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Tuesday
February 12, 1985

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

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 810

U.S. Standards for Triticale; Correction

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule correction.

SUMMARY: In FR Doc. 84–33082, concerning U.S. standards for Triticale, beginning on page 49423 in the issue of Thursday, December 20, 1984, the column headings for the table in § 810.656 are being corrected as set forth below.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information Resources Management Branch, USDA, FGIS, Room 0667, South Building, 1400 Independence Avenue, SW., Washington, D.C. 20250, telephone (202) 382–1738.

§ 810.656 [Corrected]

On page 49425, in § 810.656, the headings in the table should appear as follows:

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—					
		Damaged kernels		Foreign material		Shrunken and broken kernels (percent)	Defects (Total) [3] (percent)
		Heat-damaged (percent)	Total [1] (percent)	Material other than wheat or rye (percent)	Total [2] (percent)		

Dated: February 5, 1985.
D.R. Galliart,
Acting Administrator.
[FR Doc. 85–3465 Filed 2–11–65; 8:45 am]
BILLING CODE 3410-EN-M

Agricultural Marketing Service

7 CFR Parts 907 and 908

Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Establishment of Rates of Compensation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This Interim rule establishes rates of compensation for members of the Navel Orange Administrative Committee (NOAC) and the Valencia Orange Administrative Committee (VOAC). Grower and handler members of the committees shall be compensated at a rate of $50 per day and nonindustry members and alternates at a rate of $100 per day. All members would also receive $50 per day to cover the cost of food and lodging. This action is necessary to assure that committee members are appropriately reimbursed for expenses incurred by them in the performance of their duties.

DATES: The interim rule is effective on February 12, 1985. Comments are due by March 14, 1985.

ADDRESS: Comments should be sent to: Docket Clerk, F&V, AMS, Room 2069–S, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Acting Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This interim rule is issued under Marketing Orders 907 and 908, as amended (7 CFR Parts 907 and 908), regulating the handling of navel and Valencia oranges, respectively, grown in Arizona and designated parts of California. The marketing orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended. It is hereby found that this action will tend to effectuate the declared policy of the act.

At a joint meeting on January 15, 1985, the Navel and Valencia Orange Administrative Committees unanimously recommended that the compensation for their committee members and alternates be set as follows: $50 per day for grower and handler members and alternates and $100 per day for nonindustry members and alternates.

In addition, committee members and alternates would receive $50 per day to cover the cost of food and lodging necessitated by attendance at committee meetings. The committees also recommended that when a grower or handler member or alternate attends both a meeting of the Navel Orange Administrative Committee (NOAC) and of the Valencia Orange Administrative Committee (VOAC) on the same day, that each committee would pay the committee member $37.50 per day for the meeting and $25 per day for food and lodging. When a nonindustry member or alternate attends both a NOAC and a VOAC meeting on one day, that member would receive $75 per day for attendance at the meeting and $25 per day for food and lodging from each committee.

The rates at which committee members are reimbursed for time spent in the performance of their duties was previously limited to $25 per day or portion thereof for any member. Sections 907.31 and 908.31 of the orders were amended on January 11, 1985, however, to permit compensation of grower and handler members and alternates at a rate not to exceed $100 per day or portion thereof and for nonindustry members at a rate not to exceed $250 per day or portion thereof. The amendments also required the

committees to recommend compensation rates for approval by the Secretary. The budgets for both committees provide for these increases in compensation.

These rates of compensation reflect increases in costs incurred by members and alternates in the performance of their duties since the $25 limit was set in 1970. Between January 15, 1985, and the effective date of this rule, the committees may reimburse their members at the previously authorized rate.

It is found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553), and good cause exists for making this rule effective as specified in that: (1) The January 11, 1985, amendment of §§ 907.31 and 908.31 authorizes the new compensation rates; (2) the committees meet at least weekly during the respective marketing seasons; (3) committee members have been reimbursed at an unreasonably low rate during recent years; and (4) no useful purpose would be served by delaying the effective date of this rule.

The interim rule provides a 30-day comment period. A longer comment period would be contrary to the public interest and would serve no useful purpose.

List of Subjects in 7 CFR Parts 907 and 908

Marketing agreements and orders, California, Arizona, Oranges (navel) Oranges (Valencia).

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

A new § 907.103 is added to read as follows:

§ 907.103 Rates of compensation for expenses.

(a) Grower and handler members and alternates of the committee shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part at a rate of $50 per day. The member and alternate nominated and selected pursuant to § 907.22(f) shall be reimbursed for expenses necessarily incurred by them in the performance of their duties at a rate of $100 per day. In addition, all members shall receive $50 per day to cover expenses for food and lodging incurred in connection with attendance at committee meetings.

(b) When a grower or handler member or alternate of the Navel Orange Administrative Committee (NOAC) attends both a meeting of the NOAC and a meeting of the Valencia Orange Administrative Committee (VOAC) under Part 908 on the same day, and when compensation is due from both committees, the NOAC shall pay such member or alternate $37.50 per day for attendance at the NOAC meeting and $25 per day for food and lodging. When the member or alternate nominated and selected pursuant to § 907.22(f) attends both a meeting of the NOAC and the VOAC on the same day, and when compensation is due from both committees, the NOAC shall pay such member or alternate $75 per day for attendance at the NOAC meeting and $25 per day to cover expenses for food and lodging incurred in connection with attendance at the NOAC meeting.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

A new § 908.103 is added to read as follows:

§ 908.103 Rates of compensation for expenses.

(a) Grower and handler members and alternates of the committee shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part at a rate of $50 per day. The member and alternate nominated and selected pursuant to § 908.22(f) shall be reimbursed for expenses necessarily incurred by them in the performance of their duties at a rate of $100 per day. In addition, all members shall receive $50 per day to cover expenses for food and lodging incurred in connection with attendence at committee meetings.

(b) When a grower or handler member or alternate of the Valencia Orange Administrative Committee (VOAC) attends both a meeting of the VOAC and a meeting of a the Naval Orange Administrative Committee (NOAC) under Part 907 on the same day, and when compensation is due from both committees, the VOAC shall pay such member $37.50 per day for attendance at the VOAC meeting and $25 per day for food and lodging. When the member or alternate selected pursuant to § 908.22(f) attends both a meeting of the VOAC and the NOAC on the same day, and when compensation is due from both committees, the VOAC shall pay such member or alternate $75 per day for attendance at the VOAC meeting and $25 per day to cover expenses for food and lodging incurred in connection with attendance at the VOAC meeting.

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

Dated: February 6, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85-3466 Filed 2-8-85; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 210

[Docket No. R-0522]

Federal Reserve Bank Check Collection System

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended Regulation J to strengthen the current requirement that payor depository institutions provide notice when they are returning unpaid large dollar checks presented through the Federal Reserve. The amendment requires the payor institution to provide timely notice to the depository institution at which the check was originally deposited that the check is being returned unpaid. The Federal Reserve Banks will enhance the notification service they currently provide to assist payor institutions in meeting this requirement. The Federal Reserve's notification service will also be available to depository institutions for checks collected outside the Federal Reserve.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Elliott C. McEntee, Associate Director (202–452–2231), or Bill Brown, Manager (202–452–3760), Division of Federal Reserve Bank Operations; Joseph R. Alexander, Attorney (202–452–2489), or Robert G. Ballen, Attorney (202–452–3265), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION:

Background

Significant attention has recently been focused on the issue of delayed availability, that is, the practice of some depository institutions of delaying a depositor's ability to withdraw funds deposited by check for extended periods of time. Although the risk of loss to depository institutions associated with returned items is relatively small in the aggregate, many institutions point to the potential losses they could incur on particular returned checks as the reason

for their delayed availability policies. The Board, in conjunction with other federal banking regulators, has urged institutions to review their policies on making funds available to customers and to consider taking into account factors that indicate the degree to which a given situation presents a risk of loss. (See joint release of Federal Financial Institutions Regulators, March 22, 1984.) These factors include the length of time the account has been maintained, the past experience with the depositor, the identity of the drawer, the type of check, and the location of the payor institution. The Board recognizes that many institutions may be unwilling to modify their hold policies unless some effort is made to reduce what these institutions believe is their exposure to potential losses as a result of returned checks. The Board believes that, at this juncture, modification to the Federal Reserve's current requirement that payor institutions provide notification when they return unpaid large dollar checks appears to be an effective way of reducing risk to institutions of first deposit. This reduction in risk will permit depository institutions to reevaluate the length of their hold periods.

Current Requirement

Federal Reserve Bank operating circulars currently required a payor institution returning a check in the amount of $2500 or more that has been presented to it by a Reserve Bank to provide a notification of nonpayment. This notice is usually given to the presenting institution, which is generally the Reserve Bank. When the Reserve Bank receives a notification from a payor institution, the Reserve Bank initiates a notification to the institution that sent the check to the Reserve Bank for collection.

The current procedure is not entirely satisfactory for several reasons. Payor institutions do not provide notification in all cases in which notification is required in part because the Federal Reserve has not indicated what liability an institution incurs if it fails to provide a notification. Moreover, there is no requirement that the payor institution notify the institution of first deposit directly that the check is being returned and the time period for providing notification is not specified. As a result, in some cases the returned check gets to the institution of first deposit at the same time as or before the notification. Finally, even when a timely notice is provided, it often does not contain enough information to be helpful to the institution of first deposit.

Proposed Notification Requirement

The Board proposed in June 1984 to amend Regulation J to improve the current notification requirement (49 FR 26597). Under the proposal, a payor institution that does not pay a check of $2500 or more that had been collected through the Federal Reserve would be required to provide notice of nonpayment such that the notice is received by the institution of first deposit by midnight of the second banking day following the day on which the payor institution is required to dishonor the check. The notification would be required to include specific information provided the payor institution could determine the requisite information from the check. The payor institution could select among several means of providing notice, including providing notification by telephone or returning the check such that it is received by the institution of first deposit before the notification deadline. In this regard, the Reserve Banks would enhance their current notification service to assist payor institutions in meeting the notification requirement. (An enhanced Federal Reserve notification service would be available to depository institutions for all checks, including those collected outside the Federal Reserve. The Federal Reserve would, however, continue not to handle returned checks it did not originally collect.) A payor institution that failed to exercise ordinary care in providing timely and accurate notification could incur liability up to the amount of the item for resulting losses incurred by the institution of first deposit. In those cases where the Reserve Bank agreed to provide notification for the payor institution, the Reserve Bank would incur this liability rather than the payor institution. The process by which the physical item itself would be returned would not, however, be affected by this proposal.

Discussion and Analysis of Comments

Two hundred and sixty non-Reserve Bank comments were received in response to the Board's proposal, over 90 percent of which were from depository institutions. One hundred and fifty three (59 percent) of these commenters supported the proposal. Thirty, or approximately 60 percent, of the comments received from large correspondent depository institutions and 67, or approximately 78 percent, of the comments received from other depository institutions supported the proposal. Sixty four (25 percent) of the commenters opposed the proposal. The remaining 43 commenters (16 percent) did not specify whether they favored or opposed the proposal.

Commenters favoring the proposal indicated that the proposal would, at minimal cost, result in a reduction in losses incurred by depositing institutions from returned checks and check kiting, as well as improve funds availability for customers of depository institutions. In this regard, 75 commenters, or 44 percent of the commenters commenting on this issue, reported that the proposal would enable depository institutions to improve their delayed availability policies because institutions would be able to protect themselves from potential losses on large dollar checks without imposing extended holds on all check deposits.

Commenters opposing the proposal generally indicated that it would not result in improvements in availability because the notification requirement would apply only to checks collected through the Federal Reserve or because they do not currently delay availability. Accordingly, these commenters concluded that the cost of this proposal outweighed its benefits. Finally, many of these commenters stated that other approaches should be pursued, such as speeding up the return of the physical check through direct return to the institution of first deposit or automation of the return item process.

The Board believes that timely notification of nonpayment will enable the institution of first deposit to take steps to protect itself from potential loss. Such measures may include extending a hold it may have placed on the account or placing a hold on other funds of the depositor. The Board also believes that the proposal would provide significant public benefits by providing depository institutions the opportunity to make funds available sooner to their customers. Accordingly, the Board has determined to adopt the notification proposal.

Although the requirement would initially apply only to checks collected through the Federal Reserve, depository institutions may voluntarily extend notification to all checks of $2,500 or more so as to simplify processing operations. In this regard, the Federal Reserve would make an enhanced notification service available to depository institutions for checks collected outside the Federal Reserve. Finally, the Board indicated that it would support legislation to extend the notification requirement to checks not originally collected through the Federal Reserve. (One hundred and twenty-seven commenters, or 85 percent of the

commenters commenting on this issue, strongly supported such legislation.)

The Board estimates that the proposal will be less costly to the banking industry compared to the current notification requirement. (The proposal will, however, result in modest cost increases for depository institutions that currently are not complying with the notification requirement.) The proposal will provide a number of cost savings as compared to the current notification requirement. The payor institution will not be required to provide notice for those checks that will be returned to the institution of first deposit within the notification deadline. Currently, a payor institution is required to provide notice for *all* large dollar returned checks collected through the Federal Reserve. Moreover, intermediary collecting institutions will realize cost savings because they will no longer be required to pass along notifications to their prior endorsers. For these reasons, it is estimated that the proposal will reduce the number of required notifications for payor and intermediary institutions by half.

Several commenters suggested other alternatives to improve the return item process. While the Board expects the notification requirement to improve the return item process in the near term, it is recognized that this is an interim solution and further initiatives will be required to achieve long-term comprehensive solutions to the processing of return items. These initiatives are likely to include development and implementation of endorsement standards, assessment of technology to substitute automation for the largely manual handling of returns, and consideration of means other than telephone and wire to speed the flow of payment information. In this regard, the Dallas Reserve Bank has been experimenting with enhancements to its return item service that include returning unpaid checks directly to institutions of first deposit that are located in the Dallas Reserve Bank's District.[1]

The Federal Reserve will continue to take an active role in working with the industry and Congress to pursue improvements to the return item process.

Recognizing that some check processing equipment may not accommodate certain endorsement standards and the difficulties of ensuring compliance with an endorsement standard, the Federal Reserve also intends to work with the industry to improve the quality of endorsements and implement endorsement standards. One hundred and twenty-nine commenters, or 91 percent of the commenters commenting on this issue, supported implementation of an endorsement standard to assist the payor institution in identifying, and providing notice to, the institution of first deposit.

Technical issues

A. *Scope of the notification requirement.* Under the Board's proposal, the notification requirement would apply to all cash items (e.g., checks), including items drawn on a Reserve Bank and items presented through a clearing house, in an amount of $2,500 or more that were collected through the Federal Reserve. It is estimated that approximately one-third of all checks written are collected through the Federal Reserve. The proposal would not apply to items indorsed by, or for credit to, the United States Treasury.

One hundred and thirty one commenters, or 79 percent of the commenters commenting on this issue, agreed with the $2500 cut off in the Board's proposal. The current notification requirement applies only to checks in amounts of $2500 or more. Moreover, such checks account for over 50 percent of the dollars associated with returned checks but comprise only approximately 2 percent of all returns. For these reasons, the Board has determined that the notification requirement will apply only to checks in amounts of $2500 or more. The impact of the $2500 cut off will be evaluated over time to determine the feasibility of reducing the cut off. The same dollar cut off will apply to all returned checks, regardless of the reason for return, so as to avoid unduly complicating the notification requirement.

The Board believes that the exemption in the proposal for checks indorsed by, or for credit to, the United States Treasury should be adopted. Depository institutions typically do not delay availability of funds represented by checks indorsed by, or for credit to, the United States Treasury. Morever, the Board believes that this exemption should be extended to checks drawn on the U.S. Treasury. Checks drawn on the U.S. Treasury are not returned for insufficient funds. Moreover, if such checks are returned for other reasons (e.g., forged endorsement), the return typically will occur long after the expiration of any hold period imposed by the institution of first deposit. (Returned checks drawn on the U.S. Treasury are not subject to the Uniform Commercial Code's ("U.S.C.") time limits concerning return.) Accordingly, requiring notification of nonpayment of checks drawn on the U.S. Treasury serves little purpose because such notice would not be given in a time frame to be value to the institution of first deposit.

The Board believes that the notification requirement should apply to all other large dollar checks collected through the Federal Reserve. An exemption should not be provided for checks returned for improper indorsement, as suggested by six commenters, because such checks also represent a risk of loss to the institution of first deposit that notification of nonpayment could help avoid. For example, such a risk of loss could occur with an improperly indorsed check in the case where one joint payee attempts to obtain the funds represented by the check without the permission of the other joint payee(s).

B. *Time by which notification must be received by the institution of first deposit.* Under the Board's proposal, a payor institution would be required to provide notification of nonpayment such that it is received by the institution of first deposit by the *second* banking day following the day on which the payor institution is required to dishonor the check. That is, if a Reserve Bank presents a check to a payor institution on Monday, that institution would be required to determine whether to return the check by midnight Tuesday and would be required to provide a notification of return such that it is received by the institution of first deposit by Thursday.

Sixty nine commenters, or 44 percent of the commenters that commented on this issue, agreed with the Board's proposal. These commenters believed that this time period was necessary to accommodate internal operations and to permit the payor institution to take advantage of the most cost effective means of providing notice. Several of these commenters indicated that a shorter time period would result in operational problems, particularly for smaller depository institutions that return checks through the U.S. mail or have other entities (e.g., correspondent banks or processing centers) process their checks. On the other hand, 84 commenters, or 54 percent of the commenters commenting on this issue, believed that this time period should be shortened by one day. These commenters believed that it was

[1] As part of this pilot, the Dallas Reserve Bank currently is providing notification of nonpayment to the institution of first deposit. The Reserve Bank will continue to provide this notification under the terms and conditions of the pilot for the duration of the pilot.

feasible to provide the notification within the shorter time frame and that the sooner the institution of first deposit received notification, the greater the reduction in the loss exposure to depository institutions and the sooner funds could be made available to customers.

The Board has determined to adopt the proposed deadline in view of the operational considerations raised by a significant number of commenters concerning the shorter deadline. Accordingly, a payor institution that determines to return a check collected through the Federal Reserve is required to provide notification such that it is received by the institution of first deposit by the payor institution's *second* banking day following the day the payor institution is required to return the check. The Board indicated that it intends to evaluate this deadline over time to determine whether it could be shortened by one day after experience is gained with the notification requirement.

Under the Board's proposal, the deadline for receipt of notice would be established at midnight of the banking day, rather than at the institution of first deposit's close of business. Eighty three commenters, or 55 percent of the commenters commenting on this issue, agreed with the Board's proposal. These commenters indicated that they were accustomed to the midnight deadlines of the U.C.C. They stated that payor institutions could not be expected to be aware of the closing time of each institution of first deposit. Furthermore, a deadline based upon close of business (e.g., 2:00 p.m.) would give West Coast depository institutions only a few hours to provide same day notification to East Coast depository institutions. For these reasons, the Board has determined to require the payor institution to provide notice such that it is received by *midnight* of the second banking day following the day on which the payor institution is required to dishonor the check.

The Board believes that it is appropriate to base this deadline upon time of receipt by the institution of first deposit because it is that institution that would take this information into account in providing its customer with availability by a date certain. (In many cases, it would not matter whether the deadline is established in terms of the time the payor institution sends the notice or the time the institution of first deposit receives the notice because the day upon which the notice is sent by the payor institution and the day upon which it is received by the institution of first deposit will often be the same day.) The Board expects that the institution of first deposit will establish procedures to ensure that the notification is brought to the attention of the individual(s) at the institution of first deposit responsible for receiving such notice as quickly as reasonably possible. Timely notification that otherwise satisfies the notification requirements would relieve the payor institution from liability with regard to the notice. The failure of the institution of first deposit to ensure that the notification is brought to the attention of the responsible individual(s), would not shift liability to a payor institution that otherwise satisfies the notification requirements.

C. *Day upon which notification is required is not a business day for the institution of first deposit.* Under the Board's proposal, if the day the payor institution provides notice to the institution of first deposit is not a business day for that institution, receipt of notice on the institution of first deposit's next business day would constitute timely notice.

One hundred and forty-five commenters, or 98 percent of the commenters commenting on this issue, agreed with the Board's proposal. These commenters indicated that the institution of first deposit would not release funds to its customers on a non-business day even if it received notice on that day. Accordingly, the Board has detemined that if the day the payor institution is required to provide notice to the institution of first deposit is not a business day for the institution of first deposit, receipt of notice on the institution of first deposit's next business day consititutes timely notice.

Four commenters suggested that if the next business day for the institution of first deposit is not also a business day for the payor institution, the payor institution should not be required to provide notice until the next day that is a business day for both the payor institution and the institution of first deposit. It will be quite uncommon for the institution of first deposit's next business day to not also be a business day for the payor institution. In those rare instances where this day is not a business day for the payor institution, the payor institution could use another entity to provide notice on that day. In addition, the payor institution also would have the option of providing the notification to the institution of first deposit on the day prior to its closing. For these reasons, the Board has detemined to require the payor institution to provide notice to the institution of first deposit on the institution of first deposit's next business day, regardless of whether that day is also a business day for the payor institution.

D. *Information to be provided in the notification.* The Board's proposal required the payor institution to provide the following information: (1) The name of the payor institution; (2) the name of the payee; (3) the amount of the check; (4) the reason for return; (5) the date of the indorsement of the institution of first deposit; (6) the account number of the depositor; (7) the branch at which the check was first deposited; and (8) the trace number on the check of the institution of first deposit.

One hundred and six, or 97 percent of the commenters commenting on this issue, stated that the information specified in the Board's proposal would be useful to the institution of first deposit. Accordingly, the Board has determined that the payor institution is required to provided in the notification the information specified in the proposal provided it, exercising ordinary care and acting in good faith, is able to determine such information from the check itself. For example, the account number of the depositor, the branch at which the check was deposited and the trace number on the check could be provided in the notification only if the institution of first deposit had placed such information on the check. In those cases in which another entity provides notice for the payor institution, the payor institution would of course be required to provide that entity with information concerning the indentity of the institution of first deposit.

Several commenters suggested additional information not included in the Board's proposal that would also be useful to the institution of first deposit. After evaluating these suggestions, the Board has determined to encourage, but not require, the payor institution to include the following information in the notification: (1) The drawer of the check (name and account number); (2) the number of the check; (3) the date of the check; (4) the last non-depository institution indorser if different from the payee; and (5) any other information that the payor institution believes might be useful to the institution of first deposit. The requirements as to the information to be included in the notification will be uniform among all Reserve Banks.

E. *Method of providing notification.* Under the Board's proposal, the payor institution could select among several means of providing notice, including providing notification by telephone or returning the check such that it is received by the institution of first

deposit before the notification deadline. Virtually all of the commenters commenting on this issue supported the options provided to the payor institution for satisfying the notification requirement.

Accordingly, the Board has determined to permit the payor institution to use any means to satisfy the notification requirement. For example, the payor institution could return the unpaid check such that it is received by the institution of first deposit by midnight of the second banking day following the payor institution's midnight deadline for dishonor of the check. This alternative would generally be feasible when the payor institution is returning a check to a nearby institution of first deposit, either directly or perhaps through a local clearing house. The payor institution could also itself provide a notification directly to the institution of first deposit. The notice could be given by telephone or other telecommunications networks such as BankWire, SWIFT, Telex or the Federal Reserve's Communications System, which would pass the message on to the institution of first deposit. The payor institution could also provide its Reserve Bank, such as by telephone, with all of the required information concerning the unpaid check. The Reserve Bank would then advise the institution of first deposit that the check is being returned and provide it with the appropriate information. For checks collected through the Federal Reserve, a payor institution could return the check to the Reserve Bank with instructions that the Reserve Bank initiate a notification to the institution of first deposit. The Reserve Bank would then provide the appropriate information on the check to the institution of first deposit.

Institutions exercising either of these latter two options will be required to provide the information or the check (as the case may be) to the Reserve Bank in advance of the time by which notification will have to be received by the institution of first deposit. These deadlines will be specified in the Reserve Banks' operating circulars.

In cases where the Federal Reserve initiated the notification or the payor institution initiated the notification through the Federal Reserve's Communications System, the notification would follow a standard format that will be developed well in advance of the implementation date. In addition, the Federal Reserve will work with the industry to develop a standard format for notifications that could be used regardless of whether the notification is made through the Federal Reserve or through other means.

When the payor institution makes use of the Federal Reserve's notification service, the institution of first deposit will be able to specify to the Reserve Bank whether the institution desires to receive notification of dishonor via the telephone or the Federal Reserve's Communications System. The institution of first deposit will also be to specify the department (or other entity) that should receive the notice. Moreover, in those cases in which the Reserve Bank gives the notification, the Reserve Bank will retain documentation of the notification for the time period within which the institution of first deposit must initiate action concerning the notification of nonpayment and will provide this documentation to the payor institution upon request.

