval of the Contracting Officer for the inclusion of such copyrighted material.

(4) *Rights in Technical Data (Modified Short Form).* This clause shall apply to any grant having as a purpose the conduct of a conference, a symposium, or training.

Rights in Technical Data—Modified Short Form

(1) The grantee grants to the Government a worldwide, royalty-free, non-exclusive, irrevocable license to publish, duplicate, translate, perform, exhibit and dispose of and to have others to do so, technical information or data including copyrightable material first produced by the grantee, under the grant.

(2) DOE has the right to require delivery of all technical information or data first produced by the grantee under this grant and all conference papers of a scientific or technical nature. The grantee agrees not to include in the technical information or data, or scientific or technical conference papers delivered under the grant, any material copyrighted by the grantee or any material including scientific or technical conference papers copyrighted by others without first obtaining without cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (1) above. If, nevertheless, there must be included in the technical information or data, or scientific or technical conference papers to be delivered, copyrighted material for which a license of the above scope cannot be obtained, the grantee shall obtain the written authorization of DOE to include such material prior to physical delivery to DOE.

(5) *Authorization and Consent.* This clause shall apply to any grant under which experimental, developmental, demonstration, or research work is to be performed within the United States, its possessions, or Puerto Rico.

Authorization and Consent

The Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this grant or any part hereof or any amendment hereto or any contract hereunder (including all lower-tier subcontracts).

(6) *Notice and Assistance.* This clause shall be applied to any grant in excess of $10,000 for construction, experimental, developmental, demonstration, or research work which is to be performed within the United States, its possessions, or Puerto Rico.

Notice and Assistance Regarding Patent and Copyright Infringement

The provisions of this clause shall be applicable only if the amount of this grant exceeds $10,000.

(a) The grantee shall report to the Contracting Officer, promptly and in reasonable written detail, each notice of claim of patent or copyright infringement based on the performance of this grant of which the grantee has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this grant or out of the use of any supplies furnished or work or services performed hereunder, the grantee shall furnish to the Government when requested by the Contracting Officer, all evidence and information in possession of the grantee pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the grantee has agreed to indemnify the Government.

(c) This clause shall be included in all contracts and subgrants under the grant.

(c) *Reporting of royalties.* In order that DOE may be informed regarding royalty payments to be made by a grantee in connection with any grant where the amount of the royalty payments is included in the approved budget or is to be reimbursed by the Government, the applicant shall provide:

(1) Information concerning the royalty payments expected to be made under the grant, if awarded, together with the names of the licensors, and either the patent numbers involved or such other information as will permit identification of the patents and patent applications as well as the basis on which the royalties are to be paid; or

(2) A certification that the proposed budget includes no amount representing any royalty that would be paid by the grantee directly to others in connection with the performance of the award. If the information or certification specified in paragraphs (c)(1) and (c)(2) is not available at the time of award, DOE shall include the Reporting of Royalties clause in any applicable grant award.

Reporting of Royalties

If this grant is in an amount which exceeds $10,000 and if any royalty payments are directly involved in the grant or are reflected in the amount of the grant award, the grantee agrees to report in writing to the Patent Counsel (with notification by Patent Counsel to the Contracting Officer) during the performance of this grant and prior to its completion or closeout, the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this grant together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit the identification of the patents or other basis on which the royalties are to be paid. The approval of DOE of any individual payments or royalties shall not stop the Government at any time from contesting the enforceability, validity, or scope of, or title to, any patent under which a royalty or payments are made.

(d) *Subgrants and contracts under grants or subgrants.* The grantee shall include the applicable patent rights and rights in technical data clauses and the clauses of paragraphs (b)(5), (b)(6), and (c) of this section, as applicable, in any subgrant or contract.

§ 600.119 Procurement under grants and subgrants.

(a) *Applicability.* This section applies to the procurement, whether by purchase, rental, or otherwise, of supplies, equipment, construction, or services by grantees and subgrantees from third parties when some or all of the cost of the procurement is a direct charge to DOE grant funds or is a direct cost being used to meet all or part of a cost sharing requirement of the DOE award.

(1) This section does not apply to such procurement by one government from another government, or by one agency or instrumentality of a government from another agency or instrumentality of the same or another government. For purposes of this section, a public institution of higher education or a public hospital shall be considered an "instrumentality of a government" whenever such an organization procures goods or services from a government, or whenever a government procures goods or services from such an organization.

(2) This section does not apply to procurement of land or any other existing real property.

(b) *Grantee and subgrantee responsibilities.* (1) State governments, local governments, and Indian tribal governments shall comply with the grantee and subgrantee responsibility requirements of OMB Circular A–102, Attachment O, Paragraphs 2 and 7 through 15. DOE may review the procurement system of a grantee covered by OMB Circular A–102, in accordance with Attachment O, Paragraph 4 of that Circular, if DOE anticipates a continuing relationship with the grantee, or if a substantial amount of the DOE support is to be used for procurement and DOE intends to review individual contracts. DOE may make any such review at DOE initiative or at the request of a grantee. If a grantee's procurement system is found acceptable, DOE shall issue a certification to that effect. If a grantee's procurement system has been certified by DOE or other Federal agency, a grantee need not comply with the prior approval requirements of paragraph (c) of this section. DOE may rely on the findings of a review or certification by DOE or other Federal agency for a period of 24 months.

(2) All other grantees and subgrantees shall comply with the grantee and subgrantee responsibility requirements of OMB Circular A–110, Attachment O, Paragraphs 2, 3, and 4.

(c) *Prior approval requirements.* (1) A grantee or subgrantee must receive prior written approval from the awarding party before entering into any sole source contract or a contract where only one bid or proposal is received when:

(i) 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) 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.

(2) In addition to the prior approval requirements of paragraph (c)(1), DOE may require review and approval of proposed procurements in the following instances:

(i) If DOE or the grantee determines, on the basis of a review under paragraph (b)(1) of this section or in accordance with § 600.104 or § 600.105, that the grantee's or subgrantee's procurement procedures or operations do not comply with one or more of the applicable procurement system standards; or

(ii) Whenever authorized under OMB Circulars A–102 or A–110.

(3) A request for prior approval under this paragraph shall include a copy of the proposed contract and any related procurement documents, such as requests for proposals and invitations for bids, and justification for noncompetitive procurement.

(d) *Contract provisions.* In addition to the contract clauses required under OMB Circulars A–102 and A–110, contracts under grants and subgrants shall include the following as appropriate:

(1) In negotiated contracts whose value is more than $10,000, a clause requiring the contractor to retain records for three years after final payment is made under the contract. The provision must also require that if an audit, litigation, or other action involving the records is started before the end of the three-year period, the records must be retained until all issues arising out of the action are resolved, or until the end of the three-year period, whichever is later.

(i) If the contract is under a subgrant, the clause must require that the grantee, the subgrantee, and the Federal government shall have access to applicable records (see § 600.25).

(2) A clause requiring the contractor to comply with applicable DOE requirements concerning patents, inventions and copyrights (see § 600.118).

(3) A clause specifying the Federal cost principles applicable to a contractor under a cost-reimbursement contract.

(4) A clause requiring the contractor to include the clauses required by this paragraph (d) in any subcontract which would be required if the subcontract were a contract under a grant or subgrant except that a contractor administering a fixed-price contract shall not be required to specify Federal cost principles in a cost-reimbursement subcontract.

(e) *Payment of interest penalties.* By agreement of the grantee or subgrantee and the contractor, if consistent with the grantee's or subgrantee's usual business practices and applicable state and local law, any contract to which this section applies may provide for the payment of interest penalties on amounts overdue under such contract except that—

(1) In no case shall any obligation to pay such interest penalties be construed to be an obligation of the Federal government, and

(2) Any payment of such interest penalties may not be made from DOE funds nor be counted toward meeting a cost sharing requirement of a DOE award.