The Reserve Banks will develop procedures to ensure that they do not erroneously send a second notice in those cases in which the payor institution has itself provided notice and returned the check to the Federal Reserve for collection. For example, each Reserve Bank may require each payor institution in advance to notify the Reserve Bank whether the institution wants the Reserve Bank to provide notification on all or none of the institution's return items.

The Board proposed to charge the payor institution, rather than the institution of first deposit, for these enhanced notification services because the Reserve Bank is assisting the payor institution in fulfilling its responsibility to provide notification and because its customer is usually responsible for the returned check. Although the institution of first deposit does enjoy benefits from the notification, as asserted by a few of the commenters, the Board continues to believe it to be appropriate to charge the payor institution for the reasons indicated in the proposal.

The Board proposed that a three tiered fee structure apply to the services offered by the Reserve Bank. If the institution provides notification through the use of an on-line Fedwire message, a fee of $2.25 per advice would be charged. This fee is based upon the estimated cost of providing the service, including any notification that the Reserve Bank must make by telephone to the institution of first deposit. If the payor institution provides the information, such as by telephone, to the Reserve Bank and requests it to provide the required information to the institution of first deposit, a fee of $4.25 per advice would be charged. This fee reflects additional labor and other costs involved in transcribing the information provided by the payor institution. Finally, if the payor institution returns a check collected through the Federal Reserve to the Reserve Bank with instructions to provide notification to the institution of first deposit, a fee of $4.25 would be charged. This fee includes the costs of processing, reading the indorsements, initiating the wire advice, and other costs.

Five commenters stated that the Federal Reserve's fees should be cost-justified. As indicated above, the proposed fees are established to recover the projected cost of providing the service. These fees have been based upon projected volumes and experience with the cost of providing similar services. Accordingly, the Board has determined to adopt the fees as proposed. The Board intends to review these fees at the time it reviews the fee schedule for the Federal Reserve's check collection services and adjust the fees for the notification service, if necessary, to ensure that they continue to reflect the cost of providing the service. In the interest of maintaining a simple fee structure, the Board has determined not to adopt different fees depending upon whether the notification is being sent to an on-line or off-line institution as recommended by three of the commenters.

F. *Permitting or requiring institution of first deposit to specify to the payor institution the department or entity to receive notice.* Under the Board's proposal, the institution of first deposit would not be required to specify to the payor institution the department or entity to receive the notice. The Board's proposal was, however, silent as to whether the institution of first deposit would be permitted to specify to the payor institution this information.

Eighty one commenters, or 84 percent of the commenters commenting on this issue, opposed *requiring* the institution of first deposit to specify to the payor institution where notice should be sent. Sixty eight commenters, or 54 percent of the commenters commenting on this issue, opposed *permitting* the institution of first deposit to specify to the payor institution where notice should be sent. These commenters indicated that placing this information on the check would clutter the check and further complicate the reading of endorsements. These commenters stated that requiring the payor institution to look beyond the check for this information would be unduly complicated and costly, particularly in view of the rapid rate that this information would be updated and revised. Moreover, the institution of

first deposit should easily be able to route the notification to the appropriate area. For these reasons, the Board has determined that the institution of first deposit will not be required or permitted to specify to the payor institution the department of the institution (or other entity) that must receive the notification. Similarly, the Board believes that it is not necessary to specify in the regulation the area of the institution of first deposit to be notified (e.g., Return Item Unit).

As indicated above, the institution of first deposit would be able to specify to its Reserve Bank the department or entity to receive the notice. Similarly, a payor institution could agree with a particular institution of first deposit to provide the notice as directed by the institution of first deposit. The Board encourages bank directories to include information to assist the payor institution in providing notice.

G. *Institutions of first deposit located outside the United States.* Three commenters questioned how the notification requirement would apply if the institution of first deposit were located outside the United States. The Board believes that it would be an inordinate burden for the payor institution to provide notification to institutions of first deposit located outside the United States. Accordingly, in such cases, the payor institution should provide notification to the depository institution in the United States that first handled the item.

H. *Cancellation of a previous notification.* Five commenters raised questions concerning the case in which the payor institution provides notification but subsequently decides to pay the check. The Board has determined to adopt the suggestion of one of the commenters and require a payor institution that determines not to return a check subsequent to the provision of a notice of nonpayment to send a second notification as soon as reasonably possible cancelling its previous notification of nonpayment. This second notification should indicate that it is a second notification that is cancelling a previous notification of nonpayment. It should also contain sufficient information to enable the institution of first deposit to match this second notification with the previous notification of nonpayment.

I. *Liability for failure to comply with notification requirement.* Under the Board's proposal, a payor institution that failed to exercise ordinary care in complying with the notification requirement would be liable for losses incurred by the institution of first deposit up to the amount of the item if the loss would have otherwise been avoided had the payor institution exercised ordinary care. A payor institution that failed to act in good faith (i.e., failure to exercise honesty in fact) in complying with the notification requirement would be liable for consequential damages. (These are the same liability standards as are contained in the U.C.C. Indeed, several courts already have applied this standard in cases involving the failure of a payor institution to provide notification of return.) Similarly under the proposal, in cases where the Reserve Bank assists the payor institution in providing notification, the Reserve Bank would be liable for a loss incurred by the institution of first deposit up to the amount of the item if the loss would have otherwise been avoided had the Reserve Bank exercised ordinary care in providing the notification. Accordingly, if the payor institution returns the check to the Reserve Bank in accordance with established deadlines and requests the Reserve Bank to initiate the notification, the Reserve Bank would incur the same liability to the institution of first deposit under the proposal as would the payor institution.

One hundred and forty commenters, or 93 percent of the commenters commenting on this issue, supported the Board's proposal. These commenters indicated that incorporating the same liability standards as are prescribed in the U.C.C. will result in the immediate application of an existing body of case law; thereby obviating the necessity of litigating the meaning of the language employed. Accordingly, the Board has determined to adopt the standards of liability as proposed.

Fourteen commenters suggested that the Board should specify how these standards of ordinary care and good faith would apply in the context of the notification requirement (e.g., should there be liability if the failure of the payor institution to provide notification was due to an act of God or computer down time). Regulation J currently provides a bank with an extension from the requirements in the regulation if the delay in complying is due to an interruption of communication facilities, war, emergency conditions or other circumstances beyond the bank's control. The Board does not believe that it would be appropriate to specify further how the standards of ordinary care and good faith would apply in particular factual circumstances because the factual circumstances cannot be anticipated prior to actual occurances and this task is more appropriately performed by the courts.

The commenters were evenly split on whether the institution of first deposit, if it prevails in litigation, should be able to recover its court costs and reasonable attorneys' fees from the payor institution. The Board has determined that the institution of first deposit should be permitted to recover such costs to facilitate the recovery by the institution of first deposit of its economic loss (particularly for smaller institutions). However, so as not to unduly disadvantage the payor institution, the Board has adopted the suggestion of two commenters to permit the payor institution to recover its court costs and reasonable attorneys' fees if it prevails in litigation. (The costs of in-house counsel should be based upon the actual costs incurred by the party.)

Under the Board's proposal, only the payor institution would be required to provide notification of nonpayment. One commenter recommended that an institution to whom a check is presented for payment be required to provide notification even if that institution is not the payor institution. This commenter suggested that this would help alleviate the recent problem of MICR fraud (i.e., the intentional altering of a check so that it indicates one or more fictitious payor institutions in order that its collection and return be delayed beyond expiration of the institution of first deposit's availability of funds hold). The Board has determined not to adopt this suggestion because it would be unfair to impose this duty, and presumably liability for any failure to meet this duty, on an institution that is involved only because a malefactor identified the institution, without its consent or knowledge, as a party on the check. Similarly, intermediary collecting institutions would not have any responsibilities concerning the notification of nonpayment. This would be true even if an intermediary institution mistakenly receives a notification of nonpayment.

Four commenters raised the issue of whether the institution of first deposit is required to pass on the notification to its customer. The Board believes that this is an issue most appropriately left to agreement between the institution of first deposit and its customer given that the needs of each will vary from case to case. Accordingly, the rule adopted by the Board does not require the institution of first deposit to pass along the notification to its customer.

Several commenters raised questions concerning how the liability provisions of the notification requirement would overlap with existing requirements in the U.C.C. The Board believes that it

would be possible to have duplicative or overlapping liability if the payor institution failed to comply with the notification requirement and another depository institution failed to comply with the U.C.C.'s requirements concerning the return of the physical check. Similarly, the failure of the payor institution to satisfy the notification requirement should not defeat the claims that the institution otherwise would have against the institution of first deposit for breach of warranty.

One commenter asked what statute of limitations applied to the institution of first deposit's claim against the payor institution for failure to comply with the notification requirement. This question will be addressed separately in the context of Regulation J as a whole.

As discussed above, a Reserve Bank that provides a notification on behalf of the payor institution would incur the same liability as woud be applicable to the payor institution had it itself provided the notification. Accordingly, the Board believes that it would be appropriate, as suggested by one of the commenters, for the Reserve Bank to indemnify the payor institution for any claim brought against it by the institution for first deposit that resulted from the Reserve Bank's failure to exercise ordinary care or failure to act in good faith in providing the notice. Similarly, the payor institution is to indemnify the Reserve Bank for any claim brought against it by the institution of first deposit that resulted from the payor institution's failure to exercise ordinary care or failure to act in good faith.

J. *Implementation date.* Several commenters indicated that a substantial lead time was necessary to establish procedures, train personnel, improve indorsements, and work for legislation to apply the notification requirement to all checks. Accordingly, the Board has determined that the new notification requirement be effective on October 1, 1985.

The impact of this amendment to Regulation J on small entities has been considered in acordance with the Regulatory Flexibility Act (Pub. L. 96-354; 5 U.S.C. 604). The amendment should not result in a significant burden on small depository institutions because all depository institutions currently are required to provide notification of nonpayment of checks of $2500 or more collected through the Federal Reserve. That is, a payor institution currently is requried to incur the cost of providing notice of nonpayment of such checks to the presenting institution. Under the amendment, a payor institution will be required to provide this notice of nonpayment directly to the institution of first deposit rather than to the presenting institution. As discussed above, it is estimated that the proposal will reduce the costs for smaller payor depository institutions as compared to the current notification requirement by reducing the number of required notifications. Moreover, the Reserve Banks will provide an enhanced notification service which will reduce any operational effect this action may have. Finally, the amendment imposes no new reporting or recordkeeping requirements on depository institutions.

List of Subjects in 12 CFR Part 210

Banks, Banking, Federal Reserve System.

Pursuant to its authority under section 13 of the Federal Reserve Act, (12 U.S.C. 342); section 16 of the Federal Reserve Act (12 U.S.C. 248(o), 360); and section 11(i) of the Federal Reserve Act (12 U.S.C. 248(i)), the Board has amended 12 CFR Part 210 (Regulation J), effective October 1, 1985, as follows:

PART 210—[AMENDED]

In § 210.12, the last sentence of the section is designated as paragraph (d), and new paragraph (c) is added after paragraph (b) to read as follows:

§ 210.12 Return of cash items.

* * * * *

(c) *Notification of Nonpayment.* (1) A paying bank that receives a cash item in the amount of $2500 or more directly or indirectly from a Reserve Bank and determines not to pay it shall provide notice to the first bank to which the item was transferred for collection ("depositary bank") that the paying bank is returning the item unpaid. If the depositary bank is not located in a state, the paying bank shall provide the notice to the bank located in a state that first handled the item for collection.

(2) The paying bank shall provide the notice such that it is received as specified by the operating circular of the paying bank's Reserve Bank by the depositary bank by midnight of the second banking day of the paying bank following the deadline for return of the item as specified in paragraph (a) of this section. If the day the paying bank is required to provide notice to the depositary bank is not a banking day for the depositary bank, receipt of notice on the depositary bank's next banking day shall constitute timely notice under this paragraph. Notice may be provided through any means, including return of the cash item so long as the cash item is received by the depositary bank within the time limits specified in this subparagraph.

(3) The information contained in the notice shall include the name of the paying bank, the name of the payee, the amount of the item, the reason for return, the date of the indorsement of the depositary bank, the account number of the depositor, the branch at which the item was first deposited, and the trace number on the item of the depositary bank, and should otherwise be in accordance with uniform standards and procedures specified by the operating circular of the paying bank's Reserve Bank. A paying bank is not required to provide any information in the notice that it, after exercising ordinary care and acting in good faith, is not able to determine with reasonable certainty from the item itself.

(4) A paying bank is not required to, but may voluntarily, provide notice to the department of the depositary bank or other entity specified by the depositary bank to receive the notice.

(5) If a paying bank provides a notice pursuant to subparagraph (1) of this paragraph and subsequently determines to pay the item, the paying bank shall provide to the depositary bank a second notice as soon as reasonably possible. This second notice should indicate that it is a second notice that is cancelling a previous notice and should contain sufficient information to enable the depositary bank to match the second notice with the previous notice.

(6) A paying bank that fails to exercise ordinary care in meeting the requirements of this paragraph shall be liable to the depositary bank for losses incurred by the depositary bank, up to the amount of the item, reduced by the amount of the loss that the depositary bank would have incurred even if the paying bank had used ordinary care. A paying bank that fails to act in good faith in meeting the requirements of this paragraph may be liable for other damages, if any, suffered by the depositary bank as a proximate consequence. If the paying bank or the depositary bank prevails in litigation involving the requirements of this paragraph, it may recover its court costs and reasonable attorneys' fees. A paying bank shall not be liable for mistake, neglect, negligence, misconduct, insolvency or default of any other bank or other person in connection with providing notice under this paragraph.

(7) Notwithstanding the provisions of section 210.6 of this subpart, a Reserve Bank that fails to exercise ordinary care in undertaking to provide the notice required in this paragraph on a paying

bank's behalf shall be liable to the depositary bank for losses incurred by the depositary bank, up to the amount of the item, reduced by the amount of the loss that the depositary bank would have incurred even if the Reserve Bank had used ordinary care. A Reserve Bank that fails to act in good faith in undertaking to provide the notice required in this paragraph on a paying bank's behalf may be liable for other damages, if any, suffered by the depositary bank as a proximate consequence. If the Reserve Bank or the depositary bank prevails in litigation involving the requirements of this paragraph, it may recover its court costs and reasonable attorneys' fees. A Reserve Bank shall not be liable for mistake, neglect, negligence, misconduct, insolvency or default of any other bank or other person, including the paying bank in connection with providing notice under this paragraph.

(8) Notwithstanding the provisions of § 210.6 of this subpart, a Reserve Bank that undertakes to provide the notice required in this paragraph on a paying bank's behalf shall indemnify the paying bank for any claim brought against it by the depositary bank that results from the Reserve Bank's failure to exercise ordinary care or failure to act in good faith in providing the notice. The paying bank shall indemnify a Reserve Bank that undertakes to provide the notice required in this paragraph on the paying bank's behalf for any claim brought against the Reserve Bank by the depositary bank that results from the paying bank's failure to exercise ordinary care or failure to act in good faith in connection with the provision of the notice.

(9) This paragraph does not apply to an item drawn on the account of the U.S. Treasury or to an item indorsed by, or for credit to, the U.S. Treasury.

* * * * *

By order of the Board of Governors, February 7, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-3462 Filed 2-11-85; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563b

[No. 85-80]

Acquisitions of Converted Institutions

Dated: January 31, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is adopting final rules on offers to acquire and acquisitions of the stock of thrift institutions that have recently converted to the stock form and whose deposits are insured by the Federal Savings and Loan Insurance Corporation or which are federally chartered savings banks the deposits of which are insured by the Federal Deposit Insurance Corporation. Under the rule, insured institutions that offered stock to the public prior to February 29, 1984, but completed their conversion to the stock form after March 1, 1983, would be subject to a restriction on the acquisition of more than ten percent of their stock until August 1, 1985. This extension of the duration of the restriction with respect to the foregoing category of institutions is intended to protect the conversion program and provide an appropriate transition period for those institutions; it is the Board's present intention not to further extend the transition period.

EFFECTIVE DATE: February 1, 1985.

FOR FURTHER INFORMATION CONTACT: James C. Stewart, Senior Attorney, (202-377-6457); J. Larry Fleck, Deputy Director, (202-377-6413); or Julie L. Williams, Associate General Counsel, Director, (202-377-6459); Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: By Resolution No. 84-90, dated February 23, 1984, the Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC"), temporarily extended the regulatory restriction on offers to acquire and acquisitions of more than ten percent of the stock of recently-converted insured institutions from one year to three years following conversion. 49 FR 7356 (Feb. 29, 1984) (to be codifed at 12 CFR 563b.3(i)(3)). This action was taken in order to protect the integrity of the conversion process by, among other things, providing converting institutions a more effective period of time in which to deploy conversion proceeds into productive assets. The extension was necessitated by recent takeover speculation and other acquisition pressures targeted to converted institutions. This activity tended to divert association management from the task of investing conversion proceeds and managing their converted institutions and was caused by the failure of the former one-year restriction on acquisitions to deter speculators from staking out positions in recently-converted institutions, and working to make such institutions takeover targets. Concluding that speculative activity and acquisition efforts in the first year following conversion were not only undermining the integrity of previous conversions and subjecting converted institutions to acquisition pressures that the Board was unable adequately to oversee, but was also creating disincentives to future conversions, the Board determined to extend the § 563b.3(i) restriction on acquisitions from one year to three years following completion of conversion.

In order to allow the Board an opportunity to assess the impact of the rule, the extension was adopted as a temporary final rule with an expiration date of August 31, 1984. To minimize market disruption, the three-year restriction was applied only to institutions that had not begun offering stock prior to the effective date of the regulation. Associations that had begun stock offerings prior to February 29, 1984, remained subject to only a one-year restriction.

Comments on Resolution 84-90 uniformly supported extension of the post-conversion acquisition restriction to three years. A majority of the commenters, however, went further to urge the Board to apply the extended restriction to institutions that had commenced their stock offerings prior to February 29, 1984. These commenters contended that the phase-in of the three-year rule had the effect of focusing speculative interest on those associations that were still subject to only a one-year restriction. It was noted particularly that the extended rule did not cover the unprecedented number of institutions that had converted in 1983 and whose problems had demonstrated the necessity for Board action.

In Resolution 84-400, dated August 2, 1984, the Board made the three-year post-conversion acquisition restriction permanent for insured institutions that had not offered stock to the public prior to February 29, 1984. 49 FR 32340 (August 14, 1984). In response to the issues raised by commenters and out of concern for the integrity of the conversion program, coverage of the rule also was temporarily expanded to include institutions that had offered stock to the public prior to February 29, 1984, provided that the conversion to stock form had been completed after March 1, 1983. This latter provision was drafted to expire of its own terms on February 1, 1985, and the Board requested comment on this aspect of the rule for a period of 60 days.

The Board received 167 comment letters from the public in response to the solicitation. Forty-seven commenters supported the extension of § 563b.3(i); the remainder opposed it. Forty-four of the negative comments were form letters from shareholders in Florida institutions opposing the application of the rule to institutions that had offered stock to the public prior to February 29, 1984. Thirty-nine comments were received from thrift institutions with twenty-nine supporting the expanded rule and ten opposed. Fourteen comments were received from law firms, five registering support and nine, opposition. Nine brokers and investment advisors offered comments opposing the extension of the rule. The remaining comments were received from persons and companies that had invested in conversion stock; the majority of these commenters opposed the rule.

Objections made by opponents of expanded coverage tended to fall into several broad categories. The most frequently used argument was that the rule was unfair to investors who had purchased stock in converted institutions assuming that the post-conversion acquisition restriction would only last for one year. It was noted that the stock prices of some recently-converted institutions had fallen immediately after adoption of the rule with a temporary diminution in the value of their holdings.

Related to this argument was the objection that the rule would be ultimately detrimental to the conversion program. Some commenters predicted reluctance among investors to purchase thrift institution stocks in the future. It was submitted that since the imposition of a three-year restriction, converting institutions have gone to market at a lower percentage of their book value than had previously been the case. Some commenters contended that a significant percentage of the value assigned to thrift stock is attributable to the possibility of a later takeover. Removal or postponement of this possibility, it is argued, necessarily results in a diminution of market value and consequently undermines the effectiveness of conversion for infusing capital.

Other objections to the expanded rule were less specific. It was asserted that takeovers should be encouraged in order to achieve the most efficient allocation of market resources; the Board should be primarily concerned with shareholders; the rule serves to entrench management; the rule adds little to the Board's acquisition approval powers under the Change in Savings and Loan Control Act; and the charter provisions authorized by the Board offer sufficient protection of converted institutions.

Supporters of the expanded rule maintained that the three-year post-conversion protection was necessary to maintain the utility of the conversion program. Recently converted institutions offered further examples of how speculative activity had undermined their operations. Others noted that since the rule is only a requirement of prior Board approval of acquisition, the possibility of future takeover premiums to shareholders is not foreclosed. Finally, it was asserted that without the longer protection period, mutual institutions would be less willing to undertake conversion.

While the interests of investors is a factor for the Board to consider, its primary responsibility under section 402(j) of the National Housing Act is the administration of the conversion program. The Board continues to hold the view that acquisition pressures on recently-converted institutions, if not subject to Board oversight directed to the unique concerns of the conversion process and of recently-converted institutions, may be detrimental both in disrupting the operations of converted institutions and in deterring mutual institutions from undertaking conversion. For this reason, the Board previously determined to retain the three-year post-conversion protection for institutions that had not offered stock to the public prior to February 29, 1984.

The Board, however, has determined not to permanently apply the three-year rule to institutions that offered stock to the public prior to February 29, 1984, but converted after March 1, 1983. Instead, that portion of the rule applicable to institutions that commenced their conversion stock offerings prior to February 29, 1984, will be extended for another six months in order to provide affected institutions with adequate time to plan for the expiration of the regulatory restriction. The Board is of the view that permanent extension of the rule is not necessary at this time. The Board notes that converted institutions now have sufficient flexibility in the adoption of anti-takeover provisions to guard against post-conversion speculative abuses. Moreover, the Board believes that it has demonstrated its willingness to take action against practices that threaten the conversion program in the event speculative activity again threatens to undermine these conversions. Accordingly, the Board believes it can adequately carry out its statutory responsibilities to the conversion program without permanently extending the rule to institutions that offered stock to the public prior to February 29, 1984. The Board and its staff, however, will continue to monitor the experience of affected institutions.

The Board also wishes to take this opportunity to emphasize again that § 563b.3(i)(3) is not a flat prohibition on acquisitions of more than ten percent of the stock of recently converted institutions. Rather, the rule implements a pre-acquisition approval process designed to enable the Board to scrutinize aspects of acquisitions that are uniquely of concern in connection with the conversion process and the status of recently converted institutions. Since August 1984, for example, the Board has received and has approved several applications submitted under § 563b.3(i)(3).

The Board is also concerned that the restrictions of § 563b.3(i)(3) work in an even-handed manner without prejudicing or aiding any particular type of prospective acquiror. In particular, the Board is aware that the broad scope of the term "offer" inadvertently may make it more difficult for a friendly acquisition proposal to be presented to an institution than for a hostile offer to proceed, by limiting the ability of third parties to engage in discussions with management of a converted institution regarding certain business transactions. Therefore, in order to provide guidance to investors and converted institutions regarding their responsibilities under § 563b.3(i)(3), the Board is taking this opportunity to clarify the applicability and scope of the rule.

The Board emphasizes that the regulatory restriction applies to the offers as well as to the acquisitions. Moreover, in the Board's view, certain offers to acquire stock may have a significant effect on the conversion and should be reviewed by the Board before these effects can take place. Review of offers allows the Board to assess the ramifications of a transaction prior to the commitment of significant funds and changes in the positions of the parties. The Board generally considers an offer subject to the rule to include communications, definite as to price and terms, made in circumstances intended to lead to their dissemination to persons capable of accepting the offer. However, the Board believes that inquiries to an institution's management which are not intended to be communicated to stockholders, but simply designed to elicit an indication of the receptivity of management to an offer, while within the literal scope of the term "offer,"

would not be inconsistent with the purposes of the rule.