§ 600.120 Audit requirements.

(a) This paragraph establishes requirements for the conduct, oversight, scope, and frequency of financial and compliance audits. Any audit made by or on behalf of DOE shall rely, to the extent possible, on independent audits performed in accordance with this section.

(b) *State governments, local governments, or Indian tribal governments.* A grantee that is a State government, a local government, or an Indian tribal government and its governmental subgrantees shall arrange for independent audits that comply with the following requirements:

(1) Audits shall be made in accordance with the General Accounting Office (GAO) *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions;* the GAO *Guidelines for Financial and Compliance Audits of Federally Assisted Programs;* OMB-approved audit compliance supplements; and generally accepted auditing standards established by the American Institute of Certified Public Accountants.

(2) Audits shall be made on an organizationwide basis using a representative sample of Federal awards;

(3) Audits shall usually be made annually but not less frequently than every two years;

(4) An audit shall be conducted and the results reported in accordance with OMB Circular A–102, Attachment P, Paragraphs 6, 7, 9, and 10, and the audit work papers and reports shall be retained as provided in Paragraph 11 of that Attachment;

(5) If a contract is to be awarded for the conduct of any audit services required under this paragraph (b), the grantee or subgrantee shall comply with Paragraph 10 of OMB Circular A–102, Attachment P; and shall include a reference to OMB Circular A–102, Attachment P.

(6) The grantee shall ensure that the cognizant audit agency(ies) for that grantee and its subgrantees receives reports of audits conducted on its operations and on the operations of its subgrantees.

(c) *Nonprofit organizations.* Except as provided in paragraph (e) of this section, all grantees and subgrantees that are nonprofit organizations covered by OMB Circular A–110 shall conduct or provide for independent audits to be conducted in accordance with paragraphs (b)(1), (2), (3), and (6) of this section, and OMB Circular A–110, Attachment F, Paragraph 2.h.

(d) *Individuals and for-profit organizations.* The awarding party may audit, or cause to be audited, grants or subgrants to individuals or for-profit organizations whenever and in the degree of detail deemed necessary by the awarding party. The awarding party shall rely on available audit reports in determining the need for an scope of such audits.

(e) *Small entities.* Any grantee or subgrantee that is a small entity and that receives DOE financial assistance only in the amount of $10,000 or less for a period of 18 months or less shall not be required to comply with the requirements of paragraphs (b) or (c) of this section but may be auditied in accordance with paragraph (d).

§ 600.121 Noncompliance.

(a) Except for noncompliance determinations under 10 CFR Part 1040, whenever DOE determines that a grantee has not complied with the applicable requirements of this Part, with the requirements of any applicable program statute or rule, or with any other term or condition of the award, a DOE Contracting Officer shall provide to the grantee (by certified mail, return receipt requested) a written notice setting forth—

(1) The factual and legal bases for the determination of noncompliance;

(2) The corrective actions and the date (not less than 30 days after the date of the notice) by which they must be taken.

(3) Which of the actions authorized under paragraph (b) of this section DOE may take if the grantee does not achieve compliance within the time specified in the notice, or does not provide satisfactory assurances that actions have been initiated which will achieve compliance in a timely manner.

(b) If the grantee does not achieve compliance or provide DOE with satisfactory assurances of the initiation of actions intended to achieve compliance within the time specified in the notice under paragraph (a) of this section, DOE may take any or all of the following actions:

(1) Convert the grantee from an advance payment method to a reimbursement payment method as provided in § 600.112(d);

(2) Withhold payment as provided in § 600.112(f);

(3) Suspend the grant;

(4) Terminate the grant for cause;

(5) Disapprove continuation or renewal applications or other requests for extension of or additional funding for the same project;

(6) Invalidate an award that was obtained fraudulently;

(7) Recover funds and tangible property up to the amount of the award;

(8) Determine that the grantee is not responsible as provided in § 600.104;

(9) Initiate debarment proceedings as provided in § 600.27; and

(10) Initiate such other legal action as may be appropriate.