Therefore, in order to clarify the scope of the rule in this regard, the Board is amending the definition of "offer" to allow for a prospective acquiror of a converted institution to ascertain management's receptivity to certain basic features of a prospective acquisition proposal. This would include discussions and could include a non-binding letter of intent with management addressing the basic elements needed for the Board's review of an application under § 563b.3(i)(3), such as the amount of stock involved, the manner of acquisition and identity of individual buyers and sellers, and the formula to be used to determine price. In this manner, the Board hopes to facilitate its review of applications submitted under § 563b.3(i)(3) and to enable management to pursue legitimate business transactions in a manner consistent with the sound operation of the conversion program. If a converted institution and a prospective acquiror choose to proceed beyond discussions of these basic features to enter into a non-binding letter of intent, the Board notes that disclosure obligations would exist that would not necessarily be present in the case of discussions. Thus, the parties would be expected to weigh this consideration in electing whether to enter into a letter of intent.

Finally the Board is amending § 563b.3(i)(8) to include the definitions of "acquire" that was deleted inadvertently in Resolution No. 84-400.

The Board has determined that the public notice and comment procedures of 5 U.S.C. 553(b) and 12 CFR 508.12 and 508.13 and the 30-day delayed effective date requirement of 5 U.S.C. 552(d) and 12 CFR 508.14 are unnecessary, impracticable, and contrary to the public interest, since: (1) Failure to expeditiously implement the amendments to § 563b.3(i)(4) would result in a lapse of the current rule and could lead to market dislocations from accelerated speculation, and (2) the amendments to § 563b.3(i)(8) are interpretive in nature and relieve a restriction.

List of Subjects in 12 CFR Part 563b

Securities, Savings and loan associations.

Accordingly, the Board hereby amends Part 563b of Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563b—CONVERSION FROM MUTUAL TO STOCK FORM

Subpart A—Standard Conversions

3. Amend § 563b.3 by revising paragraphs (i)(4)(i) and (i)(8)(ii); renumbering paragraphs (i)(8)(iii) and (i)(8)(iv) as paragraphs (i)(8)(iv) and (i)(8)(v), respectively; and adding a new paragraph (i)(8)(iii); as follows:

§ 563b.3 General principles for conversions; applicability of subpart.

* * * * *

(i) *Acquisition of securities of converting and converted insured institutions.*

* * * * *

(4) *Savings clause for certain offers and acquisitions.* (i) The provisions of paragraph (i)(3) of this section shall not apply to an offer to acquire or an acquisition of the beneficial ownership of more than ten percent of any class of an equity security of an insured institution that completed its conversion prior to March 1, 1983: *Provided,* that the offer or acquisition shall not have been made without the approval of the Corporation during the first year following the date of completion of the conversion, and *Provided further,* that after August 1, 1985, the provisions of paragraph (i)(3) shall not apply to offers and acquisitions of equity securities of an insured institution that had commenced its conversion stock offering prior to February 29, 1984. A conversion shall be deemed completed on the date all its conversion stock was sold. A conversion stock offering shall be deemed to have commenced on the date on which the subscription-offering circular was declared effective by the Corporation or its delegate.

* * * * *

(8) *Definitions.*

* * * * *

(ii) The term "offer" includes every offer to buy or acquire, solicitation of an offer to sell, tender offer for, or request or invitation for tenders of, a security or interest in a security, for value: *Provided,* that for the purpose of this paragraph 563b.3(i), the term "offer" shall not include: (A) Inquiries directed solely to the management of an insured institution and not intended to be communicated to stockholders, designed to elicit an indication of management's receptivity to the basic structure of a potential acquisition with respect to the amount of securities, manner of acquisition and formula for determining price, or (B) non-binding expressions of understanding or letters of intent with the management of an insured institution regarding the basic structure of a potential acquisition with respect to the amount of securities, manner of acquisition, and formula for determining price.

(iii) The term "acquire" includes every type of acquisition, whether effected by purchase, exchange, operation of law or otherwise.

* * * * *

(Sec. 402(j) of the National Housing Act, 12 U.S.C. 1725(j) (1982); sec. 5 of the Home Owners' Loan Act, 12 U.S.C. 1464 (1982); Reorg. Plan No. 3 of 1947, 3 CFR Part 1071 (1943-48 Comp))

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 85-3463 Filed 2-11-85; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 101, 104, 141, 154, 157, 159, 201, 204, 216, and 260

[Docket No. RM83-66-000]

Revisions to Public Utility and Natural Gas Company Classification Criteria, Uniform Systems of Accounts Form Nos. 1, 1-F, 2 and 2-A and Related Regulations; Erratum Notice to Order No. 390

Issued: January 17, 1985.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; corrections.

SUMMARY: On August 3, 1984, the Federal Energy Regulatory Commission (Commission) issued Order No. 390 in Docket No. RM83-66-000, 49 FR 32496 (Aug. 14, 1984), relating to revisions to public utility and natural gas company classification criteria, Uniform Systems of Accounts, Form Nos. 1, 1-F, 2, and 2-A and related regulations. This document makes corrections to the preamble and regulatory text of Order No. 390.

FOR FURTHER INFORMATION CONTACT:

Elaine Dawson, Office of Chief Accountant, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 376-9782

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The following corrections are made in FR. Doc. 84-21013 appearing on page 32496 in the issue of August 14, 1984.

1. On page 32498 in the middle of column three, all references to 901, 902 and 903 in the chart are removed.

2. On page 32499 at the top of column one all references to 901, 902 and 903 in the chart are removed.

3. On page 32499 in the middle of column one, in the *Accounts* paragraph of paragraph (a), add "201," after "186," and "902," after "588,".

4. On page 32502 in the second paragraph of column two:

The Commission does not believe that guidance is needed because these amounts would not meet the requirements of FASB 5 since, without regulatory approval, these contingencies should not be recorded.

is clarified and corrected to read:

The Commission believes that amounts accrued in accordance with the provisions of FASB 5 that are not yet approved by a regulatory authority as required by FASB 71 may be recorded in Account 253, Other Deferred Credits, if noncurrent, or in Account 242, Miscellaneous Current and Accrued Liabilities, if current.

5. On page 32504 in the middle of column one in the second full paragraph, "with FASB 71" is corrected to read "with the intent of FASB 71".

PART 101—[CORRECTED]

6. On page 32506 in the middle of column two, "(d) By removing Instruction 11;" is corrected to read:

(d) By removing the title and text to Instruction 11 and adding, in their place, the following title and text:

11. *Accounting to be on Accrual Basis.*

A. The utility is required to keep its accounts on the accrual basis. This requires the inclusion in its accounts of all known transactions of appreciable amount which affect the accounts. If bills covering such transactions have not been received or rendered, the amounts shall be estimated and appropriate adjustments made when the bills are received.

B. When payments are made in advance for items such as insurance, rents, taxes or interest the amount applicable to future periods shall be charged to account 165, Prepayments, and spread over the periods to which applicable by credits to account 165, and charges to the accounts appropriate for the expenditure.

7. On page 32507 in paragraph (j) at the bottom of column three, remove "and" following "Electric Plant in Service;" and add at the end of the paragraph following "to Account 108;" and "182" is corrected to read "182.1";

8. On page 32508 at the top of column one following paragraph (m), add a new paragraph (n) to read:

(n) In Instruction 16, correct "120.5" to read "120.6."

9. On page 32508 in paragraph 9.(d) of column one, add "(Major only)" following "Capital Leases".

10. On page 32508 at the top of column three in paragraph (d), add "(Major only)" following "120.6 Nuclear fuel under capital leases".

11. On page 32508 in the middle of column three in paragraph (e) B., "(2) basis details" is corrected to read "(2) basic details".

12. On page 32509 in the middle of column two in the third line of paragraph (j) B., "bodies to plant in service" is corrected to read "bodies related to plant in service", and "attributible" (two places) is corrected to read "attributable".

13. On page 32510 at the bottom of column three in Account 243 in paragraph (t), "120.6, Nuclear Fuel under Capital Leases" is corrected to read "120.6, Nuclear Fuel under Capital Leases (Major only)".

14. On page 32511 at the bottom of column three, "449 Other sales (Nonmajor)" is corrected to read "449 Other sales (Nonmajor only)".

15. On page 32513 in the middle of column three in paragraph (h), "582 Station expenses" is corrected to read "582 Station expenses (Major only)".

PART 104—[CORRECTED]

16. On page 32515, column one, paragraphs (h) and (j) are corrected by adding the following to the end of each paragraph: "and by removing the words 'See operating expense instruction 1' and adding, in their place, 'See operating expense instruction 2'."

17. On page 32515, column one, paragraph (l) is corrected by adding the following to the end of the paragraph: "and by removing the words 'See operating expense instruction 1' and adding, in their place, 'See operating expense instruction 2'."

18. On page 32515, column one, paragraph (n) is corrected by adding the following to the end of the paragraph: "and by removing the words 'See operating expense instruction 1' and adding, in their place,' See operating expense instruction 2'."

19. On page 32515, column one, paragraph (p) is corrected by adding the following to the end of the paragraph: "and by removing the words 'See operating expense instruction 1' and adding, in their place, 'See operating expense instruction 2'."

20. On page 32515, column one, paragraph (q) is corrected by adding the following to the end of the paragraph: "and by removing the words 'See operating expense instruction 1' and adding, in their place, 'See operating expense instruction 2'."

21. On page 32515 in the middle of column one, paragraph (o) is corrected to read:

(o) By redesignating account 562 as account 581.1, adding the parenthetical "(Nonmajor only)" at the end of the account 581.1 heading, and by removing the entire text and items;

PART 141—[CORRECTED]

§ 141.2 [Corrected]

22. On page 32515, column three in the eighth line of paragraph (h), "Generally, each public" is corrected to read "*Generally.* Each public".

PART 154—[CORRECTED]

23. On page 32515 in column three, add a new instruction 26.(a) to read as follows:

§ 154.38 [Amended]

26. Part 154 is amended as follows:

(a) In paragraph (d)(4)(iv)(*b*) of § 154.38 by removing the first three sentences and adding, in their place, the following two sentences to read:

(b) To assure recovery of all purchased gas costs, the Commission has prescribed deferred purchased gas cost accounts. For both Major and Nonmajor natural gas companies, the deferred account is "Account 191, Unrecovered purchased gas costs," 18 CFR Part 201, Balance Sheet Accounts, 191 and is used in conjunction with "Account 805.1, Purchased gas cost adjustments," 18 CFR Part 201, Operation and Maintenance Expense Accounts, 805.1.

§ 154.63 [Corrected]

24. On page 32515 in column three, the existing paragraph 26 is redesignated as 26.(b) and amended by removing "Part 154,".

25. On page 32515 in the middle of column three in the seventeenth line of paragraph 26.(b), "and by revising the authority citation" is corrected to read "and paragraph (f) of § 154.63 is amended by removing the words "Class A" from the second paragraph of Schedule N-11 and by adding, in their place, the word "Major" and by revising the authority citation".

PART 159—[CORRECTED]

26. On page 32516 in the first column, the authority citations appearing in paragraphs 28. and 29. are corrected by changing "717z" to read "717w".

PART 201—[CORRECTED]

27. On page 32517 at the top of column one, "(d) By removing Instruction 11." is corrected to read:

(d) By removing the title and text to Instruction 11 and adding, in their place, the following title and text:

11. *Accounting to be on Accrual Basis.*

A. The utility is required to keep its accounts on the accrual basis. This requires the inclusion in its accounts of all known transactions of appreciable amount which affect the accounts. If bills covering such transactions have not been received or rendered, the amounts shall be estimated and appropriate adjustments made when the bills are received.

B. When payments are made in advance for items such as insurance, rents, taxes or interest, the amount applicable to future periods shall be charged to account 165, Prepayments, and spread over the periods to which applicable by credits to account 165, and charges to the accounts appropriate for the expenditure.

28. On page 32518 at the top of column two, paragraph (g)(1) now reading,

(1) In paragraph C, by adding the parenthetical "(in the case of Major companies, account 105.1, Production Properties Held for Future Use)" following the words "Gas Plant Held For Future Use" in the second sentence;

is corrected to read:

(1) In paragraph C, by adding the words "or in the case of Major companies, account" immediately preceding the words "105.1, Production Properties Held for Future Use";

29. On page 32518 in the middle of column two, paragraph (g)(3) now reading,

(3) In paragraph E, by adding the parenthetical "(in the case of Major companies, the differences shall be included in accounts 411.6, Gains from Disposition of Utility Plant or 411.7, Losses from Disposition of Utility Plant, when such property has been recorded in accounts 105, Gas Plant Held for Future Use or 105.1, Production Properties Held for Future Use)" following the words "as appropriate";

is corrected to read:

(3) In paragraph E, by adding the words "in the case of Major companies", immediately preceding the words "105.1, Production Properties Held for Future Use";

30. On page 32518 at the top of column three in paragraph (j)(1), "or in the case of Major companies, account" immediately following the words "Gas Plant Held for Future Use." is corrected to read "in the case of Major companies, account" immediately preceding "105.1, Production Properties Held for Future Use";

31. On page 32518 at the bottom of column three in paragraph (p), "16. Transmission and Distribution Plant Nonmajor natural gas companies)", is corrected to read: "16. *Transmission and Distribution Plant (Nonmajor natural gas companies)".*

32. On page 32519 in the middle of column two in paragraph 35.(b) "301.1, Gas Plant" is corrected to read "103.1, Gas Plant"; in the middle of column three in paragraph B. of Account 101.1, "electric plant" is corrected to read "gas plant" and in paragraph C. of Account 101.1, "(4) original cost of fair market" is corrected to read "(4) original cost or fair market".

33. On page 32519 in column three "(b) by revising paragraph C of account 105 to read" is corrected to read "(b) by revising paragraph C of account 105 and adding a new Note to read" and a new Note C is added immediately following the text of account 105 to read as follows:

Note C.—(Nonmajor only) The loss on abandonment of natural gas leases acquired after October 7, 1969, shall be charged to Account 338, Unsuccessful Exploration and Development Costs.

34. On page 32520 in the seventeenth line of column three, "account 723" is corrected to read "account 798".

35. On page 32522 in column two, add new instructions (x) and (y) following (w) to read:

(x) in account 108 by removing "182" in item (6) of paragraph A and adding in its place "182.1";

(y) in account 116 by removing from the parenthetical the word "See" and adding, in its place, the words "For Major companies, see";

36. On page 32523 in the second line of paragraph (b) in column one, "410" is corrected to read "409", and in the middle of column three in both the heading for paragraph 46 and paragraph 46., "Chart of Account" is corrected to read "Chart of Accounts".

37. On page 32524 at the top of column three,

Items (Major and Nonmajor)

* * * * *

5. Gas well labor * * *

is corrected to read:

Items

Major and Nonmajor

* * * * *

Nonmajor Only

5. Gas well labor; * * *

38. On page 32524 at the bottom of column three, paragraph (d)(1), "of Major companies)", is corrected to read "of Major companies", and removing the quote following the work "bracket".

39. On page 32525 at the top of column one, "(2) By adding the heading 'Major companies' between the titles 'ITEMS' and 'Labor' " is corrected to read "(2) by adding the heading 'Major only' after the title 'Labor' and the text is corrected to read as follows:

759 *Other Expenses.*

* * * * *

Items

Labor (Major only)

* * * * *

40. On page 32525 at the bottom of column one in the note appearing in paragraph (f), "Major Gas Utilities" is corrected to read "Major gas companies"; at the top of column two, "Instruction 19" is corrected to read "Instruction 21" and in the last line of paragraph (i)(1) "(See account 182)" is corrected to read "(See account 182.1)".

41. On page 32525 in paragraph (i)(2), column two, "preceding the word 'when';" is corrected to read:

preceding the word "when", and by correcting the number 182 in the parenthetical to read 182.1.

42. On page 32525 at the bottom of column three,

(s) In the ITEMS section of account 874, by adding the parenthetical "(Major only) to the heading "Labor", such that the heading reads "Labor (Major only), and by adding * * *

is changed to read:

(s) In the ITEMS section of account 874, by adding the parenthetical "(Major only)" to the heading "Labor", such that the heading reads "Labor (Major only)", by removing the heading *"Materials and expenses"* along with Items 16 through 28, and by adding * * *

43. On page 32526 in paragraph (bb) of column two, "and by removing the NOTE" is corrected to read "and by removing the reference to functions and the NOTE".

44. On page 32526, column three, in paragraph (b), "110 heading:" is corrected to read: "110 heading and by removing "182" in item (3) of paragraph A and adding, in its place, "182.1";".

45. On page 32526, column three, in paragraph (h), "724.1 heading:" is corrected to read: "724.1 heading: and by

removing from the parenthetical the number "150" and adding, in its place, the number "154";".

46. On page 32526, column three, in paragraph (i), "729.1 heading;" is corrected to read: "729.1 heading; and by removing from the parenthetical the number "150" and adding, in its place, the number "154";".

47. On page 32526, column three, in paragraph (k), "743 heading;" is corrected to read: "743 heading; and by removing from the parenthetical "1" and adding, in its place, "2";".

48. On page 32527, column one, in paragraph (m), "769.1 heading;" is corrected to read: "769.1 heading and by removing from the parenthetical "1" and adding, in its place, "2";".

49. On page 32527, column one, in paragraph (q), "838 heading;" is corrected to read: "838 heading; and by removing from the parenthetical "1" and adding, in its place, "2";".

50. On page 32527, column one, in paragraph (w), "892.1 heading"; is corrected to read: "892.1 heading; and by removing from the parenthetical "1" and adding, in its place, "2";".

51. On page 32527, column one, in paragraph (x), "895 heading;" is corrected to read: "895 heading; and by removing from the parenthetical "1" and adding, in its place, "2";".

PART 216—[CORRECTED]

52. On page 32527 in paragraph 50., in column two, "Natural Gas Companies." is corrected to read: "Natural Gas Companies, and the authority citation of Part 216 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7102–7352 (1982); Executive Order 12,009, 3 CFR 142 (1978); Natural Gas Act, 15 U.S.C. 717–717w (1982)."

PART 260—[CORRECTED]

53. On page 32527 in paragraph 51.(a), in column two, the authority citation is corrected by changing "717z" to read "717w".

PART 157—[AMENDED]

54. On page 32527 at the bottom of column three, add a new instruction 53 at the end of the text:

53. Part 157 is amended as follows:

(a) The authority citation continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982), Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Executive Order 12,009, 3 CFR 142 (1978).

§ 157.40 [Amended]

(b) In paragraph (a) of § 157.40, by removing the words "Class A" from the first sentence and adding, in their place, the word "Major", and by removing the words "Class A" from two places in the second sentence and adding, in their place, the words "Major" and "Major natural gas" respectively.

(c) In paragraph (f)(1) of § 157.40, by removing the words "Class A" from the first sentence and adding, in their place, the word "Major".

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–3503 Filed 2–11–85; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Parts 353 and 355

[Docket No. 50 108–5008]

Antidumping and Countervailing Duties; Effective Date of Trade and Tariff Act of 1984 Amendments

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Interim-Final Rule.

SUMMARY: Title VI of the Trade and Tariff Act of 1984, Pub. L. No. 98–573, makes a number of amendments to the Tariff Act of 1930 regarding administration of the antidumping and countervailing duty laws. This interim-final rule clarifies section 626 of the Trade and Tariff Act of 1984 with respect to the effective date of the various amendments.

DATES: Effective date: February 12, 1985. Comments by: March 14, 1985.

ADDRESSES: Address written comments to Stephen J. Powell, Assistant General Counsel for Import Administration, Room B099, U.S. Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell, (202) 377–1411.

SUPPLEMENTARY INFORMATION: Title VI of the Trade and Tariff Act of 1984, Pub. L. No. 98–573 (October 30, 1984) ("the 1984 Act"), amends Title VII of the Tariff Act of 1930 ("the Tariff Act") with respect to the administration of antidumping and countervailing duty cases. Section 626 of the 1984 Act sets forth the effective dates of the various amendments.

This interim-final rule interprets the applicability of subsections (a) and (b) of section 626 to the various amendments. The Department anticipates publishing proposed rules in early 1985 which will implement the other provisions of the 1984 Act.

1. Sections 353.70(a) and 355.50(a)—These paragraphs interpret section 626(a) of the Act and state the general principle that the amendments of the 1984 Act are effective on October 30, 1984 (the date of enactment), except as provided in subsections (b), (c) and (d) of each paragraph. The amendments which are in effect as of October 30, 1984, are those relating to waiver of verification (section 603), termination or suspension of investigations (section 604), final determination of critical circumstances (section 605), simultaneous investigations (section 606), application of countervailing duties on a country-wide basis (section 607), upstream subsidies (section 613), use of a reseller's price (section 614), foreign market value (section 615), subsidies discovered during a proceeding (section 617), verification of information (section 618), records of *ex parte* meetings and release of confidential information (section 619), and interest on underpayments and overpayments of duties (section 621). While section 626(a) of the 1984 Act also applies to amendments which affect authorities administered by the International Trade Commission or the United States Customs Service, this interim-final interpretive rule is issued pursuant to the authority of the Secretary of Commerce and its scope is limited to the amendments of the 1984 Act which affect authorities administered by Commerce.

2. Sections 353.70(b) and 355.50(b)—These subsections interpret section 626(b)(1) of the 1984 Act regarding the effective date of the amendments relating to sales for importation (section 602), persistent dumping monitoring (section 609), annual reviews and quantitative restriction agreement determinations (section 611), definitions (section 612), and the use of sampling and averaging techniques (section 620). Subsection (b) of each paragraph provides that the amendments set forth in these sections are deemed effective on the date of enactment (October 30, 1984) for all investigations and section 751 reviews begun on or after that date. Investigations and reviews begun before October 30, 1984, are viewed as remaining subject to the requirements of the Tariff Act which were in effect before the amendments made by sections 602, 609, 611, 612, and 620 of the 1984 Act.

Section 626(b)(1) of the 1984 Act states that amendments set forth in these five sections apply "with respect to

investigations initiated * * * on or after such effective date." While "investigation" in the technical sense could refer to the pre-order investigative stage of an antidumping or countervailing duty proceeding, it is apparent from the language of the 1984 Act and the legislative history that Congress did not use "investigation" in this technical sense, but rather in the broader sense of a "factual inquiry". Hence, we believe section 626(b)(1) is intended to distinguish between investigations and reviews underway in which Commerce has begun to conduct an inquiry into the existence or, in the case of a section 751 annual review, the continued existence, of a dumping margin or a subsidy practice, and those investigations and reviews which have not yet begun. The new procedural requirements set forth in sections 602, 609, 611, 612, and 620 thus apply only to those investigations and reviews begun on or after October 30, 1984.

The legislative history to the 1984 Act supports inclusion of reviews within the provision of section 626(b)(1). Inasmuch as section 626(b)(1) refers to section 611, which amends the section 751 review requirements, it is clear that Congress was not limiting the application of section 626(b)(1) to the investigative stage of a proceeding unless it intended to distinguish between reviews of orders resulting from investigations begun after October 30, 1984, and reviews of orders resulting from investigations begun before October 30, 1984. There is no indication in the legislative history that Congress intended to require Commerce to establish two sets of procedural and substantive rules for section 751 reviews—one for new cases and one for reviews of existing orders. Further, the legislative history to section 611 is inconsistent with such a distinction. With respect to section 611, the Joint Explanatory Statement of the Committee of Conference states that section 611 would require Commerce to conduct section 751 reviews of "outstanding CVD or AD orders only upon request," and that the amendment is "designed to limit the number of reviews in cases in which there is little or no interest, thus limiting the burden on petitioners and respondents, as well as the administering authority." H.R. Rep. No. 1156, 98th Cong., 2d Sess. 181 (1984). Because existing orders are "outstanding" orders, distinguishing between reviews of existing and new orders would not be consistent with the statement of the conferees and would not implement the intent to limit the number of reviews in cases in which there is no interest.

Accordingly, subsection (b) of each paragraph of the regulation provides that the amendments of sections 602, 609, 611, 612, and 620 are deemed to apply to investigations and section 751 reviews begun on or after the date of enactment of the 1984 Act.

3. Sections 353.70(c) and 355.50(c)—These subsections interpret section 626(b)(2) of the 1984 Act and provide that the amendment of section 623 concerning judicial review of certain interlocutory decisions is deemed to apply to civil actions pending on, or filed on or after, the date of enactment of the 1984 Act.

4. Sections 353.70(d) and 355.50(d)—These subsections state that the Secretary may delay implementation of the amendments of the 1984 Act if the Secretary determines that implementation in accordance with subsections (a) or (b) would prevent Commerce from complying with other requirements of law.

Given the need to meet statutory deadlines and the purpose of the 1984 Act to improve administration of the law, Commerce believes it is necessary to retain limited flexibility in determining when the amendments of the 1984 Act take effect. This will prevent situations where immediate implementation of certain of the amendments could significantly increase the time to complete the investigation, contrary to other requirements of law.[1] We expect that this waiver will be necessary, if at all, only in investigations (as opposed to section 751 reviews) which were ongoing as of October 30, 1984. A further important limitation to the waiver provision is the requirement of subsections (d) that prior to considering delayed implementation, the Secretary must make a determination that the Department would be prevented from complying with other requirements of law if subsections (a) or (b), as appropriate, were not followed. The Department intends strick compliance with this requirement in reviewing any waiver issue under these provisions.

This interim-final rule constitutes an interpretive rule regarding construction of a statute under section 553(b) of the Administrative Procedure Act, 5 U.S.C. 553, and is not required to be published in proposed form. Because the 1984 Act generally requires the Department to implement the amendments on the date of enactment (October 30, 1984), the Department has determined that it is necessary to make the interpretive rule effective immediately. In order to provide the public an opportunity to comment on the rule, the Department is publishing the rule on an interim basis and will consider the need for any changes to the rule upon expiration of the comment period. Written comments should be sent to Stephen J. Powell, Assistant General Counsel, at the above address.

3. Regulatory Flexibility Act and E.O. 12291 determinations.

Since notice and an opportunity for comment are not required to be given under section 553 of the Administrative Procedure Act or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

Under Executive Order 12291 the Department must judge whether a regulation is "major" within the meaning of section 1 of the Order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or import markets. Therefore, preparation of a Regulatory Impact Analysis is not required and no preliminary or final Regulatory Impact Analysis has been or will be prepared.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 19 CFR Parts 353 and 355

Business and industry, Foreign trade, Imports, Trade practices.

[1] The legislative history to the 1984 Act indicates that a major purpose of the statute was to improve administration of these laws. *See*, for example, the statement of Senator Dole, 130 Cong. Rec. S13970 (daily ed. Oct. 9, 1984) ("Title VI contains 23 provisions that will, for the most part, streamline the administration of the antidumping and countervailing duty laws, as well as codify existing administrative practice in this area so that certainly will be brought into these procedures for relief."), Senator Danforth, 130 Cong. Rec. S13972 (daily ed. Oct. 9, 1984), and Representative Rostenkowski, 130 Cong. Rec. H11657 (daily ed. Oct. 9, 1984) ("The [conference] agreement contains essential changes in the trade remedy laws addressing foreign subsidies and dumping to reduce the time and expense of processing cases, to improve administration of the laws, and to assist small business.")

Accordingly, parts 353 and 355 of Title 19, Code of Federal Regulations, are amended as follows:

PART 353—[AMENDED]

1. 19 CFR Part 353 is amended by adding a new Subpart D to read as follows:

Subpart D—Effective Date of Amendments to the Tariff Act of 1930 Made by the Trade and Tariff Act of 1984

§ 353.70 Trade and Tariff Act of 1984—effective date.

In accordance with section 626 of the Trade and Tariff Act of 1984 (Pub. L. No. 98–573) ("the 1984 Act"), the amendments to the Tariff Act of 1930 made by Title VI of the 1984 Act are deemed effective as follows:

(a) Except as provided in subsections (b), (c), and (d), all amendments made by Title VI of the 1984 Act which affect authorities administered by the Secretary of Commerce are deemed effective on October 30, 1984.

(b) Amendments made by sections 602, 609, 611, 612, and 620 of the 1984 Act which affect authorities administered by the Secretary of Commerce are deemed to take effect immediately with respect to all investigations and section 751 reviews begun on or after October 30, 1984.

(c) Amendments made by section 623 of the 1984 Act, regarding judicial review, are deemed to apply with respect to civil actions pending on, or filed on or after, October 30, 1984.

(d) Notwithstanding the provisions of subsections (a) and (b) of this section, the Secretary may implement the amendments of the 1984 Act at a date later than October 30, 1984, if the Secretary determines that implementation in accordance with subsections (a) or (b) would prevent the Department from complying with other requirements of law.

PART 355—[AMENDED]

2. 19 CFR Part 355 is amended by adding a new subpart E to read as follows:

Subpart E—Effective Date of Amendments to the Tariff Act of 1930 Made by the Trade and Tariff Act of 1984

§ 355.51 Trade and Tariff Act of 1984—effective date.

In accordance with section 626 of the Trade and Tariff Act of 1984 (Pub. L. No. 98.573) ("the 1984 Act"), the amendments to the Tariff Act of 1930 made by Title VI of the 1984 Act are deemed effective as follows:

(a) Except as provided in Subsections (b), (c), and (d), all amendments made by Title VI of the 1984 Act which affect authorities administered by the Secretary of Commerce are deemed effective on October 30, 1984.

(b) Amendments made by sections 602, 611, 612, and 620 of the 984 Act which affect authorities administered by the Secretary of Commerce are deemed to take effect immediately with respect to all investigations and section 751 reviews begun on or after October 30, 1984.

(c) Amendments made by section 623 of the 1984 Act, regarding judicial review, are deemed to apply with respect to civil actions pending on, or filed on or after, October 30, 1984.

(d) Notwithstanding the provisions of subsections (a) and (b) of this section, the Secretary may implement the amendments of the 1984 Act at a date later than October 30, 1984 if the Secretary determines that implementation in accordance with subsections (a) or (b) would prevent the Department from complying with other requirements of law.

Authority: 5 U.S.C. 301; 19 U.S.C. 1303 and 1671–1677g, as amended by the Trade and Tariff Act of 1984 (Title VI of Pub. L. No. 98–573; October 30, 1984); Department Organization Orders 10-3 and 40–1.

Dated: February 5, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85–3407 Filed 2–11–85; 8:45 am]

BILLING CODE 3510-05-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 436

[Docket No. 84N-0149]

Tests and Methods of Assay of Antibiotic and Antibiotic-Containing Drugs; High-Pressure Liquid Chromatographic Assays for Dactinomycin and Plicamycin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) has previously amended the antibiotic drug regulations to: (1) Provide for an improved method, high-pressure liquid chromatographic assay (HPLC), for determining the potency of dectinomycin and plicamycin; (2) add an identity test requirement for dactinomycin; and (3) revise the identity test for plicamycin (49 FR 24016; June 11, 1984). Additional amendments to those regulations were inadvertently omitted. This document corrects those omissions.

DATES: Effective February 12, 1985; comments, notice of participation, and request for hearing by March 14, 1985; data, information, and analyses to justify a hearing by April 15, 1985.

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

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Center for Drugs and Biologics (HFN–815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 11, 1984 (49 FR 24016), FDA amended the antibiotic drug regulations (21 CFR 436.331 and 436.341) to provide for an improved method for determining the potency of dactinomycin and plicamycin with a high-pressure liquid chromatographic (HPLC) assay, to require the use of HPLC assay for determining the identity of dactinomycin and to revise the identity test for plicamycin. The agency inadvertently omitted amendments to 21 CFR 436.331(e)(1) and 436.341(e)(1) at that time and is now correcting those omissions.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 436

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 701 (f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 436 is amended as follows:

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

1. In § 436.331 by revising paragraph (e)(1) to read as follows:

§ 436.331 High-pressure liquid chromatographic assay for dactinomycin.

* * * * *

(e) * * *

(1) *System suitability test.* Equilibrate and condition the column by passage of about 10 to 15 void volumes of mobile phase followed by two or more replicate injections of 10 microliters each of the working standard solution. Allow an elution time sufficient to obtain satisfactory separation of expected components after each injection. Record the peak responses and, calculate the relative standard deviation as described for system suitability tests in the U.S.P. XX General Chapter 621 chromatography. Proceed as directed in paragraph (e)(2) of this section if the minimum performance requirement for the relative standard deviation is not more than 1.0 percent. If the minimum performance requirement is not met, adjustment must be made to the system to obtain satisfactory operation before proceeding as described in paragraph (e)(2) of this section.

* * * * *

2. In § 436.341 by revising the last sentence in paragraph (e)(1) to read as follows:

§ 436.341 High-pressure liquid chromatographic assay for plicamycin.

* * * * *

(e) * * *

(1) * * * Proceed as directed in paragraph (e)(2) of this section if the minimum performance requirement for the relative standard deviation is not more than 2.0 percent.

* * * * *

These amendments correct omissions to the regulation that announced standards that FDA has accepted in a request for approval of an antibiotic drug. Because these amendments are not controversial and because they merely correct inadvertent omissions, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The amendments, therefore, are effective February 12, 1985. Interested persons may, however, on or before March 14, 1985, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file: (1) On or before March 14, 1985 a written notice of participation and request for hearing, and (2) on or before April 15, 1985, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20 A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of the 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 no genuine and substantial issue of fact precludes the action taken by this order, or if 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 request(s) the hearing making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This amendment is effective February 12, 1985

(Secs. 507, 701(f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371(f) and (g))

Dated: February 1, 1985

Daniel L. Michels,

Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 85-3334 Filed 2-11-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 526, 540, and 556

[Docket No. 76N-0231, NADA Nos. 12-738 and 65-059]

Furaltadone; Revocation of Regulations

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revoking the regulations reflecting approval of new animal drug applications (NADA's) held by Norwich-Eaton Pharmaceuticals, Inc., which provide for the use of furaltadone for the treatment of bovine mastitis in lactating dairy cows. The firm has requested that the NADA's be withdrawn.

EFFECTIVE DATE: February 22, 1985.

FOR FURTHER INFORMATION CONTACT: Philip J. Frappaolo, Center for Veterinary Medicine (HFV-240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4940.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, approval of NADA's 12-738 and 65-059 held by Norwich-Eaton Pharmaceuticals, Inc., is being withdrawn. The applications provide for the use of furaltadone alone and in combination with procaine penicillin G for the treatment of bovine mastitis in lactating dairy cows. This document revokes §§ 526.1014 and 540.874g that provide for use of the drug and § 556.280 that provides for a zero tolerance for residues of furaltadone in milk.

List of Subjects

21 CFR Part 526

Animal drugs—intramammary.

21 CFR Part 540

Animal drugs, Antibiotics—penicillin.

21 CFR Part 556

Animal drugs, Foods, Residues.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), Parts 526, 540, and 556 are amended as follows:

PART 526—INTRAMAMMARY DOSAGE FORMS NOT SUBJECT TO CERTIFICATION

§ 526.1014 [Removed]

1. Part 526 is amended by removing § 526.1014 *Furaltadone.*

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

§ 540.874g [Removed]

2. Part 540 is amended by removing § 540.874g *Procaine penicillin G-furaltadone.*

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

§ 556.280 [Removed]

3. Part 556 is amended by removing § 556.280 *Furaltadone.*

Effective date. February 22, 1985.

(Sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e)))

Dated: February 4, 1985.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 85–3447 Filed 2–11–85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R–85–1199; FR–1974]

Section 108 Loan Guarantee Assistance—Fees

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This rule amends 24 CFR Part 570 Subpart M, which governs the Loan Guarantee Program under Section 108 of the Housing and Community Development Act of 1974. The rule requires the Secretary to establish a fee to help recover costs of processing loan guarantee applications and servicing guaranteed loans and sets forth a methodology for computing the fee. The rule requires the Secretary to announce the fee and make future adjustments in the fee by placing a notice in the **Federal Register**.

EFFECTIVE DATE: March 20, 1985.

FOR FURTHER INFORMATION CONTACT: Paul D. Webster, Director, Financial Management Division, Room 7180, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone (202) 755–1871. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Subpart M of 24 CFR Part 570 governs the Loan Guarantee Program under section 108 of the Housing and Community Development Act of 1974 (the Act). Under this program HUD is authorized to guarantee notes and other obligations issued by local government units entitled to receive grants under section 106(b) of the Act. The loan proceeds are used for financing the acquisition and rehabilitation of real property.

October 10, 1984, the Department published a proposed rule in the **Federal Register** (49 FR 39693) to amend Part 570 to require the Secretary to establish a fee on Section 108 Loan Guarantees. The fee was to defray certain direct and indirect costs incurred by HUD to process loan guarantee applications and to service the guaranteed loans.

The proposed rule established a methodology for computing the fee and required the Secretary to announce the fee and future adjustments to the fee by placing a notice in the **Federal Register**.

Interested parties were invited to submit comments by December 10, 1984. Comments were received from the City of Tacoma, WA; Department of Community Development,City of Syracuse, NY; the City of Pueblo, CO; the Urban Redevelopment Authority of Pittsburgh, PA; and an individual.

Commenters generally opposed the loan guarantee fee. They felt that a fee would increase the financial burdens placed on local communities and would adversely affect the communities' ability to carry out the economic development activities encouraged by the Act.

HUD continues to believe that its imposition of a fee on section 108 loan guarantees is appropriate. While the fee may burden local communities, the charge is consistent with the Federal government's general policy that a reasonable charge should be assessed on identifiable beneficiaries of government services. The fee is also consistent with HUD's specific authority "to establish fees and charges, chargeable against program beneficiaries and project participants" under section 7(j) of the Department of Housing and Urban Development Act. The authority to impose fees for loan guarantees is recognized in section 108(c) of the Act which states:

> Notwithstanding any other provision of this title, grants allocated to an issuer pursuant to this title (including program income derived therefrom) are authorized for use in the payment of principal and interest due (*including such servicing, underwriting, or other costs as may be specified in regulations of the Secretary*) on the notes or other obligations guaranteed pursuant to this section. (Emphasis added.)

One commenter argued that fees should be permitted only if the loan processing activities are outside the realm of HUD's work as an administrative agency. Contrary to this view, HUD's authority to impose fees is not limited to the recovery of the costs described by the commenter. Rather, section 7(j) provides that the fee "shall be adequate to cover over the long run, costs of inspection, project review and financing service, audit by Federal or federally authorized auditors, and other beneficial rights, privileges, licenses, and services."

Commenters feared that imposition of a section 108 loan guarantee fee could establish a precedent for requiring fees for all Federally administered grants. Other commenters argued that it is improper to isolate one activity under the Act for the imposition of a fee. HUD has determined that the imposition of fees under most programs is discretionary with the Department. The imposition of fees in one program does not mandate their imposition for another program.

The proposed rule would have permitted the recovery of certain direct and indirect costs incurred by the Office of Community Planning and Development (CPD) within HUD to review a loan guarantee application for compliance with the requirements of Part 570; to process the application; and to service the loan. The proposed fee would not have varied with the size of the loan.

One commenter suggested that the loan fee should be based on a percentage of the guaranteed loan rather than a flat fee. This commenter argued that an approach based on a percentage of the guaranteed loan would be fairer to small loan recipients.

The final rule has not been changed to reflect this comment. None of the costs associated with the review and processing of loan guarantee applications or the servicing of guaranteed loans vary significantly with the size of the loan guarantee. A fee based on a percentage of the guaranteed loan would thus impose a burden on larger borrowers which would not have any reasonable relationship to the cost of the services rendered by the Department. This would result in the unfair subsidization of the loans of smaller borrowers by larger borrowers.

In the proposed rule, HUD estimated that the amount of the fee would be $2,468.00 using the proposed methodology. One commenter stated that HUD's estimate of the number of staff hours needed to review a loan guarantee was too high. Based on reviews performed by commercial financial institutions, this commenter suggested that a processing time of 50–60 hours is more realistic.

The proposed rule emphasized that our estimates were preliminary and that HUD was undertaking further studies to obtain more accurate data. These studies are reflected in the Fee Notice published elsewhere in today's issue of

the Federal Register. The Notice states that HUD spends an average of 53 staff hours reviewing loan guarantee applications. This figure is consistent with the commenter's estimates. In addition, HUD has determined, as stated in the Notice, that an average of 9 hours are required to process requests for advances and other loan servicing paperwork and that an additional 6 hours are required for loan servicing for each year of the term of the guaranteed loan.

Based on HUD's findings, the amount of the fee for Fiscal Year 1985 will be: (1) A flat fee of $1,662.84 to cover processing and servicing costs that do not vary with the term of the loan; and (2) a fee of $160.92 times the number of years in the repayment period to cover loan servicing costs that vary over the term of the guaranteed loan. These calculations are fully explained in the Notice.

One final matter merits comment. The proposed rule stated that the purpose of the Section 108 fee is to help defray the *administrative* costs involved in processing loan guarantees and servicing loans. One commenter noted the apparent conflict between this statement and the language of section 7(j) of the Department of Housing and Urban Development Act, which provides in part that "Such fees and charges heretofore or hereafter collected shall be considered *nonadministrative* and shall remain available for operating expenses of the Department in providing similar services on a consolidated basis." (Emphasis added.)

The apparent conflict reflects differences in usage of the words "administrative" and "nonadministrative." By this final rule, the Department intends to recover those salary and related costs incurred by CPD which are associated with administering the loan guarantee program under section 108. To prevent further ambiguity, the final rule has been drafted to describe those costs to be included in the fee and to avoid their being characterized in terms of whether they are "administrative" or "nonadministrative".

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, at the address listed above.

This rule does not constitute a "major rule," as that term is defined in Section 1(b) of Executive Order 12291 issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The amendment will have some economic impact by requiring units of local government to pay a fee for loan guarantees under Section 108 of the Act. However, since these units of local government are generally not small entities as defined in the Regulatory Flexibility Act and since grants allocated under Part 570 may be used for fee payment, this impact will not be significant.

This rule was listed as item 197 in the Department's Semiannual Agenda of Regulations published October 22, 1984 (49 FR 41684, 41727) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.218—Community Development Block Grants/Entitlement Grants.

List of Subjects in 24 CFR Part 570

Community development block grants, Grant programs—Housing, and community development, Loan programs—Housing and community development, Low and moderate income housing, New communities, Pockets of poverty, Small cities.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

Accordingly, 24 CFR Part 570 is amended as follows:

A new paragraph (g) is added to § 570.703, to read as follows:

§ 570.703 Loan requirements.

* * * * *

(g) *Loan guarantee fee.* (1) Each application approved under § 570.702(d) shall be subject to a loan guarantee fee. The loan guarantee fee shall be payable upon submission of a note or other obligation to HUD for inspection and guarantee. Grants allocated under this part may be used for payment of the fee.

(2) The Secretary shall establish the loan guarantee fee by publishing a notice of the fee in the Federal Register. The Secretary may periodically revise the amount of the fee established under this section by placing a notice of the amount of the new fee in the Federal Register.

(3) The amount of the loan guarantee fee shall be determined by multiplying the average number of the Office of Community Planning and Development (CPD) staff hours required to process a loan guarantee application and to service a guaranteed loan by the anticipated cost per staff hour. These factors shall be determined in accordance with the following procedures:

(i) The average number of staff hours required to process a loan guarantee application and to service a guaranteed loan shall be determined by means of Departmental studies and other relevant data. Disapproved loan guarantee applications and the number of staff hours required to process disapproved loan guarantee applications will not be considered in this determination.

(ii) Based on HUD budget estimates for the current fiscal year, the cost per staff hour shall be determined by dividing the total amount budgeted for salaries and related expenses for CPD activities by the total estimated number of staff hours budgeted for CPD activities.

Authority: Sec. 108, Housing and Community Development Act of 1974, (42 U.S.C. 5308); secs. 7 (d) and 7(j), Department of HUD Act (42 U.S.C 3535 (d) and (j)).

Dated: February 4, 1985.

Jack R. Stokvis,

General Deputy, Assistant Secretary for Community Planning and Development.

[FR Doc. 85-3475 Filed 2-11-85; 8:45 am]

BILLING CODE 4210-29-M

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24 CFR Part 570

[Docket No. N-85-1499; FR-1974]

Section 108 Loan Guarantee Assistance—Notice of Fee

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Section 108 Loan Guarantee Fee.

SUMMARY: Under 24 CFR 570.703(g), HUD is required to establish a fee for processing loan guarantees and servicing guaranteed loans issued under section 108 of the Housing and

Community Development Act of 1974. This Notice announces the loan guarantee fee for FY–1985.

FOR FURTHER INFORMATION CONTACT: Paul D. Webster, Director, Financial Management Division, Room 7180, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone (202) 755–1871. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Elsewhere in today's issue of the **Federal Register**, HUD has published a final rule amending 24 CFR Part 570, Subpart M to require the imposition of fees to recover the costs of processing loan guarantees and servicing guaranteed loans issued under Section 108 of the Housing and Community Development Act of 1974. This Notice fulfills the requirement that the Secretary announce the amount of the fee by **Federal Register** notice.

Section 570.703(g)(3) provides that "The amount of the loan guarantee fee shall be determined by multiplying the average number of the Office of Community Planning and Development (CPD) staff hours required to process a loan guarantee application and to service a guaranteed loan by the anticipated cost per staff hour."

Average Number of Staff Hours

Section 570.703(g)(3)(i) provides "The average number of staff hours required to process a loan guarantee application and to service a guaranteed loan shall be determined by means of Departmental studies and other relevant data. Disapproved loan guarantee applications and the number of staff hours required to process disapproved loan guarantee applications will not be considered in this determination."

The proposed rule published on October 10, 1984 (49 FR 39693) states that, on the basis of a six-year repayment period, preliminary estimates indicate that HUD will spend approximately 80 staff hours reviewing a loan guarantee application and 12 staff hours servicing the guaranteed loan. HUD has completed its review of the time spent on these functions and finds that an average of 53 hours are spent by Headquarters and field staff in processing loan guarantee applications. HUD's review also indicates that an average of 9 hours are required to process requests for advances and other loan servicing paperwork and that an additional 6 hours per year are required to service the guaranteed loan for each year of the repayment period of the guaranteed loan. These findings were derived from surveys of staff responsible for carrying out the processing and servicing functions. With respect to work performed by HUD field staff, reports on processing and servicing requirements were obtained from 9 field offices selected through random selection techniques. Since HUD did not disapprove any loan guarantee applications, it was not necessary to exclude these hours from the computation.

Cost Per Staff Hour

Section 570.703(g)(3)(ii) provides, "Based on HUD budget estimates for the current fiscal year, the cost per staff hour shall be determined by dividing the total amount budgeted for salaries and related expenses for CPD activities by the total estimated number of staff hours budgeted for CPD activities." CPD's budgeted costs per staff hour are $26.82 for Fiscal Year 1985 (source: 1985 Budget).

Fee Amount

In accordance with the procedure described in the final rule, the amount of the loan guarantee fee to be charged during Fiscal Year 1985 is: (1) A flat fee of $1,662.84 consisting of $1,421.46 (53 hours × $26.82) for processing the loan guarantee application and $241.38 (9 hours × $26.82) for processing advances and other loan servicing costs that do not vary with terms of the loan; plus (2) a servicing fee of $160.92 (6 hours × $26.82) times the number of years in the loan repayment period to cover servicing costs that vary over the term of the guaranteed loan. Based on these fees, the Fiscal Year 1985 fee for a guaranteed loan with a 6–year repayment period is $2,628.36 [$1,662.84 plus $965.52 ($160.92 per year × 6 years)].

The fee announced in this Notice will be applicable only to applications filed after March 20, 1985. The fee is payable upon submission of a note or other obligation to HUD for inspection and guarantee.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, at the address listed above.

Authority: Sec. 108, Housing and Community Development Act of 1974, (42 U.S.C. 5308); secs. 7(d) and 7(j), Department of HUD Act (42 U.S.C. 3535 (d) and (j)).

Dated: February 4, 1985.

Jack R. Stokvis,

General Deputy, Assistant Secretary for Community Planning and Development.

[FR Doc. 85–3475 Filed 2–11–85; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Access to Employee Exposure and Medical Records; Extension of Partial Stay

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Extension of partial stay.

SUMMARY: OSHA is hereby extending the partial administrative stay of the access to employee exposure and medical records regulation, 29 CFR 1910.20, for the flavor and fragrance industries. The current partial stay which expired February 1, 1985, is being extended until February 1, 1986, or until completion of the current rulemaking, whichever is sooner, to allow OSHA to complete consideration of the issues presented by the flavor and fragrance industries as part of its rulemaking on the records access rule.

DATE: The flavor and fragrance stay is extended to February 1, 1986, or until completion of the current rulemaking, whichever is sooner.

FOR FURTHER INFORMATION CONTACT: James Foster, Office of Information and Consumer Affairs, OSHA, Room N–3641, Third Street and Constitution Avenue, NW., Washington, D.C. 20210. Telephone: (202) 523–8151.

SUPPLEMENTARY INFORMATION: Since August 1980, the flavor and fragrance industries have been subject to a series of administrative stays of 29 CFR 1910.20, OSHA's access to employee exposure and medical records rule. The current partial stay, which expired February 1, 1985, is hereby being extended until February 1, 1986, or until completion of the current rulemaking, whichever is sooner, to allow OSHA to complete its consideration of the issues presented by the flavor and fragrance industries as part of its rulemaking on the records access rule. A proposal to modify the records access rule was published July 13, 1982 (47 FR 30420 et seq.), and it is anticipated that a final determination with respect to this proposal will be completed in advance of February 1, 1986.