(c) DOE may take any of the actions set forth in paragraph (b) of this section concurrent with the written notice required under paragraph (a) of this section or with less than 30 days written notice to the grantee whenever:

(1) There is evidence the award was obtained by fraud;

(2) The grantee ceases to exist or becomes legally incapable of performing its responsibilities under the grant agreement;

(3) There is serious mismanagement or misuse of grant funds necessitating immediate action; or

(4) An immediate debarment in accordance with § 600.27(g) is warranted.

§ 600.122 Suspension and termination.

(a) *Suspension and termination for cause.* DOE may suspend or terminate a grant for cause on the basis of—

(1) a noncompliance determination under § 600.121; or

(2) an immediate debarment or debarment of the grantee under § 600.27.

(b) *Notification requirements.* Except as provided in § 600.121(c), before suspending or terminating a grant for cause, DOE shall mail to the grantee (by certified mail, return receipt requested) a separate written notice in addition to that required by § 600.121(a) at least ten days prior to the effective date of the suspension or termination. Such notice shall include, as appropriate—

(1) The factual and legal bases for the suspension or termination;

(2) The effective date or dates of the DOE action;

(3) If the action does not apply to the entire grant, a description of the activities affected by the action;

(4) Instructions concerning which costs shall be allowable during the period of suspension, or instructions concerning allowable termination costs, including in either case, instructions concerning any subgrants or contracts;

(5) Instructions concerning required final reports and other closeout actions for terminated grants (see § 600.123);

(6) A statement of the grantee's right to appeal a termination for cause pursuant to § 600.26; and

(7) The dated signature of a DOE Contracting Officer.

(c) *Suspension.* (1) Unless DOE and the grantee agree otherwise, no period of suspension shall exceed 90 days.

(2) DOE may cancel the suspension at any time, up to and including the date of expiration of the period of suspension, if the grantee takes satisfactory corrective action before the expiration date of the suspension or gives DOE satisfactory evidence that such corrective action will be taken.

(3) If the suspension has not been cancelled by the expiration date of the period of suspension, the grantee shall resume the suspended activities or project unless, prior to the expiration date, DOE notifies the grantee in writing that the period of suspension shall be extended consistent with paragraph (c)(1) of this section or that the grant shall be terminated.

(4) As of the effective date of the suspension, DOE shall withhold further payments and shall allow new obligations incurred by the grantee during the period of suspension only if such costs were authorized in the notice of suspension or in a subsequent letter.

(5) If the suspension is cancelled or expires and the grant is not terminated, DOE shall reimburse the grantee for any authorized allowable costs incurred during the suspension and, if necessary, may amend the award to extend the period of performance.

(d) *Termination by mutual agreement.* In addition to any situation where a termination for cause pursuant to § 600.121 is appropriate, either DOE or the grantee may initiate a termination of a grant (or portion thereof) as described in this paragraph. If the grantee initiates a termination, the grantee must notify DOE in writing and specify the grantee's reasons for requesting the termination, the proposed effective date of the termination, and, in the case of a partial termination, a description of the activities to be terminated, and an appropriate budget revision. DOE shall terminate a grant or portion thereof under this paragraph only if both parties agree to the termination and the conditions under which it shall occur. If DOE determines that the remaining activities under a partially terminated grant would not accomplish the purpose for which the grant was originally awarded, DOE may terminate the entire grant.

(e) *Effect of termination.* The grantee shall incur no new obligations after the effective date of the termination of a grant (or portion thereof), and shall cancel as many outstanding obligations as possible. DOE shall allow full credit to the grantee for the DOE share of noncancellable obligations properly incurred by the grantee prior to the effective date of the termination.

(f) *Subgrants.* Grantees shall follow the policies and procedures in this section and in § 600.121 for suspending and terminating subgrants.

§ 600.123 Closeout.