The full text of the current administrative stay for the flavor and fragrance industries was published in the August 7, 1981, **Federal Register** (46 FR 40490).

(Secs. 6(b), 8(g); 84 Stat. 1593, 1600 (29 U.S.C. 655, 657); sec. 4 of the Administrative Procedure Act (5 U.S.C. 553))

Signed at Washington, D.C., this 30th day of January 1985.

Robert A. Rowland,

Assistant Secretary of Labor.

[FR Doc. 85-3296 Filed 2-11-85; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 500 and 515

Foreign Assets Control Regulations, and Cuban Assets Control Regulations; Publications Originating in Vietnam, North Korea, Kampuchea or Cuba

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Appendix to a final rule.

SUMMARY: The Office of Foreign Assets Control is amending the Foreign Assets Control Regulations and the Cuban Assets Control Regulations by the addition, as an appendix, of a January 25, 1982, notice to the U.S. Customs Service (47 FR 4385, January 29, 1982) regarding publications originating in Vietnam, North Korea, Kampuchea or Cuba. This notice authorizes the importation by any person of single copies of any publication from these countries without the requirement of a specific license to do so. This action will result in the notice, which was published in the **Federal Register** previously, being codified in the *Code of Federal Regulations.*

EFFECTIVE DATE: The codification of this notice is effective February 12, 1985.

FOR FURTHER INFORMATION CONTACT: Raymond W. Konan, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C., telephone (202) 376-0236.

SUPPLEMENTARY INFORMATION: Since the amendment involves a foreign affairs function, and is merely the codification of a prior authorization which does not in fact constitute rulemaking, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, regarding the notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable.

Because no notice of proposed rulemaking is required for the amendment, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply. Because the amendment is issued with respect to a foreign affairs function of the United States, it is not subject to Executive Order 12291 of February 17, 1981, dealing with Federal Regulations. The amendment is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subject in 31 CFR Parts 500 and 515

Administrative practice and procedure, Communist countries, Cuba, Currency, Foreign trade.

31 CFR PARTS 500 AND 515—FOREIGN ASSETS CONTROL REGULATIONS AND CUBAN ASSETS CONTROL REGULATIONS

31 CFR Parts 500 and 515, is amended by the addition of an appendix at the end of §§ 500.536 and 515.536 as follows:

§ 500.536 and 515.536 [Amended]

Appendix to sections 500.536 and 515.536

This Appendix sets out in full Office of Foreign Assets Control Notice to Customs officers of January 25, 1982, FAC No. 95111, as follows:

Restricted Merchandise: Publications Originating in Vietnam, North Korea, Cambodia [Kampuchea], or Cuba.

January 25, 1982.

I. Purpose

This notice is to advise Customs officers of the procedures to be followed in the detention and disposition of publications of Vietnamese, North Korean, Cambodian [Kampuchean], or Cuban origin which are imported without a license issued by the Office of Foreign Assets Control, Treasury Department (FAC).

II. Information

The Foreign Assets Control Regulations (31 CFR Part 500) prohibit the importation without Treasury license of books, periodicals, or other publications of Vietnamese, North Korean, or Cambodian [Kampuchean] origin, including those which are mailed or otherwise shipped from third countries. A similar prohibition applies with respect to publications from Cuba under the Cuban Assets Control Regulations (31 CFR Part 515). The countries referred to in this paragraph ("designated countries") are the only ones to which restrictions administered by this Office apply with respect to importation of publications.

III. Action

A. Single Copy Imports

U.S. Customs Service is authorized to release to the addressee, whether an individual, an institution or other organization, single copies of any Cuban, Vietnamese, North Korean, or Cambodian [Kampuchean] publications. For purposes of this notice, the term "publications" includes books, newspapers, magazines, films, phonograph records, tapes, photographs, microfilm, microfiche, posters and similar materials.

B. Commercial Imports

The firms listed on the attachment [1] have been issued Treasury licenses authorizing the importation of publications from one or more of the designated countries. Such licensed imports addressed to the named licensed importer should not be detained.

C. Imports by Newsgathering Agencies, Universities, Libraries, Scientific Institutions

Treasury has issued licenses to major media networks, universites, libraries, scientific and research organizations to import publications from the embargoed countries. Any such importation of more than single copies shall be detained until it is established that the importation has been licensed by the Office of Foreign Assets Control. If such shipment in not accompanied by a copy of the license or if the importer has not presented a license to the Customs Service, the shipment should be detained and the Chief of Licensing of this Office notified (376-0408).

D. Scholars, Newsmen, Film Makers and Researchers Who Visit Designated Countries

Persons who travel to Cuba, North Korea, Vietnam, or Cambodia [Kampuchea] for the purpose of gathering news, making news or documentary films, engaging in professional research or for similar activities are authorized by general licenses contained in § 515.560(b) of the Cuban Assets Control Regulations and § 500.583(b) of the Foreign Assets Control Regulations to acquire and import as accompanied baggage or otherwise and without limit as to value, publications and similar materials directly related to these professional activities. Customs Service should not detain such importations. These goods may not be imported for resale.

E. Tourists

Tourists who visit designated countries are authorized by the general licenses contained in § 515.560(a)(3) of the Cuban Assets Control Regulations and § 500.563(a)(3) of the Foreign Assets Control Regulations to import as accompanied baggage *only* up to $100 in foreign market value of any merchandise which originated in the county. This $100 authorization can be used in whole or in part for publications and similar items, for personal use only.

IV. Unlicensed Importation of Publications

In the case of publications which are imported without a license, Customs should use normal notice of detention procedures and advise the Office through the Chief of Licensing of the detention of unlicensed publications from designated countries. Importers of unlicensed publications should be advised that information can be obtained

[1] The list is available from the Chief of Licensing, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220.

from, and license applications filed with: Chief of Licensing, Office of Foreign Assets Control, Department of the Treasury, 1331 G Street, N.W., Washington, D.C. 20220.

V. Publications Presently Under Detention

Publications from designated countries presently under detention as of the date of these instructions due to the absence of an FAC license but which fall within the terms of paragraph III. A above should be released to the importer as soon as practicable.

(Sec. 5, 40 Stat. 415, as amended; 50 U.S.C., App. 5, E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748)

Dated: January 18, 1985.

Dennis M. O'Connell,

Director, Office of Foreign Assets Control.

Approved: January 24, 1985.

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 85-3335 Filed 2-11-85; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty; Increase in Loan Fee for Housing Loans

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration), in implementing the provisions of Pub. L. 98–369, the Deficit Reduction Act of 1984, is amending its regulations to require the collection of a loan fee of 1 percent of the loan amount instead of the one-half of 1 percent previously charged in connection with VA housing loans.

EFFECTIVE DATE: August 17, 1984.

FOR FURTHER INFORMATION CONTACT: George D. Moerman, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420, (202) 389–3042.

SUPPLEMENTARY INFORMATION: These amendments implement Pub. L. 98–369 by raising the amount of the fee that is collected in connection with VA home and manufactured home loans and extending the termination date for the collection of such fees. Previously the fees collected were deposited in the U.S. Treasury as miscellaneous receipts. As authorized by Pub. L. 98–369, the fees will now be deposited directly into the Loan Guaranty Revolving Fund.

As before, the fee is collectible from all veterans obtaining VA-guaranteed home or manufactured home loans and direct loans except for those receiving VA compensation or those who would receive it but for the receipt of military retired pay. Surviving spouses of veterans who died from a service-connected disability also continue to be exempt from payment of the loan fee. Authority for the collection of the fee has been extended through September 30, 1987.

With the enactment of Pub. L. 98–369, the 1-percent fee will also be collected on vendee loans. Vendee loans are purchase money mortgages made by the VA to finance properties sold by the VA which have been acquired through the home loan program. The procedures for processing vendee loans are contained in DVB Manual M26–5, Property Management Policies and Procedures, in which requirements for collection of the fee on vendee loans will be published. Therefore, regulations on this issue are not necessary.

Pub. L. 98–369 was enacted in part to provide emergency interim solvency for the VA's Loan Guaranty Revolving Fund and is necessary as a funding device to lessen the impact of the VA Loan Guaranty program on the Federal budget. The Loan Guaranty Revolving Fund, where the fees will now be deposited, is used to honor VA's liability under the guaranty agreement and to acquire properties as required by law. The revolving fund has been significantly depleted during the last 4 fiscal years, and a supplemental appropriation of $306.6 million was enacted to meet the program's needs in fiscal year 1985.

With the increased fee and deposit of such fees into the Loan Guaranty Revolving Fund, there will be additional capital to meet increasing property acquisition and claims expenses. The fees will also offset the high interest rates which, coupled with growth in real estate values, have contributed to the inability of the fund to finance long-term program obligations without additional revenues.

The effect of the increased fee on a veteran's ability to obtain financing should be minimal. The amount of the fee may still be included in the veteran's loan and paid to the Administrator from the loan proceeds, thus spreading out its payment over the life of the mortgage. The increased fee is payable on all VA guaranteed and vendee housing loans (except for loans to those veterans or surviving spouses who are exempt) closed on or after August 17, 1984, and prior to October 1, 1987.

These amendments conform the existing regulations to the requirements of Pub. L. 98–369. Since these changes have no effect independent of the statute, the VA is not seeking public participation in promulgating these regulations. This is done in accordance with 5 U.S.C. 553(b)(3)(B) and § 1.12 of title 38, Code of Federal Regulations. These revised regulations implement a statutory change over which there are no discretionary interpretations. Because a proposed notice is not necessary and will not be published, these changes do not come within the definition of the term "rule" (5 U.S.C. 601(2)) under the Regulatory Flexibility Act and are not subject to the requirements of that Act.

The regulations have been reviewed under Executive Order 12291, entitled Federal Regulation, and not considered major as defined in the Executive Order. The regulations will not impact on the public or private sectors as a major rule. They will not have an annual effect on the economy of $100 million or more, cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or have other 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.

(Catalog of Federal Domestic Assistance Program numbers 64.114 and 64.119)

These amendments are adopted under authority granted to the Administrator by sections 210(c), 1824 and 1829 of title 38, United States Code, and the enabling legislation.

List of subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs—Housing and community development, Manufactured homes, Veterans.

Approved: January 9, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 36—[AMENDED]

38 CFR Part 36, Loan Guaranty, is amended as follows:

§ 36.4232 [Amended]

1. In § 36.4232, paragraph (e)(1) is amended by removing the words "one half of"; and paragraph (e)(3) is amended by changing the dates: "October 1, 1982" to "August 17, 1984" and "September 30, 1985" to "September 30, 1987".

§ 36.4254 [Amended]

2. In § 36.4254, paragraph (d)(1) is amended by removing the words "one half of"; and paragraph (d)(3) is

amended by changing the dates: "October 1, 1982" to "August 17, 1984" and "September 30, 1985" to "September 30, 1987".

§ 36.4312 [Amended]

3. In § 36.4312, paragraph (e)(1) is amended by removing the words "one half of"; and paragraph (e)(3) is amended by changing the dates: "October 1, 1982" to "August 17, 1984" and "September 30, 1985" to "September 30, 1987".

§ 36.4504 [Amended]

4. In § 36.4504, paragraph (b)(2)(i) is amended by removing the words "one half of"; and paragraph (b)(2)(iii) is amended by changing the dates: "October 1, 1982" to "August 17, 1984" and "September 30, 1985" to "September 30, 1987".

(38 U.S.C. 210(c), 1824 and 1829; Pub. L. 98-369)

[FR Doc. 85-3450 Filed 2-11-85; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

Deletion of Part 15 Requirements Pertaining to Certification and Labelling of Low Power Communications Devices Produced Before October 1, 1975; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; erratum.

SUMMARY: This Erratum corrects an Order issued earlier, which deleted obsolete requirements pertaining to low power communication devices manufactured before October 1, 1975. This correction is necessary to delete a cross reference to the effected rule sections.

FOR FURTHER INFORMATION CONTACT: Julius P. Knapp, Technical Standards Branch, Office of Science and Technology, (202) 653-8247.

SUPPLEMENTARY INFORMATION:

Erratum

In the matter of deletion of part 15 requirements pertaining to certification and labelling of low power communication devices produced before October 1, 1975.

Released: January 31, 1985.

1. On October 18, 1984, the Commission adopted an Order deleting as obsolete 47 CFR §§ 15.135 and 15.136, which specified labelling and certification requirements for low power communication devices manufactured before October 1, 1975. Reference: FCC 84-501, 49 FR 44210, published November 5, 1984.

2. It was recently pointed out that §§ 15.135 and 15.136 are cross referenced in § 15.131. Therefore, the cross reference should also be deleted. Accordingly, the Order is corrected by adding the following text at the end of paragraph 2:

—It is further ordered that the present text of paragraph (a) of § 15.131 is removed and paragraph (b) is to be left undesignated.

3. For further information concerning this Erratum, contact Julius P. Knapp, Office of Science and Technology, (202) 653-8247.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-3377 Filed 2-11-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for "Camissonia Benitensis" (San Benito Evening-Primrose)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Camissonia benitensis* (San Benito evening-primrose) to be a threatened species. This action is being taken because a significant portion of the limited range of this species is subject to gravel mining and damage by off-road vehicle (ORV) use. The San Benito evening-primrose occurs only in parts of the Clear Creek and San Carlos Creek drainages, between Hernandez and New Idria, San Benito County, California. This plant occurs as a few scattered populations on serpentine alluvial terraces on public (Bureau of Land Management) and private land within these drainages. The designation as threatened provides this species the protection of the Endangered Species Act of 1973, as amended.

DATES: The effective date of this rule is March 14, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 N.E. Multnomah Street, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: John L. Spinks, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503/231-6131; FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

Camissonia benitensis is a small, hairy, annual member of the evening-primrose family (Onagraceae) with bright yellow flowers. Peter H. Raven discovered this plant in the Clear Creek Reservation Area, San Benito County, California, in 1960 and published its description in 1969. It grows on alluvial terraces along Clear Creek and San Carlos Creek, at elevations ranging from 2,500 to 4,600 feet (760 to 1,340 meters). The species has only been observed to grow on alluvial terraces of serpentine origin; it is not known whether it is also able to grow on serpentine uplands. The species has only a moderate reproductive potential under favorable conditions, apparently is not weedy or aggressive, and is highly sensitive to trampling (Griffin 1977, 1978).

In May of 1979 a total of only 70 plants were observed to flower (Marcus 1979). A field examination by U.S. Fish and Wildlife Service and Bureau of Land Management (BLM) personnel in April of 1980 revealed that the plants on Clear Creek numbered perhaps 200 to 300 at a single small location. At that time the site was completely unprotected and numerous tire tracks crisscrossed the area. Shortly thereafter BLM fenced the site. A second location (first observed in 1978 by BLM personnel) had been severely altered by ORV activity and no plants were observed. This latter site was fenced by the BLM in 1981. The San Carlos Creek site was inaccessible at the time because of impassable road conditions.

Observations in the spring (May-June) of 1983 revealed nine colonies of the plant ranging from 10 to 100 individuals (Kiguchi 1983). Eight of the colonies occurred on BLM land and one was on private land. The population on private land, one of the largest and most vigorous, occurred near the west entrance to Clear Creek Canyon. It is being destroyed by gravel mining activities. To date the BLM has fenced or barred access to all but one site on public land. The single remaining site on public land had been scheduled for protection by spring, 1984, but this has

not yet been carried out. No protection is afforded the plants on private land.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report as a petition within the context of section 4(c)(2) of the 1973 Act, and of its intention thereby to review the status of the plant taxa named within. *Camissonia benitensis* was included in that notice. On August 5, 1977, the Service was petitioned by Ms. Alice Q. Howard of the California Native Plant Society's Rare Plant Project Committee to place the San Benito evening-primrose on the U.S. List of Endangered and Threatened Plants, with a designation of critical habitat. Accompanying this petition was a detailed account of this species and its status prepared by Dr. James R. Griffin of the University of California, Hastings Natural History Reservation. The July 1, 1975 notice was replaced with the December 15, 1980 notice of review of plant species for listing under the Act (45 FR 82480), which also included *Camissonia benitensis*. On February 15, 1983, the Service published a notice in the **Federal Register** (48 FR 6752) of its prior finding that the petitioned action on this species may be warranted, in accord with section 4(b)(3)(A) of the Act as amended in 1982. On October 13, 1983, the petition finding was made that listing *Camissonia benitensis* was warranted but precluded by other pending listing actions. On October 31, 1983, the Service found that the petitioned action was warranted and published the proposed rule (48 FR 50126–50128), in accordance with section 4(b)(3)(B)(ii) of the Act. For reasons of hazards posed to the species, more fully detailed below, designation of critical habitat for this species is not deemed prudent. After reviewing all of the comments received on the proposed rule, the Service has concluded to change the status of the plant from endangered to threatened in the final rule.

Summary of Comments and Recommendations

In the October 31, 1983 proposed rule (48 FR 50126–50128) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the *Hollister Free Lance* on November 11, 1983, which invited general public comment. A public hearing was requested by Mr. Ed Dunkley of the California Association of Four Wheel Drive Clubs and held in Coalinga, California. Eighteen written comments were received in response to the original proposal and six more were received during the public hearing; all of these are discussed below.

Few of the commenters presented new data on the status of the species or new information revealing additional threats or lack thereof. BLM indicated that it has designated the Clear Creek Canyon as a recreation area for ORV's and has developed a management plan that will substantially limit vehicle use in the canyon. The Bureau further indicated that recent surveys (Kiguchi 1983) found a total of nine colonies and that the *Camissonia benitensis* population may be increasing as a result of the fencing of several sites. Service personnel inspected the area and noted a substantial increase in the number of protective fences and barriers placed around individual colonies. Based on these efforts and the presence of nine colonies of the plant, BLM suggested that the listing of *Camissonia benitensis* was premature. The Service finds that, while the efforts of BLM to protect the plants appear to be beneficial and necessary, at this time the population still remains exceedingly low for an annual plant, and the species is still subject to threats from gravel mining operations on private land and damage from ORV operators that do not respect the exclosures. However, due to the species' improved status as a result of these efforts, the Service believes that *Comissonia benitensis* should be listed as threatened rather than endangered as originally proposed. Although precise counts were not presented in the latest census, Kiguchi (1983) suggests the population numbers approximately 1,000 individuals, most of which occur on two or three sites. One of the largest colonies occurs on private land. This site is being destroyed by gravel mining activities. BLM has no control over this activity, but Federal listing may provide additional limited options to protect this site.

Ten letters were received in support of the listing. Included among these was a letter from the County of San Benito that recommended the species be protected and preserved by the most prudent means. The County emphasized the threat of ORV's pointed out that designation of critical habitat may increase the threat of vandalism and destruction. All other commenters in support of the listing emphasized the ORV threats. Several commenters also indicated that, while fencing and barriers have helped to protect the plant, violations of these sites by ORV recreationists are likely to occur. Three commenters noted that the close proximity of camping sites to colonies of the plant increases the likelihood of human access and disturbance, and creates additional difficulties for assuring the safety of the species.

Two letters received from ORV organizations expressed concern about the potential impact of the listing on ORV activities in the Clear Creek area—these organizations were the South County Trail-Riders 4 x 4 Club and the California Association of 4 Wheel Drive Clubs. These letters raised a number of questions also voiced at the public hearing. The public hearing was held at the West Hills Community College and was attended by approximately ten people. For the sake of brevity, the written comments and those from the public heaing have been combined and summarized here:

The question was asked by letter and by several individuals at the public hearing whether *Camissonia benitensis* is a separate species or just a mutation or local adaptation. Based on the best scientific information available, *Camissonia benitensis* is recognized as a distinct species (Raven 1969 and personal communication 1983, and Griffin personal communication 1984). Morphologically, *C. benitensis* is similar in appearance to the non-serpentine species *C. contorta*. However, *C. benitensis* differs from *C. contorta* in chromosome number, the former being tetraploid, the latter hexaploid (Raven 1969, Griffin personal communication 1980). Another differentiating feature can be determined by a close examination of the pollen: the tetraploid rarely has up to about 10 percent four-pored pollen, the hexaploid often has more than 30 percent four-pored pollen. Other characteristics such as leaf shape and pubescence also are distinctive in *C. benitensis*. Actual chromosome counts, however, provide the most reliable method of indentification.

With regard to the comment that *C. benitensis* may be only a mutant form of *C. contorta*, Raven (1969) indicates this is not the case. Based on a careful examination and study of the genus *Camissonia* (90 taxa) and similar genera in the family Onagraceae, Raven (1969) postulated that *C. benitensis* was

derived from *C. strigulosa*, a common species in the coast range of California found from the vicinity of Bodega Bay south to Santo Tomas in Baja California. *C. strigulosa* is not known from San Benito County, but its range overlaps with *C. contorta* in several other locations in the Coast Range. Raven (1969) hypothesized that differentiation at the tetraploid level gave rise to local endemics such as *C. benitensis* and *C. integrifolia*. Undoubtedly, the unusual soil conditions of Clear Creek Canyon are correlated with the derivation of this species.

The concern was voiced several times by commenters that *C. benitensis* may occur in other areas. The Service recognizes this as a relatively remote possibility considering the limited extent of alluvial serpentine areas in this region. Surveys by BLM botanists, Dr. J.R. Griffin, and other local botanists have found no locations for this species in other drainages or regions despite efforts over the years since *C. benitensis* was described. Therefore, based upon the best available scientific information, the Service finds it reasonable to assume that *C. benitensis* is endemic to the Clear Creek and San Carlos Creek drainages.

The major concern voiced by all of the ORV representatives at the hearing was that the listing of *Camissonia benitensis* would "close down" or significantly reduce ORV recreation in the vicinity of Clear Creek. This is highly unlikely because of the very limited habitat of this plant along the alluvial terraces of Clear Creek and San Carlos Creek. Non-riparian and non-alluvial areas of Clear Creek evidently do not provide habitat for this species. Most upland sites, therefore, could still be available for ORV activities. A management plan for the area could be developed in such a way that ample protection for the *Camissonia* could be provided without closing large areas to ORV recreationists.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Camissonia benitensis* (San Benito evening-primrose) should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424, revised 49 FR 38900, October 1, 1984) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Camissonia benitensis* (San Benito evening-primrose) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* In the past, habitat and colonies of *Camissonia benitensis* along Clear Creek on BLM land have been adversely affected by ORV activities (Marcus 1979). Recent efforts by BLM to protect the species by fencing of observed colonies have been relatively effective in preventing additional losses and may have enhanced survival on those specific sites. However, recent surveys suggest that the population consists only of approximately 1,000 individuals, a relatively low number for an annual plant. The close proximity of camping and ORV free play areas and trails to fenced *Camissonia* sites along Clear Creek makes protection of the species heavily dependent upon voluntary user compliance (BLM 1982). This situation provides uncertain protection for the species. These same difficulties also limit BLM's protection of *Camissonia* within the "Natural Area" along San Carlos Creek.

In addition to the sites on public land, one of the largest colonies occurs on private land near the entrance to Clear Creek Canyon. Active gravel removal at this site threatens to destroy the entire colony. Stochastic losses may become a problem in causing further declines of the species in all areas. Federal listing may provide additional limited options to protect these sites.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable.

C. *Disease or predation.* Not applicable.

D. *The inadequacy of existing regulatory mechanisms.* At this time *Camissonia benitensis* is not listed as rare or endangered by the State of California and, therefore, protection is minimal. The BLM, which recognizes ORV activities as a legitimate use of the public land in this area, is attempting to protect individual colonies of the plant on public land by fences, barriers, weekly patrols, and requests for user compliance. The Service does not believe that this provides certain protection for the species. Listing under the Act will aid in the conservation of this species through interagency cooperation under section 7 of the Act. Moreover, section 9(a)(2)(B) of the Act prohibits removing and reducing to possession any endangered plant from areas under Federal jurisdiction. Section 4(d) allows for the provision of such protection to threatened species through regulations. This protection will apply to *Camissonia benitensis* under Federal jurisdiction once revised regulations are promulgated.

E. *Other natural or manmade factors affecting its continued existence.* Although *Camissonia benitensis* is an annual, it appears to have only a moderate reproductive capacity, even under favorable conditions (Griffin 1977). Very little is known about its environmental requirements and it is unclear whether the plant will be able to recover or expand even with protection. Under existing conditions intensive ORV use in close proximity to fenced *Camissonia* sites increased the likelihood of vandalism. Federal listing will assist in providing additional authority to protect the species and its habitat.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Camissonia benitensis* as a threatened species. The Service finds that the protective measures initiated by the BLM on public land have reduced adverse impacts of ORV activities to the point where the species is no longer in danger of extinction. However, uncertain protection hampers efforts to fully protect the species on public land and gravel removal on private land threatens to destroy one of the largest colonies of the plant, so that it is likely to become endangered without vigorous protection under the Act. Critical habitat has not been designated because of the threat of vandalism and increased enforcement problems, as is explained more fully in the following section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. This species is potentially threatened by vandalism, and occurs in an area in which enforcement of restrictions against such activity is difficult because of its remoteness. Publication of maps indicating specific areas where this species occurs would likely increase the threat of vandalism and increase enforcement problems. Therefore, it would not be prudent to determine

critical habitat for *Camissonia benitensis* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal in the **Federal Register** of June 29, 1983, 48 FR 29990. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. Consultations involving the BLM are anticipated for actions involving public lands. Development and implementation of the management plan for the Clear Creek area will likely require formal consultation pursuant to section 7(a)(2). No other actions are now known that would require a section-7 consultation.

The Act, and its implementing regulations found at 50 CFR 17.71 and 17.72, set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to the San Benito evening-primrose, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate of foreign commerce. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since the species is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. Section 4(d) allows for the provision of such protection to threatened species through regulations. This protection will apply to *Camissonia benitensis* under Federal jurisdiction once revised regulations are promulgated. Once the revised regulations are promulgated, permits for exceptions to this prohibition will be available through sections 10(a) and 4(d) of the Act. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that few collecting permits for the species will ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Bureau of Land Management. 1982. Implementation plan for off-road vehicle designations in the Clear Creek Recreation Area. BLM Hollister Resource Area. Unpubl. plan.

Griffin, J.R. 1977. Status report for *Camisssonia benitensis*. California Native Plant Society. Unpubl. rept.

Griffin, J.R. 1978. Survey of rare and endangered plants of the Clear Creek Recreation Area. Report to Folsom District Manager. BLM, #CA-040-PH8-078. Unpubl. rept.

Kiguchi, L.M. 1983. Sensitive plant survey: Clear Creek Recreation Area and San Benito Mountain Natural Area. BLM Hollister Resource Area. Unpubl. rept.

Marcus, D. 1979. Inventory of rare and endangered plants of the Folsom District (BLM). Status report for *Camissonia benitensis*. BLM contract report. Unpubl. rept.

Raven, P.H. 1969. A revision of the genus *Camissonia* (Onagraceae). Contributions U.S. National Herb. 37:332-333.

Author

The primary author of this rule is Monty Knudsen, Sacramento Endangered Species Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E-1823, Sacramento, California 95825 (916/484-4935; FTS 468-4935).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order, under Onagraceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * * *

(h) * * *

Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Onagraceae—Evening primrose family:						
* * * * * *						
Camissonia benitensis	San Benito evening-primrose	U.S.A. (CA)	T	171	NA	NA
* * * * * *						

Dated: December 24, 1984.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-3319 Filed 2-11-85; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 20

Migratory Bird Hunting; Zones in Which Nontoxic Shot Will Be Required for Waterfowl Hunting in the 1985-86 Hunting Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule contains descriptions of areas in which nontoxic shot will be required for waterfowl hunting in the 1985-86 hunting season. When eaten by waterfowl, spent lead pellets may have a toxic effect. The only approved nontoxic shot available at this time is steel shot. This rule contains descriptions of the same areas that were identified for this purpose in the 1984-85 waterfowl hunting seasons, except in the following States where there are minor changes in boundary descriptions, zones added, or zones removed:

New York (boundary change)
North Carolina (zones removed)
South Carolina (zones removed)
Virginia (zones removed)
Indiana (boundary change)
Illinois (correction)
Tennessee (zones added)
Wisconsin (zones added)
Nebraska (zone added)

In addition to the above changes, all National Wildlife Refuges (NWRs) that require nontoxic shot are included in this final rule for the first time. These NWRs were formerly listed only in 50 CFR 32.12 but will now be listed with all other nontoxic shot zones in 50 CFR 20.108.

This final rule contains descriptions of the same areas that were proposed for public comment on October 30, 1984 (49 FR 4370-74) with the following exceptions:

North Carolina (zones removed)
Illinois (correction)
Indiana (correction)
Texas (correction)
Montana (zone removed)
Nevada (zone removed)
Utah (zone removed)
California (zone removed)

EFFECTIVE DATE: August 31, 1985.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (202-254-3207).

SUPPLEMENTARY INFORMATION: Appropriated funds for the Department of the Interior for fiscal year 1985 were restricted in their use by the following provision:

> No funds appropriated by the Act shall be available for the implementation or enforcement of any rule or regulation of the United States Fish and Wildlife Service, Department of the Interior, requiring the use of steel shot in connection with the hunting of waterfowl in any State of the United States unless the appropriate State regulatory authority approves such implementation.

Between August 10 and 31, 1984, each State was contacted by the Service by phone and notified that a proposal for nontoxic shot zones in 1985-86 hunting seasons would be published. On or about September 5, 1984, each State that was listed in the 1983-84 nontoxic shot regulations received a letter requesting approval in writing for the Service to implement and enforce the regulations in the 1984-85 hunting season. Failure of a State to approve this implementation or enforcement of zones in the 1984-85 hunting season was interpreted by the Service as a request to remove such zones from the regulations prior to the 1985-86 hunting season. The States of Virginia and South Carolina did not approve the implementation of the regulation in 1984. The responses received from States at that time included requests for boundary adjustments and other changes. Such changes were requested by Nebraska, Wisconsin, New York, Indiana, and Florida.

In previous years nontoxic shot zones on lands not administered by the Service were published in 50 CFR 20.108 and zones on Service lands were published in 50 CFR 32.12. A decision was made to amend 50 CFR 20.108 in 1985 to include all federally implemented and enforced nontoxic shot zones regardless of land ownership.

The Service conducted in 1983 a program to monitor the occurrence of lead poisoning on selected NWRs. Nineteen NWRs were investigated. Based on results of this work, the Service concluded that lead poisoning was a matter of concern on at least 5 of the 19 areas. These five NWRs were selected to be proposed as nontoxic shot zones in 1985. They were Stillwater (Nevada); Missisquoi (Vermont); Benton Lake (Montana); and Tule Lake and Lower Klamath (California).

On October 30, 1984, the Service published in the **Federal Register** (49 FR 43570-74) a proposed rule containing descriptions of nontoxic zones for 1985-86 using the 1984 nontoxic shot regulations modified as described above. Public comment on this proposal was received until December 10, 1984. Public meetings were held at Tule Lake, California; Reno, Nevada; Great Falls, Montana; and Swanton, Vermont to receive comment on the five National Wildlife Refuges proposes for the first time on October 30, 1984.

On December 11, 1984, each of the 34 States listed in the proposed rule of October 30, 1984 (49 FR 43570-74), were contacted by telegram and their approval to begin the implementation of this rule for the 1985-86 waterfowl hunting season was requested. Those States not responding with written statements of approval were removed from this final rule.

Summary of Public Comment and State Responses to Telegram

Comments of State wildlife agencies: In response to the proposed rule of October 30, 1984 (49 FR 43570-74), 12 State wildlife agencies sent letters to the Service. Nebraska Game and Parks Commission notified the service that they have plans to require nontoxic shot statewide in 1985. The Illinois Department of Conservation, Texas Parks and Wildlife Department, and Indiana Department of Natural Resources notified the Service of minor changes in the wording of the regulation as proposed. The Nevada Department of Wildlife expressed opposition to the nontoxic shot zone proposed for Stillwater NWR in Nevada on the grounds that there is not enough evidence of a problem at that location. New York State Department of Environmental Conservation notified the Service that Bashakill Wildlife Management Area in Sullivan and Orange Counties will be a nontoxic shot zone in 1985 by State regulation and the

area was not included in the Service's proposal. Rhode Island Division of Fish and Wildlife requested that The Great Swamp Management Area dike and waterfowl impoundment in Rhode Island be added to the nontoxic shot zones for 1985. Michigan Department of Natural Resources notified the Service that additional areas in Michigan will be considered as nontoxic shot zones prior to the 1985 hunting seasons. Colorado Division of Wildlife, Louisana Department of Wildlife and Fisheries, and Alaska Department of Fish and Game all provided comments in opposition to certain counties listed in a petition submitted to the Service by the National Wildlife Federation for nontoxic shot regulations to protect bald eagles. These counties were listed in the preamble to the October 30, 1984 proposal but were not part of that proposal.

In response to the telegram sent by the Service to 34 States on December 11, 1984 the Service received the following responses. Twnety-nine States that were listed in the proposal of October 30, 1984 granted approval to the Service to finalize the rule and enforce it. One State, North Carolina, gave approval to finalize only those NWRs within the proposal for that State. Utah, Nevada, Montana, and California denied implementation of the proposal at this time.

Service responses: Changes in the proposal, as requested by Illinois, Texas, and Indiana, have been made for tis final rule. Proposals for Nevada, Montana, California, and Utah have been removed from this final rule, and that portion of North Carolina not approved by the State has been removed. The comments by Alaska, Colorado, and Louisiana relative to bald eagles are discussed as part of a separate proposal dealing with lead poisoning of bald eagles to be published later by the Service. The additional zones requested by New York and Rhode Island must be proposed for public comment before they can be finalized. The Service plans to develop another proposal on this subject in late February or early March 1985. It is unlikely that any new nontoxic zones can be proposed for 1985 after that planned final proposal is developed.

Comments of private organizations and individuals: Sixteen letters in support of the proposal were received. Eleven of these were from individuals and five were from organizations. The organizations were the Humane Society of the United States, Siskiyou County Sportsmen Association (California), Green Mountain Audubon Society (Vermont), Vermont Audubon Council, Maryland Chapter of The Wildlife Society, and Northeast Kingdom Audubon (Vermont).

Seven letters were received in opposition to one or more aspects of the proposal. Five of these were from organizations. The organizations were Oregon Landowners and Waterfowlers Association, Waterfowl Habitat Owners Alliance (California), California Waterfowl Association, Wildlife Legislation Fund of America, and National Wildlife Federation.

With the exception of the National Wildlife Federation, all other organizations and two individuals opposed the proposal because they doubt that lead poisoning is as significant as it is presented to be, or they believe the performance of steel shot is inadequate, or both of the above.

The National Wildlife Federation (NWF) opposed the proposal because it did not include the counties identified by NWF in their petition to the Service dated August 1, 1984, and it did not include all National Wildlife Refuges (NWRs) where, in the opinion of NWF, lead poisoning problems have been documented. The NWF petition of August 1, 1984 dealt primarily with the protection of bald eagles that sometimes feed on dead, crippled, or sick waterfowl that contain lead shot. Nontoxic shot requirements on additional NWRs was discussed in a petition from National Wildlife Federation to the Service dated October 24, 1984. Twenty-three NWRs were indentified in that petition.

Service responses: Our ability to measure accurately the significance of lead poisoning due to lead shot ingestion at specific locations has been a subject of study and discussion for the past 8 years. In each decision to propose an area several factors are being measured and considered by the Service. The Service recognizes that some view our criteria as liberal and others view them as stringent. On January 16, 1985 the Service published for comment in the **Federal Register** a proposed set of guidelines that would standardize the process of selecting areas where nontoxic shot will be used (49 FR 2298–2301). The Service welcomes comment on the proposed guidelines. Since 1976, when the nontoxic shot program was first initiated, the Service has taken the position that nontoxic shot should not be required except in cases where evidence of a lead poisoning problem has been documented. The Service believes that the areas proposed for 1985 were zones where evidence of a problem was well documented.

The Service recognizes that controversy continues regarding the relative performance of steel shot compared to lead shot. Based upon tests conducted to date, the Service continues in its position that steel shot is an adequate substitute for lead shot in areas where the occurrence of a significant lead poisoning problem among migratory birds has been demonstrated.

National Wildlife Federation's concern that the protection of bald eagles was not considered in this proposal will be dealt with in a separate **Federal Register** document containing a proposal for the protection of bald eagles. That document will be published as a proposed amendment to 50 CFR 20.108. NWF's petition regarding 23 National Wildlife Refuges where they believe nontoxic shot should be required was responded to in a letter from the Service to NWF dated November 19, 1984. In the letter each of the NWRs in question was discussed and current and future plans outlined. Many of these NWRs are involved in a lead poisoning monitoring program of the Service that is now in its second year. In other cases the lead poisoning problem that was identified in the vicinity of the NWR appears to be due to situations outside the boundaries. The Service believes that it is dealing with the problem of lead poisoning on NWRs in a responsible manner.

Four public meetings were held in relation to the proposed rule of October 30, 1984 (49 FR 43570–74). These meetings were held to permit the Service to discuss with the public the five NWRs that were being proposed for the first time in 1985. These meetings were held at the following locations on the days indicated below:

Tule Lake, California—December 3, 1984
Reno, Nevada—December 6, 1984
Great Falls, Montana—November 30, 1984
Swanton, Vermont—December 5, 1984

The Service considered the comments received at these meetings along with letters received.

This rule will not result in the collection of information from, or place recordkeeping requirement on, the public under Paperwork Reduction Act of 1980. In accordance with Executive Order 12291, it has been determined that this rule is not a major rule. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) it was determined that this rule, if implemented without adequate notice, could result in ammunition supplies for which there is no local demand. It is

believed that adequate notice will be provided. Therefore, it was determined that the rule would not have a significant economic effect on a substantial number of small entities. A copy of the analysis relating to these decisions, Determination of Effects of Amendment to Steel Shot Rules for 1985, can be obtained from the U.S. Fish and Wildlife Service (MBMO), Washington D.C. 20240.

An Environmental Impact Statement on the steel shot program was signed in 1976. In addition, Environmental Assessments were prepared on various aspects of the steel shot program in 1977 through 1980.

This final rule was authored by Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended, authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

PART 20—[AMENDED]

In light of the foregoing, 50 CFR Part 20 is amended as follows:

1. The authority citation continues to be read as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 704); sec. 3(h)(3), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712).

2. Part 20.108 is revised to read as follows:

§ 20.108 Nontoxic shot zones.

The areas described within the States indicated below are designated for the purpose of § 20.21(j) as nontoxic shot zones for waterfowl hunting.

Atlantic Flyway

Connecticut

1. That portion of New Haven and Fairfield Counties bounded by a line beginning at the north end of the breakwater at Milford Point extending south to Stratford Point, north along Prospect Drive and Route 113 to Interstate 95, easterly along I–95 to Naugatuck Avenue, southerly along Naugatuck Avenue and Milford Point Road and continuing along a line extending from the end of Milford Point Road to the north end of the breakwater at Milford Point.

2. That portion of New Haven County along the Quinnipiac River known as the Quinnipiac Meadows beginning at the intersection of Sackett Point Road and I–91, extending south along I–91 to Route 5, northerly along Route 5 to Sackett Point Road, and easterly along Sackett Point Road to I–91.

Delaware

All lakes, ponds, marshes, swamps, bays, rivers, and streams or within 150 yards thereof within the boundaries of the following areas:

1. Chesapeake and Delaware Canal State Wildlife Area.
2. Augustine State Wildlife Area.
3. Woodland Beach State Wildlife Area.
4. Little Creek State Wildlife Area.
5. Prime Hook State Wildlife Area.
6. Bombay Hook National Wildlife Refuge.
7. Prime Hook National Wildlife Refuge.
8. Cape Henlopen and Delaware Seashore State Parks and Assawoman and Gordon's Pond Wildlife Areas.

Florida

That portion of Brevard County lying east of Interstate Highway 95; Osceola, Broward, and Dade Counties, Leon County (exclusive of Lake Talquin and the Ochlockonee River); Lake Miccosukee in Leon and Jefferson Counties; Orange Lake and Lochloosa Lake in Alachua County; the area lying lakeward of, and bounded by the Lake Okeechobee levee, by the State Road 78, Kissimmee River bridge, and by State Road 78 from its intersections with the Lake Okeechobee levee at points near Lakeport and the Old Sportsman's Village site; all of the Occidental phosphate mine pits east of SR 137, Black Still Road and Christie Tower Road, west of SR 135, south of SR 6 and north of White Springs (all located in Township 1 north, Ranges 15 and 16 east and Township 1 south, Ranges 15 and 16 east in Hamilton County); Lake Ponte Vedra in St. Johns County (all waters north of the Guana Dam); IMC Wildlife Management Area in Polk County; and M–K Ranch public waterfowl area in Gulf County.

Chassahowitzka National Wildlife Refuge, Loxahatchee National Wildlife Refuge, Merritt Island National Wildlife Refuge, and Lower Suwannee National Wildlife Refuge.

Georgia

Eufaula National Wildlife Refuge and Savannah National Wildlife Refuge.

Massachusetts

Parker River National Wildlife Refuge and Plum Island.

New Jersey

That portion of the State bounded on the north by the Shark River, on the west by the Garden State Parkway, on the south by the Cape May Canal, and on the east by the Atlantic Ocean.

Forsythe National Wildlife Refuge.

New York

All waters (including bays, lakes, ponds, marshes, swamps, rivers, streams, and ocean waters but not including temporary or sheet water) and all land areas within 150 yards of all waters of the following portions of New York:

1. That part of upstate New York west of I–81; that is north of I–90, and within a 150-yard zone of land adjacent to the margins of said waters in those areas, but not to include drainage ditches and temporary sheet waters outside the 150-yard zone of land adjacent to the margins of aforesaid waters, nor the waters of the Niagara River north of the Peace Bridge and the waters of Lake Ontario, outside the barrier beach, from the mouth of the Niagara River in Niagara County to Tibbets Point in Jefferson County but not to include the Henderson Bay-Black River Bay area east of a line running from Snowshoe Point on Henderson Harbor to Pillar Point on the southward portion of Pillar Point Peninsula.

2. That part of Nassau County south of Route 27 that is west of Wantagh Parkway and its southerly extension to the Atlantic Ocean.

3. Oneida Lake and adjacent areas bounded on the north by Route 49, on the east by Route 13, on the south by Route 31 and on the west by I–81.

4. Wilson Hill Wildlife Management area in St. Lawrence County.

5. Upper and Lower Lakes Wildlife Management area in St. Lawrence County.

6. That area including and adjacent to the Hudson River south of an imaginary line extending perpendicular from the east and west shores and passing through the flashing green light buoy number 13 in the river near Lampman Hill in the Town of Coxsackie, and north of an imaginary line extending perpendicular from the east and west shores and passing through flashing red light buoy number 28 in the river near Tyler Point in the Town of Ulster; except

for that portion of the area enclosed by a continuous line starting on the west shore of the river and extending eastward along the imaginary perpendicular line to flashing red light buoy number 28, then northward along the east side of the deep water channel which is marked by red buoys to red buoy number 50 (Cruger and Magdalen Islands are entirely in the steel shot zone), then westward to the west shore of the river following an imaginary line perpendicular to the shore, then southward along the shore to the point of beginning.

7. Iroquois and Montezuma National Wildlife Refuges.

North Carolina

Cedar Island National Wildlife Refuge, Mattamuskeet National Wildlife Refuge, and Swanquarter National Wildlife Refuge.

Pennsylvania

Crawford County, Middle Creek Wildlife Management Area in Lancaster and Lebanon Counties, and the waters of the Susquehanna River beginning at the confluence of the North and West branches at Northumberland and continuing southward to the Maryland-Pennsylvania State boundary and including a 25-yard zone of land adjacent to the waters of the Susquehanna River that are described above.

Erie National Wildlife Refuge.

Rhode Island

That portion of Washington County lying south and east of U.S Route 1 but excluding Block Island and the waters of Block Island Sound and Narragansett Bay.

Vermont

Missisquoi National Wildlife Refuge.

Mississippi Flyway

Alabama

Eufaula National Wildlife Refuge.

Illinois

Oakwood Bottoms Greentree Reservoir, Rice Lake Public Hunting Area, Union County Public Hunting Area, Horseshoe Lake, Horseshoe Lake Public Hunting Area (Alexander County), Rend Lake and related subimpoundments and all adjacent lands managed by the U.S. Army Corps of Engineers and the Illinois Department of Conservation.

Crab Orchard National Wildlife Refuge.

Indiana

1. On all waters of Lake Porter (except that area south of U.S. 30 and north of S.R. 8), LaPorte, Newton (north of S.R. 14), Jasper (north of S.R. 114), Starke, Elkhart, Kosciusko, Lagrange, and Steuben Counties and within 150-yard zone of land in these counties adjacent to the margins of these waters. This includes lakes, ponds, marshes, swamps, rivers, streams, and seasonally flooded areas of all types. Excluded from these provisions are the waters of Lake Michigan and drainage ditches and temporary sheet water that are more than 150 yards from the waters described above.

2. All waters and within a 150-yard zone of land adjacent to the margins of these waters on the Jasper-Pulaski, Tri-County, and Glendale Fish and Wildlife Areas.

3. Within the boundaries of the following state-owned or state-operated properties: Hovey Lake Fish and Wildlife Area in Posey County, Mallard Roost Wetland Conservation Area in Noble County, Monroe Reservoir in Monroe and Brown Counties, and Patoka Reservoir in Dubois, Crawford and Orange Counties.

4. Within the proposed boundaries of the Menominee Wetlands Conservation Area in Marshall County.

Iowa

1. In Fremont and Mills Counties on all waters and a 150-yard zone of land in these two Counties adjacent to waters. The waters referred to above include lakes, ponds, marshes, swamps, rivers, streams, and seasonally flooded areas of all types. Excluded from these provisions are the waters of the Missouri River and drainage ditches and temporary sheet water that are more than 150 yards from the waters described above.

2. All waters and a 150 yard zone of land adjacent to these waters on the following public hunting areas under the jurisdiction of the State Conservation Commission:

Sweet Marsh in Bremer County
Big Marsh in Butler County
Green Island Area in Jackson County
Princeton Area in Scott County

3. Upper Mississippi River Wildlife and Fish Refuge and De Soto National Wildlife Refuge.

Louisiana

Lacassine National Wildlife Refuge and Sabine National Wildife Refuge.

Michigan

A. *Eastern Upper Peninsula.* 1. That area of Chippewa County encompassed by a line from the tip of Conely's Point (Section 4, T44N R2E) southeasterly to the tip of Winter Point (Section 14 T44N R2E) to the tip of Rocky Point (Section 25, T44N R2E); then south on Rocky Point Road and west on Gogomain Road to the Town of Pickford; north on M–129 to the junction with 15-Mile Road (Section 19, T45N R1E); to the Village of Neebish; then south on the paved road from Neebish (Scenic Drive) to the point of beginning at Conely's Point.

2. The waters of Potagannissing Flooding on Drummond Island.

B. *Houghton Lake.* That area of water and land encompassing Houghton Lake, Roscommon County, described by road boundaries as follows: south of Meads Landing Road, County 300 and County 100; west of M–18; north of M–55; and east of US–27.

C. *Saginaw Bay.* 1. That area of Arenac, Bay, Tuscola, and Huron Counties south of US–23; east of M–13; north of M–25; south of Cresent Beach Road (Caseville Township, Huron County); and southwest of a line from the tip of Sand Point (Section 11 T17N R9E, Huron County) to Point Lookout (Section 13, T19N R7E, Arenac County); and Shore Road (Sims Township, Arenac County).

2. On all lands and waters within the posted boundaries of the following State or Federal management areas:

a. Crow Island State Game Area—Bay and Saginaw Counties.

b. Shiawassee River State Game Area—Saginaw County.

c. Shiawassee National Wildlife Refuge—Saginaw County.

D. *Southeastern Michigan.* 1. That area of Jackson County (north of I–94 and east of M–106); Ingham County (east of M–106/M–52 and south of M–36); Livingston County (south of M–36, east of M–155, and south of M–59); Oakland County (south of M–59, west of US–24 [Telegraph Road], north of I–96, and west of I–275); Wayne County (west of I–275 and north of M–14); Washtenaw County (north of M–14 and I–94); and St. Clair, Macomb, Wayne and Monroe Counties east of I–94 and I–75 including the U.S. waters of the St. Clair River, Lake St. Clair, and Detroit River, and Lake Erie.

2. On all lands and waters within the posted boundaries of the U.S. Fish and Wildlife Service Schlee Waterfowl Production Area located in Section 6, T3S R2E of Grass Lake Township, Jackson County.

E. *Southwestern Michigan.* 1. Muskegon, Ottawa, and Kalamazoo Counties, and Allegan County west of US–131, including the waters of Lake Michigan lakeward for one-half mile

from the shore. All county boundary waters and lakes partially within the steel shot zone are totally included.

2. All lands and waters within the posted boundary of the Muskegon County Wastewater System, Muskegon County.

Mississippi

Hillside National Wildlife Refuge, Mathews Brake National Wildlife Refuge, Morgan Brake National Wildlife Refuge, Noxubee National Wildlife Refuge, and Panther Swamp National Wildlife Refuge.