DOE shall close out a grant within a reasonable period of time after the completion date of the grant. The completion date may be either the last day of the project period or the date of termination of a grant. "Closeout" means the process by which DOE determines that all required work has been performed by the grantee and that all applicable administrative actions, except as provided in paragraphs (b) and (c) of this section, have been completed by DOE and the grantee.

(a) *Final reports.* Within 90 days after the completion date of a grant, the grantee shall submit any final financial, performance, and other reports required by the terms and conditions of the award.

(b) *Final payments and adjustments.* If required or authorized by the terms and conditions of the award, DOE may make any necessary upward or downward adjustment to the DOE share of the approved budget based on the information contained in the grantee's final reports or in any audit under § 600.120. At the request of a grantee who is being reimbursed by Treasury check, DOE shall promptly pay the grantee for any unreimbursed allowable costs under the grant being closed out. The grantee shall immediately refund to DOE any unobligated funds advanced to the grantee which are not authorized to be retained by the grantee for use on other DOE awards. In the case of grants terminated for cause, payments to grantees or refunds to DOE shall be made in accordance with § 600.122.

(c) *Property.* The grantee shall provide a listing of property furnished by DOE or acquired with DOE grant funds for which such a listing is required under § 600.117. The closeout of a grant does not affect the grantee's responsibilities for property for which a grantee is accountable and which has not been transferred by DOE or disposed of in accordance with § 600.117.

(d) *Program income.* The closeout of a grant does not affect a grantee's responsibilities with respect to program income for which the grantee is accountable in accordance with § 600.113(e).

(e) *Audit.* If DOE closes out a grant without an audit, the grantee shall refund to DOE the amount of any costs disallowed on the basis of an audit conducted subsequent to closeout.

(1) *Subgrants.* Grantees shall, to the extent appropriate, follow the procedures of this section in closing out subgrants.

§ 600.124 Record retention requirements.

Grantees and subgrantees shall retain records as specified in § 600.25 for a three-year period which shall be calculated as follows:

(a) If DOE grant support is continued or renewed at annual or other intervals, the retention period for the records of each budget period shall commence on the date the annual Financial Status Report (OMB Nos. 0348–0001 and 1900–0127) (or equivalent) is submitted to DOE. In all other cases, the retention period starts on the date the grantee submits its final Financial Status Report (or equivalent) to DOE or, if the requirement for such an expenditure report has been waived, the retention period shall start 90 days after the completion date of the grant.

(b) *Equipment records.* The record retention period for the equipment records required by § 600.117 starts from the date of disposition or transfer of the property by or at the direction of the awarding party.

(c) *Program income records.* If, by the terms and conditions of the award, the grantee or subgrantee—

(1) Is accountable for program income earned or received after the end of the project period or after the termination of a grant or subgrant, or

(2) If program income earned during the project period is required to be applied to costs incurred after the end of the project period or after termination of a grant or subgrant, the record retention period shall start on the last day of the grantee's or subgrantee's fiscal year in which such income was earned or received or such costs were incurred. All other program income records shall be retained in accordance with paragraph (a) of this section.

(d) *Indirect cost computation records.* The retention period for supporting records for indirect cost rate computations or proposals submitted to the awarding party or other Federal agency for negotiation starts from the date of submission of the proposal or computation.

(1) If a local government is required to submit its indirect cost plan to the Federal government for negotiation in accordance with OMB Circular A–87, the retention period for the plan and supporting records starts from the end of the fiscal year (or other accounting period) covered by the plan.

(e) If any litigation, claim, negotiation, audit or other disputed action involving the records has been started before the expiration of the three-year period, the records shall be retained until such action and all related issues are resolved, or until the end of the regular three-year retention period, whichever is later.

(f) The awarding party may request that records be transferred to its custody. After the records are transferred to the awarding party, the three-year retention requirement does not apply to the transferred records.

(g) Microfilm copies may be substituted for original records.