Minnesota

1. All State Wildlife Management Areas and all Federal Waterfowl Production Areas.

2. On the waters on Swan and Middle Lakes in Nicollet County, North and South Heron Lakes in Jackson County, Pelican Lake in Wright County, Bear Lake in Freeborn County, and Christina Lake in Douglas and Grant Counties and within a 150-yard zone of land adjacent to the margins of the above lakes.

3. Beginning at the intersection of the midline of the Mississippi River and U.S. Highway 61 at Hastings, thence southerly along U.S. Highway 61 to U.S. Highway 16 at LaCrescent, thence southerly along U.S. Highway 16 to State Trunk Highway 26, thence southerly along State Trunk Highway 26 to the southern boundary of the State; thence along the southern and eastern boundaries of the State to the confluence of the St. Croix and Mississippi Rivers, thence along the midline of the Mississippi River to the point of beginning.

4. *Lac qui Parle Zone:* Beginning at the intersection of U.S. Highway 212 and County State Aid Highway (CSAH) 27, Lac qui Parle County; thence along CSAH 27 to CSAH 20, Lac qui Parle County, thence along CSAH 20 to State Trunk Highway (STH) 40; thence along STH 40 to STH 119; thence along STH 119 to CSAH 34, Lac qui Parle County; thence along CSAH 34 to CSAH 19, Lac qui Parle County; thence along CSAH 19 to CSAH 38, Lac qui Parle County; thence along CSAH 38 to U.S. Highway 75; thence along U.S. Highway 75 to STH 7; thence along STH 7 to CSAH 6, Swift County; thence along CSAH 6 to County Road 65, Swift County; thence along County Road 65 to County Road 34, Chippewa County; thence along County Road 34 to CSAH 12, Chippewa County; thence along CSAH 12 to CSAH 9, Chippewa County; thence along CSAH 9 to STH 7; thence along STH 7 to Montevideo; thence along the municipal boundary of Montevideo to U.S. Highway 212; thence along U.S. Highway 212 to the point of the beginning.

Tamarac National Wildlife Refuge, Sherburne National Wildlife Refuge, Upper Mississippi River Wildlife and Fish Refuge, and Minnesota Valley National Wildlife Refuge.

Missouri

Montrose Wildlife Management Area, Duck Creek Wildlife Management Area, Schell-Osage Wildlife Management Area, Fountain Grove Wildlife Management Area, Ted Shanks Wildlife Management Area, Marais Temps Clair Wildlife Management Area, Otter Slough Wildlife Management Area, and those parts of the Swan Lake and Mingo National Wildlife Refuges in which hunting of waterfowl is authorized.

Ohio

The Maumee River in Wood County and on all waters of Erie, Ottawa, Sandusky, Cuyahoga, Wayne, Holmes, and Lucas Counties and when hunting waterfowl within a 150-yard zone of land adjacent to the margins of these waters. These waters mentioned in this paragraph include lakes, ponds, marshes, swamps, rivers, streams, and seasonally flooded areas of all types. Drainage ditches and temporary sheet water more than 150 yards from the water areas described in this paragraph are excluded from the nontoxic shot requirements.

Ottawa National Wildlife Refuge.

Tennessee

Lower Hatchie National Wildlife Refuge, Hatchie National Wildlife Refuge, and Cross Creeks National Wildlife Refuge.

Wisconsin

1. In that portion of the State lying west of the Burlington Northern Railway in Pierce, Pepin, Buffalo, Trempealeau, La Crosse, Vernon, Crawford and Grant Counties and all signed federal lands lying east of such railway in these same Counties.

2. On all waters in the Counties of Calumet, Columbia, Dane, Dodge, Fond du Lac, Green Lake, Jefferson, Kenosha, Manitowoc, Marquette, Milwaukee, Outagamine, Ozaukee, Racine, Sheboygan, Walworth, Waukesha, Winnebago, Washington, Waupaca and those portions of Oconto and Marinette Counties east of U.S. Highway 41, Waushara County east of Highway 49, and that portion of Brown County lying northwest of the Fox River and east of U.S. Highway 141, and the Brown County islands in Green Bay and including the west 1,000 feet of Green Bay waters, and within a 150-yard zone of land adjacent to the margins of these waters, except that in the Horicon and Central goose management zones, non-toxic shot will be requried for all waterfowl hunting. The waters referred to above include lakes, ponds, marshes, swamps, rivers, streams and seaonally flooded areas of all types. Drainage ditches and temporary sheet water more than 150 yards from the water areas described above and the open water of Lake Michigan and Green Bay are excluded from the non-toxic shot requirements. All county boundary waters and lakes partially within a steel shot zone are totaly included.

3. On any State wildlife area within the zones described in (2), steel shot is required for hunting waterfowl anywhere on State-owned lands or waters within the boundaries of said wildlife area and on the following State-owned wildlife areas that are not within the zones described in (2): Mead Wildlife Area in Marathon, Wood and Portage Counties, Wood County Wildlife Area and Sandhill Wildlife Area in Wood County, Meadow Valley.

4. Trempealeau National Wildlife Refuge, Necedah National Wildlife Refuge, Upper Mississippi River Wildlife and Fish Refuge, and Horicon National Wildlife Refuge.

Central Flyway

Kansas

Barton County: The Cheyenne Bottoms Wildlife Area except the south 200 yards west of U.S. 156 and east of the north-south centerline of S36, T18S, R13W in Barton County and that area west of U.S. 281 commonly known as the inlet canal.

Linn County: All of the Marais des Cygnes Wildlife Areas.

Montgomery County: All of the Elk City Reservoir and Wildlife Area including all lands and waters managed by the U.S. Corps of Engineers and the Kansas Forestry, Fish and Game Commission.

Neosho County: All of the Neosho Wildlife Area.

Reno County: All of the Cheney Reservoir and Wildlife Area including all lands managed by the U.S. Bureau of Reclamation and the Kansas Forestry, Fish and Game Commission. Also, that portion of Quivira National Wildlife Refuge in Reno County.

Stafford County: That portion of the Quivira National Wildlife Refuge in Stafford County.

Rice County: That portion of the Quivira National Wildlife Refuge in Rice County.

Nebraska

1. All waters of Clay, Fillmore, Kearney, and Phelps Counties and zone of land within 150 yards of these waters. Included are all lakes, ponds, marshes, lagoons, rivers and streams and seasonally flooded areas of all types. Excluded from these provisions are the waters of the Platte River and temporary sheet water that are more than 150 yards from the waters described above.

2. All State and federally owned or controlled public hunting areas as designated by the Commission and posted as non-toxic shot areas for waterfowl hunting (Macon WPA, Quadhammer WPA, and Ritterbush WPA in Franklin County; Elley WPA, Peterson WPA, Victor Lake WPA, Johnson Lake Reservior, and Elwood Reservior in Gosper County; County Line WPA, Sinninger WPA, and Waco WPA and York County; (Pintail WPA—Hamilton County; Smartweed WMA—Nuckolls County; Harlan County Reservoir—Harlan County; Schilling WMA—Cass County).

3. Those lands and waters in Keith and Garden Counties defined as: All lands and water lying west of Omaha Beach and Eagle Canyon access roads between State Highway 92 and U.S. Highway 26 to the Lewellen Bridge.

4. That area west of Nebr. 27 from the South Dakota/Nebraska line, south to Nebr. 2, east on Nebr. 2 to Nebr. 61, south on Nebr. 61 to Nebr. 23 and west on Nebr. 23 to the Colorado/Nebraska line.

New Mexico

That area bounded by a line beginning at the junction of U.S. Highway 60 and Interstate Highway 25 and running south along Interstate 25 approximately 13.5 miles to the San Acacia overpass; thence east along a paved and dirt road to the west bank of the Rio Grande at the San Acacia diversion; thence northeast along the west bank of the Rio Grande to U.S. Highway 60; thence west along U.S. Highway 60 to its junction with Interstate Highway 25.

Sevilleta National Wildlife Refuge, Las Vegas National Wildlife Refuge, Bosque del Apache National Wildlife Refuge, and Bitter Lake National Wildlife Refuge.

Oklahoma

Washita National Wildlife Refuge and Sequoyah National Wildlife Refuge.

Texas

That area lying within boundaries beginning at the Louisiana State line, thence westward along IH 10 to the junction of U.S. Highway 90 and IH 10 in Beaumont, thence westward along U.S. 90 to its junction with IH 610 in Houston, thence north and west along IH 610 to its junction with U.S. Highway 290 in Houston, thence westward along U.S. Highway 290 to its junction with State Highway 159 in Hempstead, thence southwestward along State Highway 159 to its junction with State Highway 36 in Bellville, thence eastward along State Highway 36 to its junction with FM 2429, thence southward along FM 2429 to its junction with FM 949, thence southwestward along FM 949 to its junction with IH 10, thence westward along IH 10 to its junction with U.S. Highway 77 at Schulenburg, thence southward along U.S. Highway 77 to its junction with the U.S.-Mexico international boundary at Brownsville, thence eastward along the U.S.-Mexico international boundary to the Gulf of Mexico, thence east and seaward to the three marine league limit, thence northeastward along the three marine league limit to the Louisiana State line, thence northward along the Texas-Louisiana State line to its junction with IH 10.

Anahuac National Wildlife Refuge, Big Boggy National Wildlife Refuge, Brazoria National Wildlife Refuge, McFaddin National Wildlife Refuge, San Bernard National Wildlife Refuge, Texas Point National Wildlife Refuge and Matagorda Island National Wildlife Refuge.

Pacific Flyway

Oregon

Sauvie Island Wildlife Management Area.

Ankeny National Wildlife Refuge, Baskett Slough National Wildlife Refuge, and William L. Finley Wildlife Refuge.

Washington

Beginning at Interstate 5 and Highway 20 at Burlington, thence easterly along Highway 20 to Highway 9 at Sedro Woolley; thence southerly along Highway 9 to Highway 538 at Big Rock; thence westerly along Highway 538 to Mt. Vernon and Interstate 5; thence northerly along Interstate 5 to the point of origin.

Ridgefield National Wildlife Refuge.

Dated: January 23, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-3396 Filed 2-11-85; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 41154-4154]

Tanner Crab Off Alaska

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

ACTION: Notice of season closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the optimum harvest levels of Tanner crab in certain sections of the Kodiak District of Registration Area J have been achieved. Fishery closures are necessary to protect Tanner crab stocks in these sections. The Secretary of Commerce, therefore, issues this notice closing fishing for Tanner crabs by vessels of the United States. This action is intended as a management measure to conserve Tanner crab stocks.

DATE: This notice is effective 12:00 noon, Alaska Standard Time (AST), February 7, 1985.

Public comments on this notice of closure are invited until February 22, 1985.

ADDRESSES: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802. During the 15-day comment period, the date upon which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m. AST, weekdays) at (1) the NMFS Kodiak Field Office, Gibson Cove, Kodiak, Alaska, and (2) the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (NMFS Fishery Management Biologist, Kodiak Field Office), 907-486-3298.

SUPPLEMENTARY INFORMATION:

Background

The Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP), which governs this fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act), provides for inseason adjustments of season and area openings and closures. Implementing rules at 50 CFR 671.27(b) specify that notices of these adjustments will be

issued by the Secretary of Commerce under criteria set out in that section.

Section 671.26(f) establishes six districts within Registration Area J in order to prevent overfishing of individual Tanner crab stocks by allowing closure or partial closure of a particular district when the desired harvest level is reached. The Kodiak District is further subdivided into eight sections. The desired harvest levels for 1985 were based on pot and trawl index surveys in the Eastside Section and pot index surveys in the Northeast and Westside Sections conducted by the Alaska Department of Fish and Game. The 1985 fishing season for all sections began on January 15. Reasons for the closures in these areas follow:

Eastside Section. Approximately 62 vessels have delivered about 3.0 million pounds through January 27. The catch of crabs per pot has declined from about 137 to 24 crabs per pot. This catch compares with a decline from 71 to less than 15 crabs per pot during the 1984 fishing season. The catch throughout this section was uniform, consisting of approximately 83 percent recruit-size crabs. Based on these findings during the present season, the harvest in this section was allowed to exceed the 2.16-million-pound projected harvest level and reached about 4.0 million pounds on February 1.

Northeast Section. Thirty-nine vessels have delivered about 0.7 million pounds of crabs through January 27, 1985. The catch has declined from 54 to 10 crabs per pot. The projected desired harvest level of 0.9 million pounds was reached on February 2.

Westside Section. Approximately 28 vessels have delivered about 0.4 million pounds through January 27, 1985. The catch has declined rapidly from 33 to less than 10 crabs per pot. On the basis of the rapid decline in catch and the potential for considerable handling mortality of female and sublegal male crabs, the fishery is being limited to a desired harvest level substantially less than the previously projected level of 0.85 million pounds.

In light of this information, the Regional Director, in accordance with § 671.27(b), has determined that:

1. Actual conditions of Tanner crab stocks in the above sections are substantialy different from conditions anticipated at the beginning of the fishing year; and

2. These differences reasonably support the need to protect those Tanner crab stocks by closing the Eastside, Northeast, and Westside Sections of the Kodiak District, as defined in § 671.26(f)(1)(i). These sections are therefore closed to all fishing for Tanner crab from 12:00 noon, AST, February 1, 1985, until 12:00 noon, ADT, April 30, 1985, at which time the closures of these areas prescribed in § 671.26(f)(2)(i) will begin.

This closure is effective after this notice is filed for public inspection with the Office of the Federal Register and after the closure is publicized for 48 hours through procedures of the Alaska Department of Fish and Game. Public comments on this notice of closure may be submitted to the Regional Director at the address stated above. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this field order's continued effect, modifying it, or rescinding it.

Other Matters

Tanner crab stocks in the above sections will be subject to damage by overfishing unless the closures take effect promptly. The Agency therefore finds for good cause that advance opportunity for public comment on this notice is contrary to the public interest and that no delay should occur in its effective date.

This action is taken under the authority of regulations specified at § 671.27 and complies with Executive Order 12291. It is not subject to the requirements of the Regulatory Flexibility Act. It does not contain any collection of information request as defined in the Paperwork Reduction Act of 1980.

List of Subjects in 50 CFR Part 671

Fisheries.

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

Dated: February 7, 1985.

Carmen J. Blondin,

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

[FR Doc. 85-3535 Filed 2-7-85; 4:57 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 29
Tuesday, February 12, 1985

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.

FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Docket No. R-0538]

Regulation T; Credit by Brokers and Dealers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to amend Regulation T (12 CFR Part 220, Credit by Brokers and Dealers) in order to continue the Board's present policy of requiring an initial margin for the writing of options that is identical to the maintenance margin required by exchange or association rules that have been approved by the Securities and Exchange Commission ("SEC"). The amendment would state that the initial margin shall be the amount specified by the rules of the national securities exchange or association authorized to trade the option if the SEC has approved the rules.

DATE: Comments should be received on or before March 15, 1985.

ADDRESS: Comments, should refer to Docket No. R-0538, and may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, D.C. 20551 or delivered to the C Street Entrance between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Laura Homer, Securities Credit Officer, Division of Banking Supervision and Regulation, (202) 452-2781, or, for the economic analysis, Carolyn Davis, Economist, Division of Research and Statistics (202) 452-3633.

SUPPLEMENTARY INFORMATION: Approval of rule changes by the SEC for a new marginal system for all options is being sought by the New York Stock Exchange, American Stock Exchange, Chicago Board Options Exchange, Pacific Stock Exchange and Philadelphia Stock Exchange. The proposed system would use a formula applicable to all current and future options and will be composed of the premium plus a percentage of the current market value of the underlying instrument minus the amount the option is out-of-the-money. A minimum amount will be established under the proposed system for each option. Both the percentage of the underlying instrument and the minimum amount have been established for those options now in existence. They are based upon annualized volatility studies and reflect the risks involved for the broker of adverse price movements over a period of time. The Board's present margin requirement for the writing of an uncovered option on a single stock is 30 percent of the current market value of the underlying security plus any unrealized loss or minus any unrealized gain. Margin requirements for other types of options presently follow the maintenance requirements of the exchange trading the option. If this proposed change is adopted by the Board, and the SEC approves the self-regulatory organizations' rule changes, all initial margin requirements for the writing of options will be at the same level as the maintenance standards established by the exchanges and approved by the SEC.

Initial Regulatory Flexibility Analysis

The change proposed by this action would reduce some administrative and regulatory burdens faced by the brokerage community. The Board certifies for purposes of 5 U.S.C. 605(b), therefore, that the proposed amendment to Regulation T is not expected to have any adverse impact on a substantial number of small businesses.

List of Subjects in 12 CFR Part 220

Banks, Banking, Borrowers, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investments, Securities.

Part 220—[AMENDED]

Accordingly, pursuant to sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w) the Board proposes to amend Regulation T (12 CFR Part 220) as follows:

1. Section 220.5 would be amended by revising paragraph (c)(2) to read as follows:

§ 220.5 Margin account exceptions and special provisions.

* * * * *

(c) * * *

(2) *Margin for options on equity securities.* The required margin for each transaction involving any short put or short call on an equity security shall be the amount set forth in section 220.18 (the Supplement).

* * * * *

2. Section 220.18 would be amended by revising paragraph (c) as follows:

§ 220.18 Supplement: Margin requirements.

* * * * *

(c) *Short put or short call on an equity security.* The amount specified by the rules of the national securities exchange or association authorized to trade the option, provided that all such rules have been approved or amended by the SEC.

* * * * *

By order of the Board of Governors of the Federal Reserve System, February 6, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-3458 Filed 2-11-85; 8:45 am]

BILLING CODE 6210-10-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-21708; File No. S7-5-85]

Confirmation Disclosure for Reported Securities

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendment.

SUMMARY: The Commission is proposing to amend its rule governing customer confirmation disclosure to require more complete disclosure for principal transactions in reported securities. These amendments would require broker-dealers to report on confirmations the trade prices and mark-ups in principal transactions with customers, thus providing customers with additional information regarding the quality and costs of broker-dealer services.

DATE: Comments to be received by March 29, 1985.

ADDRESS: All comments should be submitted in triplicate and addressed to

John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. All comments should refer to File No. S7–5–85, and will be available for public inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Leland Goss, (202) 272–2827, Robert Colby, (202) 272–2857, or Edward Pittman, (202) 272–2848, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Background

Rule 10b–10 under the Securities Exchange Act of 1934 ("Act") requires a broker-dealer executing a transaction with a customer to provide a written confirmation at or before completion of the transaction, as defined in the rule, disclosing information concerning the transaction. The confirmation provides customers the terms of trades executed by broker-dealers. The information provided on confirmations is an important part of the Commission's overrall disclosure scheme, designed to ensure full disclosure of information regarding both securities and transactions in securities.[1] The Commission believes that the information provided on customer confirmations should be as complete and useful as possible, consonant with the costs of providing this disclosure.

Since 1937, the Commission has required broker-dealers acting for customers as agent to disclose on customer confirmations the execution price and the commission charged in a trade.[2] This requirement enables investors in agency transactions to monitor the quality of their executions with respect to both the prices at which securities were bought or sold and the commissions they were charged for the execution of the trade. As a result, investors can compare agency brokerage charges of different firms, and the brokerage costs of trades in different types of securities. The Commission's confirmation rules, however, generally have not required broker-dealers to disclose the trade prices or the remuneration charged in principal transactions.[3] In these transactions, broker-dealers need disclose to customers only a single "net" price. With one exception, discussed below, broker-dealers acting as principal are not now required to disclose the actual trade price or prevailing market price for securities sold to or brought from their customers.[4]

The Commission supports the concept of disclosure of principal mark-ups and previously has proposed rulemaking initiatives in this area.[5] Most recently, after the adoption of Rule 10b–10 in 1977, the Commission proposed amendments to that rule [6] that would have required broker-dealers trading as principal with customers to disclose on customer confirmations the NASDAQ best bid and offer ("BBO") that existed at the time of the trade.[7] The purpose of this requirement was to allow customers to compare the net price obtained for them by their broker-dealer to the best inter-dealer market at the time, and to derive from this some sense of the quality of the execution and the transaction costs incurred.

This BBO disclosure requirement was opposed by many broker-dealer commentators as potentially confusing to customers, because it provided only a rough surrogate price on which to compute mark-ups and assess execution quality. The proposal also was opposed as excessively costly for many broker-dealers who did not have ready access to the NASDAQ BBO or a simple means of recording and printing this information on the confirmation.[8]

In October 1978 the Commission adopted amendments adding mark-up disclosure requirements to Rules 10b–10, but only for so called riskless principal transactions.[9] The Commission found riskless principle transactions to be essentially equivalent to agency transactions, and hence concluded that they generally should be subject to the same disclosure requirements as agency transactions. The Commission limited these requirements to riskless principal transactions because of concerns voiced by a number of commentators that it would be difficult to calculate mark-ups on securities sold to customers from their inventory or bought from customers and held in inventory. Market makers were exempted from disclosing mark-ups in any principal transactions because of the concerns raised by several commentators that, because of their continued trading activity in the course of making a market, market makers would have difficulty determining whether any particular transaction was in fact "riskless" and the amount of the mark-up.

At the same time that the Commission adopted the riskless principal mark-up amendment, it withdrew the BBO proposal, noting the problems with the use of the BBO as a reference price and the cost of compliance. The Commission also deferred action in this area in view of other initiatives under consideration in the development of a National Market System ("NMS—) and the possibility of using those initiatives as a means of addressing this area in the future.[10]

II. Discussion

A. Developments in the National Market System for Over-the-Counter Securities

On February 17, 1981, the Commission adopted Rule 11Aa2–1 under the Act

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[1] *See* Securities Exchange Act Release No. 15219 (October 6, 1978, at 1246, 43 FR 47495 at 47496, ("October 1978 Release").

[2] In 1937, the Commission adopted its first confirmation rule, Rule 15cl–4 under the Act, which applied to over-the-counter ("OTC") trades. In May 1977, the Commission adopted Rule 10b–10 to replace Rule 15cl–4. Rule 10b–10 applies to both exchange and OTC trades.

[3] Principal transactions with customers primarily occur in the OTC market, where "integrated" broker-dealers may act both as a market maker in a stock and as a broker for customer orders in that stock. Principal transactions with customers also may occur in OTC trades in listed securities, and occasionally in exchange trades.

[4] The difference between the price charged to the customer and the prevailing interdealer market price for the securities is called the mark-up (or mark-down). These charges are referred to collectively in this release as mark-ups. The proposed amendments would require disclosure of mark-ups calculated on the basis of the reported price for the trade.

[5] In 1942 the Commission published for comment a proposed rule which would have required every dealer executing a transaction in the OTC market to disclose to its customers the best independent bid and offer available in the market. This rule was withdrawn in 1947 after the National Association of Securities Dealers, Inc. ("NASD") adopted its policy on mark-up. *See* Securities Exchange Act Release No. 3940 (April 2, 1947). A similar requirement was recommended by The Report of the Special Study of the Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 95, pt. 2, 88th Cong., 1st Sess. (1963) ("*Special Study*"), at 677.

[6] Securities Exchange Act Release No. 13661 (June 23, 1977), 42 FR 33348 ("June 1977 Release").

[7] NASDAQ is an electronic system for collection and dissemination of dealer quotes in OTC and listed stocks. At the time of the June 1977 Release, NASDAQ's most widespread quote dissemination service (Level 1) provided a representative bid and ask quotation ("RBA") rather than a BBO display. The BBO could only be obtained by manually scanning quotes provided through a much more expensive NASDAQ service (Level 2) wich many smaller broker-dealers could not afford and which virtually no broker-dealers made available to registered representatives at their branch offices. The display of the RBA was prohibited in February 1980 by Rule 11Acl–2 under the Act. *See* Securities Exchange Act Release No. 16590 (February 18, 1980), 45 FR 12391, as a result, the BBO is now readily and inexpensively available for all stocks included on NASDAQ.

[8] *See* October 1978 Release, *supra* note 1, at 43 FR 47501.

[9] As defined in paragraph (a)(6)(i) of Rule 10b–10, a "riskless" principal transaction is one in which the broker-dealer, after receiving an order to buy (or sell) a security from a customer, purchases (or sells) the security to offset a contemporaneous sale to (or purchase from) the customer.

[10] *See* October 1978 Release, supra note 1, at 43 Fr 47501.