(h) The retention requirements applicable to contractor and subcontractor records are specified in § 600.119(d).

§§ 600.125–600.199 [Reserved]

3. Subpart C is amended as follows:

Subpart C—Cooperative Agreements

a. Section 600.200 is revised to read as follows:

§ 600.200 Scope of subpart C.

This subpart establishes requirements for the award and administration of cooperative agreements.

§ 600.201 [Removed]

b. Section 600.201 is removed.

c. Section 600.211 is amended to change the reference to FMC 74–4 by revising paragraph (c)(6) to read as follows:

§ 600.211 Selection of the cooperative agreement as award instrument.

* * * * *

(c) * * *

(6) General administrative requirements, such as those included in OMB Circulars A–21, A–95, A–102, A–110, and A–87.

d. Section 600.213 is amended by revising paragraph (a) to read as follows:

§ 600.213 DOE criteria for cost participation.

(a) *Scope of section.* This section sets forth the DOE policy on cost participation by the Government under DOE cooperative agreements except where cost participation is established by statute, in which case this section will not apply.

* * * * *

§ 600.214 [Removed]

e. Section 600.214 is removed.

§ 600.230 [Removed]

f. Section 600.230 is removed.

§ 600.231 [Removed]

g. Section 600.231 is removed.

h. Section 600.232 is amended by revising paragraph (c)(3) to read as follows:

§ 600.232 Solicitation for cooperative agreement proposals.

* * * * *

(c) * * *

(3) The selection official will be the individual authorized in accordance with § 600.19(a).

i. Section 600.233 is amended by revising paragraphs (h)(4)(xi) and (h)(5) to read as follows:

§ 600.233 Program opportunity notice (PON).

* * * * *

(h) * * *

(4) * * *

(xi) Each proposal containing technical data and other data, including trade secrets, and/or privileged or confidential commercial, or financial information, which the proposer intends to be used by DOE for evaluation purposes only, should be marked as prescribed in § 600.18(c).

* * * * *

(5) *Selection Official.* The selection official will be the official authorized in accordance with § 600.19(a).

* * * * *

j. Section 600.234 is amended by revising paragraphs (b)(1) and (d)(4) to read as follows:

§ 600.234 Program research and development announcement (PRDA).

* * * * *

(b)(1) This section governs the submission, evaluation and selection for award, or support of proposals offered in response to a specific PRDA issued by DOE, to conduct, support, participate, and/or otherwise cooperate in projects for research, development, and related activities in the energy field.

* * * * *

(d) * * *

(4) The selection official for PRDAs will be the individual authorized in accordance with § 600.19(a).

* * * * *

§ 600.250–600.252 [Removed]

* * * * *

k. Section 600.250 is removed.

l. Section 600.251 is removed.

m. Section 600.252 is removed.

n. Section 600.271 is amended by revising paragraph (a)(1) to read as follows:

§ 600.271 Administrative requirements for cooperative agreements.

(a) * * *

(1) For participants covered by OMB Circular A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments, or OMB Circular A–110, Grants and Agreements with Insitutions of Higher Education, Hospitals and Other Non-profit Organizations, the administrative requirements specified in those circulars will apply.

* * * * *

o. Section 600.281 is revised to read as follows:

§ 600.281 Contents of a cooperative agreement.

A Cooperative Agreement should at a minimum include the following: a Face Page, which shall be the DOE Notice of Financial Assistance Award, a Schedule, General Provisions, and Special Provisions.

§ 600.282 [Removed]

p. Section 600.282 is removed.

q. Section 600.283 is amended by revising paragraphs (b)(3)(iv), (b)(4) and (b)(7) to read as follows:

§ 600.283 Schedule.

* * * * *

(b) * * *

(3) * * *

(iv) A reference to the applicable Federal cost principles shall be included in the award document. The cost principles set forth at § 600.103(b) of this Part shall be used to determine the allowability of project costs.

(4) *Payment Article.* The method of payment and payment procedures specified in this Article shall be consistent with § 600.112 of this Part.

* * * * *

(7) *Property Management and Disposition Article.* The provisions of this Article concerning the management and disposition of property shall be consistent with § 600.117 of this Part.

r. Section 600.290(c) is amended by revising the introductory text of paragraph (c) and paragraphs (c)(4), (11), (12), (13), (17), (20), (21), and (24), (d), and (e)(2), (8), (14), and (25) to read as follows and by removing paragraphs (f) and (g).

§ 600.290 General and special provisions.

(c) *Mandatory General Provisions.* These provisions are mandatory as to text in all cooperative agreements with participants other than those covered under OMB Circulars A–102 and A–110. Deviations from this requirement may not be made unless approved in accordance with § 600.4 except for nonsubstantive changes reflecting that a cooperative agreement rather than a grant or procurement contract is being entered into.

* * * * *

(4) Examination of Records by Comptroller General, § 600.25.

* * * * *

(11) Clean Air and Water, § 600.12.

(12) Preference for U.S. Flag Air Carriers, § 600.12.

(13) Preference for U.S. Flag Commercial Vessels, § 600.12.

* * * * *

(17) Nondiscrimination in Federally Assisted Programs, § 600.12

* * * * *

(20) Patent Rights, 41 CFR 9–9.107–5(a), or, for small business firms and domestic nonprofit organizations as defined in Pub. L. 96–517, the Patent Rights clause of § 600.118(b)(1).

(21) Flood Insurance, § 600.12.

* * * * *

(24) Disputes, § 600.26.

(d) *Mandatory special provisions and deviation requirements.* The special provisions listed below are to be included in all cooperative agreements with participants other than those covered by OMB Circulars A–102 and A–110. The specific required clauses, may, upon written justification by the Contracting Officer, be modified or waived without seeking a deviation under § 600.4. The written justification shall specify why the provision is not appropriate for a particular cooperative agreement and why the provision was either waived or modified.

* * * * *

(e) *Optional special provisions.*

* * * * *

(2) Disabled Veterans and Veterans of the Vietnam Era, FPR Temporary Regulation 39, 44 FR 33265 (July 26, 1976).

* * * * *

(8) Advance Payments, § 600.283(b)(4)

* * * * *

(14) Care of Laboratory Animals, § 600.12.

* * * * *

(25) Federal Reports Act, § 600.12.

* * * * *

Subparts D and E [Removed]

s. Subparts D and E, which are currently designated as reserved, are removed.

t. Appendix A to Part 600 is revised to read as follows:

Appendix A to Part 600—Generally Applicable Requirements

Socioeconomic Policy Requirements

Nondiscrimination in Federally Assisted Programs, 10 CFR Part 1040 (45 FR 40514 (June 13, 1980)), as proposed to be amended by 46 FR 49546 (October 6, 1981).

Nondiscrimination Provisions in Federally Assisted Construction Contracts, Part III of Executive Order 11246 (September 24, 1965), 3 CFR 1964—65 Comp., p. 345.

Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended (42 U.S.C. 4581).

Drug Abuse Office and Treatment Act of 1972, as amended (21 U.S.C. 1174).

Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 *et seq.*).

National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), 40 CFR Part 1500, as implemented by 45 FR 20694 (March 28, 1980).

Sec. 306, Clean Air Act, as amended (42 U.S.C. 7606c).

Sec. 508, Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251 *et seq.*); Executive Order 11738, September 12, 1973.

Title XIV, Public Health Service Act, as amended (42 U.S.C. 300f—*et seq.*).

Sec. 102(a), Flood Disaster Protection Act of 1973 (Pub. L. 93–234, 87 Stat. 975).

10 CFR Part 1022, "Protection of Wetlands and Floodplains."

Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*).

Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 *et seq.*) (15 CFR Part 930).

Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*).

Sec. 106, National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f); Executive Order 11593, "Protection and Enhancement of the Cultural Environment," May 13, 1971, 3 CFR 1971 Comp., p. 154; Archaeological and Historic Preservation Act of 1966 (16 U.S.C. 469 *et seq.*); Protection of Historic and Cultural Properties, 36 CFR Part 800.

Wild and Scenic Rivers Act of 1968, as amended (16 U.S.C. 1271 *et seq.*).

Protection of Human Subjects, 10 CFR Part 745.

Federal Laboratory Animal Welfare Act (7 U.S.C. 2131 *et seq.*) (9 CFR Parts 1, 2, and 3).

Lead-Based Paint Prohibition (42 U.S.C. 4831(b)).

Sec. 7(b), Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)).

Cargo Preference Act of 1954 (46 U.S.C. 1241(b)) (46 CFR § 381.7).

International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517).

Executive Order 12138, "Creating a National Women's Business Enterprise Policy and Prescribing Arrangements for Developing, Coordinating, and Implementing a National Program for Women's Business Enterprise," (May 18, 1979) 3 CFR 1979 Comp., p. 393.

Sec. 403(b), Power Plant and Industrial Fuel Use Act of 1978, (42 U.S.C. 8373(b)); Executive Order 12185 (December 17, 1979, 3 CFR 1979 Comp., p. 474).

Administrative and Fiscal Policy Requirements

The Hatch Act (5 U.S.C. 1501–1508).

Federal Reports Act, as amended by the Paperwork Reduction Act of 1980, Pub. L. 96–511 (44 U.S.C. 3501 *et seq.*).

OMB Circular A–111, Jointly Funded Assistance to State and Local Governments and Nonprofit Organizations—Policies and Procedures.

Federal Claims Collection Act of 1966, Pub. L. 89–508, 89 Stat. 309 (31 U.S.C. 951 *et seq.*).

OMB Circular A–88, Coordinating Indirect Cost Rates and Audit at Educational Institutions.

OMB Circular A–73, Audit of Federal Operations and Programs.

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
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List of Public Laws

Last Listing October 4, 1982

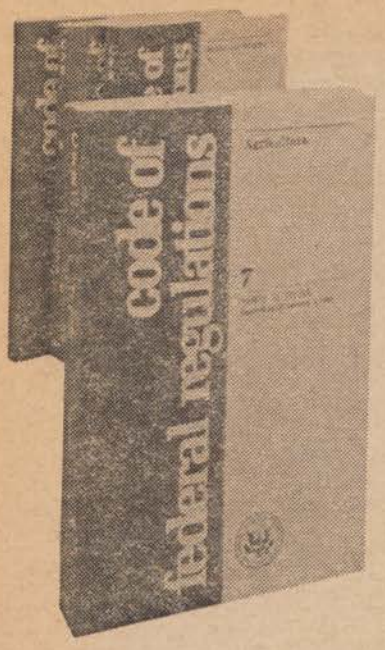
This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (phone 202-275-3030).

H.R. 6956/Pub. L. 97-272 Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1983. (September 30, 1982; 96 Stat. 1160) Price: $3.00.

H.R. 4347/Pub. L. 97-273 To authorize the Secretary of the Interior to proceed with development of the WEB pipeline, to provide for the study of South Dakota water projects to be developed in lieu of the Oahe and Pollock-Herreid irrigation projects, and to make available Missouri basin pumping power to projects authorized by the Flood Control Act of 1944 to receive such power. (September 30, 1982; 96 Stat. 1181) Price: $1.75.

H.R. 7065/Pub. L. 97-274 To amend the Community Services Block Grant Act to clarify the authority of the Secretary of Health and Human Services to designate community action agencies for certain community action programs administered by the Secretary for fiscal year 1982, and for other purposes. (September 30, 1982; 96 Stat. 1183) Price: $1.75.

S. 1628/Pub. L. 97-275 To amend the Emergency Fund Act (Act of June 26, 1948, 62 Stat. 1052). (October 1, 1982; 96 Stat. 1185) Price: $1.75.



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