("NMS Rule"), [11] pursuant to which securities traded in the OTC market are designated as NMS Securities and become subject to last sale reporting requirements. [12] To comply with the last sale requirements applicable to NMS Securities, market makers must determine, pursuant to uniform NASD guidelines, a trade price for all trades in NMS Securities, and report this price to the NASD within 90 seconds of execution of the trade. [13] Currently, over 1,100 OTC stocks have been designated as NMS Securities, and the Commission recently expanded the number of OTC stocs eligible for NMS designation to approximately 2,500 stocks. [14]

With the advent of last sale reporting for NMS Securities, confirmation disclosure of trade prices and mark-ups for these securities in principal transactions other than riskless principal trades may no longer raise the cost and difficulties in calculation concerns associated with earlier proposals. As noted above, historically a primary difficulty cited by commentators in requiring disclosure of mark-ups in such principal transactions has been that such disclosure involved problems in breaking-out the trade price and mark-up from the net price. [15] The securities industry argued that a division of the net price into the component trade price and mark-up would be arbitrary and a potential source of dispute between broker-dealers and their customers. [16]

Now that there is real time last sale reporting for NMS Securities, however, the reported price in a trade can be included as the trade price on confirmations, avoiding the former arbitrariness in calculating a trade price for confirmation purposes alone. The use of this reported trade price as a basis for calculating the mark-up entirely comports with the purposes of the NASD's last sale reporting requirements. Moreover, use of the trade price reported by the firm avoids the difficulties in the earlier BBO proposal of informing customers of the NASDAQ BBO at the time of the trade.

B. Description of Proposed Amendments

The Commission is proposing amendments to Rule 10b–10 that would require broker-dealers trading with customers as principal to disclose on customer confirmations the trade price and mark-up in transactions in reported securities (*i.e.*, NMS Securities and listed securities subject to Rule 11Aa3–1 under the Act) [17] at or before completion of the transaction. [18] The term "customer" as used in Rule 10b–10 excludes broker-dealers. The proposed amendments use the definition of "reported securities" included in Rule 11Aa3–1 under the Act, which generally applies to listed securities meeting New York or American Stock Exchange listing requirements and NMS Securities.

C. Effects of More Complete Disclosure

Trade price and mark-up disclosure in principal transactions offer numerous potential benefits similar to those arising from the Commission's longstanding requirement that broker-dealers disclose agency commissions on customer confirmations. The following is a discussion of the potential benefits of increased disclosure in this area as well as potential costs of the proposal.

1. *Evaluating Transaction Costs.* As noted previously, the Commission believes that the confirmation is an important disclosure document. Disclosure of commissions and mark-ups to customers may reduce the likelihood of excessive charges by broker-dealers by permitting customers to policy the handling of their accounts, and may thereby act as a check against broker-dealer overreaching. [19]

The Commission also believes, as it has stated in the past, that confirmations have important informational value to customers beyond their value as a measure protecting against excessive mark-ups. They provide a means by which customers can readily evaluate the costs and quality of services provided by their broker-dealers. [20] As the Commission has indicated previously,

> numerous factors may be pertinent to the making of an investment decision. In addition to various factors pertaining to the suitability of a security for the customer's investment needs, customers may wish to take into account, as information material to their investment decisions, variations in transaction costs incurred in trading different types of securities and variations in the transaction charges of competing broker-dealers. [21]

In short, disclosure of the trade price and mark-up in a principal transaction would enable the investor to determine an integrated broker-dealer's charges for executing a trade. As a result, over a period of time an investor could more easily compare the charges of his broker-dealer to the charges of other firms. Investors currently can make these comparisons and evaluations in agency and riskless principal trades only, although an investor's knowledge of his transaction costs clearly is equally important in other principal transactions. Thus, in light of the development of last sale reporting in OTC securities, which appears to obviate most of the difficulties of previous proposals, the Commission believes that the differences between confirmation requirements for agency and riskless principal transactions and

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[11] 17 CFR 240.11Aa2–1, Securities Exchange Act Release No. 17549 (Feburary 17, 1981), 46 FR 13992.

[12] Last sale reporting requirements applicable to NMS Securities are contained in Rule 11As3–1 under the Act, the NASD's Transaction Reporting Plan adopted pursuant to Rule 11Aa3–1 (*see* Securities Exchange Act Release No. 18590 (March 24, 1982), 47 FR 13617), and the NASD's transaction reporting rules (NASD By-Laws, Article XVI Schedule D, XIV(2)(d)(B)).

[13] NASD rules specify how the reported price should be determined, including that the reported prices should exclude any mark-up and should be reasonably related to the market. NASD By-Laws, Article XVI, Schedule D, XIV, (2)(d)(3).

[14] *See* Securities Exchange Act Release No. 21583 (December 18, 1984), 50 FR 730.

[15] For example, pursuant to the NASD guidelines a firm that is a market maker in XYZ security may fill a customer buy order at a net price of $20 ¾ but report the trade at $20 ½, imputing a mark-up or commission equivalent of ¼ of a point. Conversely, the firm might buy XYZ from a customer at a net price of $20, but report a trade price of $20 ¼.

[16] Despite these concerns, at least one large integrated broker-dealer has voluntarily disclosed its mark-ups in all principal transactions for many years, without any apparent problems with customers or difficulty in calculating an appropriate trade price.

[17] The Commission believes that the same benefits to be derived from applying mark-up disclosure requirements to NMS Securities would accure from their application to principal trades in listed securities. *See* Letter from Kenneth I. Rosenblum, Chairman, ITS Operating Committee, to Richard Ketchum, Associated Director, SEC, dated March 1, 1982 (comments on OTC confirmation requirements for trades in listed securities). Moreover, applying these requirements to OTC principal trades in listed securities should provide greater comparability to agency trades in listed securities on an exchange. Accordingly, the Commission is proposing to apply these requirements to principal transactions in all reported securities.

[18] The Commission emphasizes that this amendment will not require a broker-dealer to disclose the price at which it acquired the securities. A principal objection to earlier Commission mark-up disclosure proposals was that, in instances where the securities sold to the customer had been purchased by the broker-dealer and held in its inventory for some time, the disclosure of the broker-dealer's mark-up would be meaningless and possibly misleading. This concern is obviated under the instant proposal. A broker-dealer would fully comply with the requirement by disclosing the last sale reported price and the dealer mark-up calculated by subtracting the reported price from the net price to the customer.

[19] The NASD's existing mark-up policy is an important protection against excessive mark-ups in principal transactions. However, customer monitoring of mark-ups could provide a valuable supplement to this protection. It remains true, as the *Special Study* observed with reference to the NASD mark-up policy, that "there is no satisfactory substitute for full and reliable disclosure to investors of facts essential for intelligent appraisal and self protection." *Special Study*, *supra* note 5, at 673.

[20] October 1978 Release, *supra* note 1, at 43 FR 47498.

[21] *Id.* at 47496.

those for other principal transactions should be reconsidered.[22]

2. *Evaluating Execution Quality.* In addition to the investor's ability to evaluate his transaction costs, disclosure of trade prices and mark-ups on customer confirmations would afford an additional major benefit by enhancing the ability of the investor to monitor execution quality. The Act includes, as a principal Congressional finding, that "it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the practicability of brokers executing investor's orders in the best market."[23] Ensuring that customer orders are executed in the best market has been an objective of a number of Commission initiatives.[24]

Disclosure of trade prices and mark-ups on customer confirmations furthers this objective by allowing customers to compare their trade prices to the best available price for the security being purchased or sold, as determined through quote services or newspaper stock tables. Disclosing trade prices on confirmations would allow customers to see the reported price and assess the quality of executions provided by broker-dealers. At present, an investor cannot ascertain his trade price from the single net price disclosed on his confirmation or determine whether the execution was favorable. Nor does it appear that investors usually learn of the trade prices for these trades through other means.

3. *Regulatory Benefits.* Disclosure of trade prices and mark-ups on confirmations also could help validate OTC reported prices. Commentators in several contexts have suggested that OTC trade reporting would benefit from the additional discipline that customer disclosure of the reported price and resulting mark-up would impose.[25] According to this view, if the trade price and mark-up were disclosed on a customer confirmation, the market maker would have reason to ensure that both the reported trade price and mark-up calculated from this price were accurate. Thus, customer scrutiny of reported prices and mark-ups would appear to help ensure accurate trade reporting by market makers, thereby providing a valuable supplement to NASD surveillance.

4. *Costs.* The potential direct costs to broker-dealers involved in disclosing mark-ups in principal trades would appear to fall into three possible categories: the costs of breaking down the net price of each principal trade in a reported security into a trade price and mark-up component; storing that information; and including that information on customer confirmations. By limiting the proposal to principal transactions in reported securities, the first source of potential costs should be obviated. Because Commission rules already require last sale reporting of transactions in reported securities, firms are already making the necessary separation of mark-up and execution price for NMS Securities.

The second source of possible costs also would not appear to impose material burdens on broker-dealers. The Commission understands that broker-dealers generally already record net prices and trade prices in computerized internal systems for bookkeeping and compliance purposes. Moreover, the internal automatic execution systems developed by a number of firms automatically record complete trade and mark-up information for trades executed or reported through these systems.

Thus, it appears that the additional direct costs for broker-dealers including trade prices and mark-ups on customer confirmations largely would be limited to the costs of transmitting that information to the confirmation form. Since broker-dealers that would be affected by the rule generally already maintain this information in computer systems and also use automated systems for the preparation of confirmations, it would not appear that recording trade prices and mark-ups would require the development of significant new systems or procedures for these firms. In light of the fact that confirmations for agency trades already disclose trade prices and execution costs, it would appear a relatively simple matter to include these items on confirmations used in other principal trades. Nevertheless, the Commission is mindful that some costs may be borne by broker-dealers in complying with this new requirement. Accordingly, the Commission is seeking specific comment and data on the nature and size of such costs. The Commission also is seeking suggestions as to how such costs could be minimized without sacrificing the rule's objectives.

In previous confirmation disclosure proposals, commentators have argued that disclosure of mark-ups would have the indirect effect of reducing the ability of broker-dealers to market illiquid stocks. They claimed that account executives require higher compensation to research and promote the stock of less prominent OTC companies, but investors would question this compensation if it were disclosed. Regardless of the merits of these arguments,[26] it appears that any such indirect effects should be largely avoided by limiting the proposals to reported securities. Because NMS Securities designedly are the more prominent and active securities in the OTC market, it appears questionable whether there is a need for differing levels of compensation with respect to executions in NMS Securities as compared to executions in listed securities.[27]

III. Conclusion and Request for Comments

Confirmation disclosure of trade prices and mark-ups for principal

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[22] In the past, commentators also have questioned why mark-ups should be disclosed for securities but not for other commercial products. In the October 1978 Release the Commission responded that:

> [b]ecause of the special nature of securities, analogies to the standards of conduct prevailing in other industries may not be pertinent. Indeed, by the very nature of a broker-dealer's relationship with its securities customers, and particularly its retail customers, the broker-dealer is frequently in an advisory role where principles of *caveat emptor* and arms length bargaining are simply not applicable.

See October 1978 Release, *supra* note 1, 43 FR at 47409.

[23] *See* Section 11A(a)(1)(C)(iv) of the Act.

[24] For instance, the development of integrated last sale and quote facilities for listed stocks was designed to provide investors as well as broker-dealers with, among other things, information concerning the availability of superior prices in other markets to enable them to ensure that their orders received execution in the best market.

[25] *See* Letter from Robert Birnbaum, President, American Stock Exchange, Inc. to George A. Fitzsimmons, Secretary, SEC, dated July 16, 1984; Letter from James Buck, Secretary, New York Stock Exchange, Inc. to George A. Fitzsimmons, Secretary, SEC, dated July 16, 1984.

[26] Even if greater compensation is required for illiquid stocks, the Commission believes that customers may well benefit from being informed of the costs involved in the trade. Such disclosure would allow investors to compare the mark-ups charged by various firms and, generally, to determine whether such mark-ups were acceptable in view of the securities involved. Nevertheless, because there is no last sale reporting for OTC stocks that are not NMS Securities, there could be additional costs to broker-dealers in separating the mark-up in the trade from the wholesale price. Accordingly, at this time, the Commission is limiting its proposal to reported securities.

[27] Indeed, one potential advantage of the proposal is that it would put transactions effected in the OTC market (generally done on a principal basis) on a more equal footing with transactions effected in exchange markets (generally done on an agency basis). As the NASD has pointed out, the issuers of an increasing number of equity securities eligible for listing on the two primary securities exchanges have elected to continue to have their securities traded in the OTC market. *See, e.g.*, NASD Press Release (July 9, 1984). Thus, it would appear to be increasingly inappropriate to distinguish the level of disclosure provided for agency trades in exchange securities and principal trades in NMS Securities on the nature of the markets for particular stocks.

transactions in reported securities appears to offer substantial benefits to public investors. In addition, because of the success of real-time reporting in NMS Securities (as well as for listed securities), such a proposal at this time would not appear to give rise to the calculation difficulties or excessive costs concerns raised in the past. Because market makers presently must determine and report a last sale price for each trade, that same price would be used to determine and report a trade price on the customer confirmation. Use of this trade price should eliminate conjecture as to what the trade price should be for confirmation purposes and simplify calculating and reporting mark-ups on confirmations. This disclosure approach is predicated on the belief that, through such disclosure, customers will be better able to monitor the quality and cost of their securities transactions. It will also provide for equivalent disclosure to all customers effecting transactions in reported securities, whether executed on an agency or principal basis.

The Commission solicits comments on the costs and benefits of the proposed amendments. In particular, the Commission requests comment on the direct costs of recording trade prices and mark-ups and conveying these items to customer confirmations, quantified where possible. The Commission also solicits comments on whether other direct costs are likely to result from the amendments and the extent of these costs, if any. Commentators are invited to suggest specific ways of minimizing the direct and indirect costs of the proposed requirement and to discuss the effects of any such suggestion on the effectiveness of the rule.

The Commission further requests comment on other potential effects of these requirements, including the potential benefits to customers in terms of assessing execution quality, transaction costs, or other matters. Also, does last-sale reporting by itself—*i.e.*, without the proposed new confirmation requirement—provide enough information for investors to assess execution quality? In this connection, to what extent are customers now informed of the reported price of trades executed as principal, and to what extent are customers able to compare these reported prices to the prevailing market at the time? The Commission also requests comments on the competitive effects of the proposal on competing brokers, dealers, and markets.

IV. Summary of the Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA"), pursuant to the requirements of the Regulatory Flexibility Act,[25] regarding the proposed amendments to Rule 10b–10. The IRFA indicates that the proposed amendments solicit comment on requiring broker-dealers executing principal trades with customers to include in customs confirmations the price at which the trade occurred and the mark-up or mark-down charged. The IRFA notes that this requirement could impose costs on small broker-dealers in recording the trade price and mark-up and transmitting it to the confirmation, but notes that it appears that many broker-dealers already record these items for internal records and could transmit them to the confirmation with relatively little difficulty. The IRFA also notes that these disclosures may provide important benefits to customers in terms of assessing execution quality and comparing execution costs. The Commission is soliciting comment on the extent of the costs for smaller broker-dealers. The IRFA also seeks comment on whether it would be appropriate to provide an exemption for small broker-dealers who do a limited number of principal trades that would be covered by the amendments.

A copy of the IRFA may be obtained from Leland H. Goss, II (202) 272–2827, Room 5204, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

List of Subjects in 17 CFR Part 240

Brokers, Confidential business information, Fraud reporting and recordkeeping requirements, Securities.

V. Statutory Basis and Text of Amendments

Pursuant to the Securities Exchange Act of 1934 and particularly Sections 2, 3, 9, 10, 11, 11A, 15, 17, and 23 thereof, 15 U.S.C. 78b, 78c, 78i, 78j, 78k, 78k–1, 78o, 78q, and 78w, the Commission proposes to amend § 240.10b–10 in Chapter II of Title 17 of the Code of Federal Regulations by revising paragraph (a)(8)(i) and adding paragraph (e)(7) as follows. The arrows (► ◄) show the text that is being added.

[25] 15 U.S.C. 601 *et seq.*

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§ 240.10b–10 Confirmation of transactions.

(a) * * *

(8) * * *

(i) The amount of any mark-up, markdown, or similar remuneration received in an equity security if ►(A)◄ he is not a market maker in that security and, if, after having received an order to buy from such customer, he purchased the security from another person to offset a contemporaneous sale to such customer or, after having received an order to sell from such customer, he sold the security to another person to offset a contemporaneous purchase from such a customer, ►or

(B) the security is a reported security ◄; and

* * * * *

(e) * * *

(7) "Reported security" shall have the meaning provided in Rule 11Aa3–1 under the Act.

* * * * *

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

February 4, 1985.

[FR Doc. 85–3438 Filed 2–11–85; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 51

[LR–69–80]

Definitions Relating to Exemptions From the Windfall Profit Tax

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations setting forth definitions relating to exemptions from the windfall profit tax. Changes to the applicable tax law were made by the Crude Oil Windfall Profit Tax Act of 1980, the Economic Recovery Tax Act of 1981, and the Technical Corrections Act of 1982. The regulations would provide guidance on the requirements for the qualification for exemption from the windfall profit tax.

DATES: Written comments and requests for a public hearing must be delivered or mailed by April 15, 1985. The regulations

are proposed to be effective generally after February 29, 1980. The exemption for economic interests held by qualified residential child care agencies, however, is proposed to be effective for taxable periods beginning after December 31, 1980, and the provisions relating to exempt royalty oil are proposed to be effective only for oil removed after December 31, 1981.

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

FOR FURTHER INFORMATION CONTACT: John G. Schmalz of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3829).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Excise Tax Regulations Under the Crude Oil Windfall Profit Tax Act of 1980 (26 CFR Part 51). These amendments are proposed to conform the regulations to section 101(a)(1) of the Crude Oil Windfall Profit Tax Act of 1980 (Pub. L. 96-233), (which added section 4994 to the Internal Revenue Code of 1954) as amended by section 601(b) and 604 of the Economic Recovery Tax Act of 1981 (Pub. L. 97-34) and section 201(f) of the Technical Corrections Act of 1982 (Pub. L. 97-448). They do not, however, reflect section 106 of the Technical Corrections Act of 1982 because regulations reflecting that section are to be published as part of another regulation project. These proposed regulations are to be issued under the authority contained in sections 4997 and 7805 of the Internal Revenue Code of 1954 (94 Stat. 249 and 68A Stat. 917; 26 U.S.C. 4997 and 7805).

Definitions Relating to Exemptions

Section 4991(b) provides that the term "exempt oil" (oil not subject to the windfall profit tax) means: (1) Crude oil from a qualified governmental interest; (2) crude oil from a qualified charitable interest; (3) exempt Indian oil; (4) exempt Alaskan oil; (5) exempt royalty oil; (6) exempt stripper well oil; and (7) exempt front-end oil. Section 4994 and the proposed regulations provide definitions of these categories of exempt oil, except that the definitions of front-end oil in section 4994(c) and exempt stripper well oil in section 4994(g) are not included as part of these proposed regulations because they are the subject of other regulations projects.

Section 4994(a) and the proposed regulations define the term "qualified governmental interest." The interest must be held by a governmental body or its agency or instrumentality and the net income from the interest in crude oil is required to be dedicated to a public purpose. The term "public purpose" is defined by reference to section 170(c)(1) (relating to a charitable contribution made for exclusively public purposes). The term "net income" is also defined.

Section 4994(b) and the proposed regulations define the term "qualified charitable interest." The interest must be held by an educational organization, an organization that provides medical care, education or research, or an organization operated for the benefit of a state university. The interest must have been held by the organization on January 21, 1980. Special rules are provided for churches and private foundations. In addition, the proposed regulations clarify the holding requirement.

Under the proposed regulations, trusts and estates with governmental or charitable beneficiaries may be entitled to exemption from tax liability and withholding.

Section 4994(d) and the proposed regulations define the term "exempt Indian Oil." The interest in crude oil must be held by a member of the Indian tribe, an Indian tribe, or an Indian tribal organization. The interest must have been held on January 21, 1980, and must be subject to a restriction on alienation. The proposed regulations define the term "Indian tribe," and provide special rules relating to native corporations organized under the Alaska Native Claims Settlement Act.

Section 4994(e) and the proposed regulations define the term "exempt Alaskan oil." In connection with this definition, the proposed regulations define the term "divides of the Alaskan and Aleutian ranges," and give the longitude and latitude of peaks and elevations for defining the divide for purposes of the Aleutian Islands.

Section 4994(f) and the proposed regulations provide rules relating to "exempt royalty oil." This exemption is available only to qualifying individuals, estates, and family farm corporations that are producers of crude oil within the meaning of section 4996(a)(1). The exemption is not available to other corporations or to trusts. However, the proposed regulations contain a clarifying amendment to the regulations under section 4996(a)(1) defining the term "producer". In general, this rule makes it clear that in the case of grantor trusts the grantor, rather than the trust entity, is the producer. As a result, if the grantor is an individual for example, such grantor may be entitled to claim the exemption under section 4994(f).

Comments and Requests for a Public Hearing

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

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer of Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Special Analyses

The Commissioner of Internal Revenue has determined that the proposed rule is not subject to review under Executive Order 12291 or the Treasury—OMB implementation of that Order, dated April 29, 1983. Accordingly, a Regulatory Impact Analyses is not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these proposed regulations is John G. Schmalz of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing

these regulations both on matters of substance and style.

List of Subjects in 26 CFR Part 51

Excise tax, Petroleum, Crude Oil Windfall Profit Tax Act of 1980.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 51 are as follows:

PART 51—[AMENDED]

Paragraph 1. Section 51.4994–1 is added to read as follows:

§ 51.4994–1 Definitions relating to exemptions.

(a) *In general.* Section 4991(b) provides that the term "exempt oil" (oil not subject to the windfall profit tax) means—

(1) Any crude oil from a qualified governmental interest,

(2) Any crude oil from a qualified charitable interest,

(3) Any exempt Indian oil,

(4) Any exempt Alaskan oil,

(5) Any exempt front-end oil,

(6) Any exempt royalty oil, and

(7) Any exempt stripper well oil.

(b) *Qualified governmental interest*—(1) *In general.* Under section 4994(a)(1), a "qualified governmental interest" means an economic interest in crude oil if—

(i) Such interest is held by a State or political subdivision thereof or by an agency or instrumentality of a State or political subdivision thereof, and

(ii) Under the applicable State or local law, all of the net income received pursuant to such interest is dedicated to a public purpose.

(2) *Net income*—(i) *In general.* For purposes of this paragraph, the term "net income" means gross income reduced by production costs, and severance taxes of general application, allocable to the economic interest.

(ii) *Production costs.* For the purpose of paragraph (b)(2)(i) of this section, production costs means all current costs borne by the governmental interest attributable to the production of crude oil. It includes operating expenses, selling expenses, financial and administrative overhead, depreciation, cost depletion (determined on the basis that all intangible drilling costs are capitalized), taxes on the producing property, and interest on debt incurred to finance production. It does not, however, include intangible drilling and development costs (except as provided in the preceding sentence) or interest on any debt incurred to acquire the economic interest.

(3) *Public purposes requirement.* For purposes of this paragraph, the term "public purpose" has the same meaning as in section 170(c)(1). The requirement in paragraph (b)(1)(ii) of this section that all of the net income received be dedicated to a public purpose shall be treated as met if all such net income is either used for a public purpose or placed in a permanent fund 100 percent of the earnings of which are dedicated to a public purpose. Net income used to pay interest on or retire debt incurred to acquire the economic interest will not be considered to be dedicated to a public purpose. The extent to which a debt is incurred to acquire the economic interest shall be determined on the basis of the principles set forth in section 514(c).

(4) *Trusts and estates.* If legal title to an interest in crude oil is held in trust or by an estate, the character of the persons entitled to the income of the trust or the estate shall be imputed to the producer (the estate, the trust, or, in the case of a grantor trust, the grantor of the trust) to determine what portion, if any, of the interest is a qualified governmental interest. Also, for the purpose of this subparagraph, if the fiduciary maintains a reserve for depletion, or accumulates current income, the income set aside in such depletion reserve, or accumulated for future distribution, will be considered to be income of the fiduciary or of a beneficiary other than a qualifying governmental unit to the extent that such income can under any circumstances be distributed at some future time to a beneficiary that does not meet the requirements of section 4994(a). Accordingly, the share of the production of the trust or estate that is exempt under section 4994(a) is determined by dividing the sum of (i) the amount of income of the trust or estate attributable to crude oil for the year that is distributed to a qualified governmental unit, plus (ii) the amount of income from the crude oil production that is set aside that year in a reserve for depletion for the exclusive benefit of a qualified governmental unit, plus (iii) the amount of undistributed income for the year that is accumulated for the exclusive benefit of a qualified governmental unit by (iv) the total income for the year (whether distributed or not) attributable to crude oil.

(c) *Qualified charitable interest*—(1) *In general.* The term "qualified charitable interest" means an economic interest in crude oil if all of the following three requirements are met:

(i) The interest is held by an organization that is described in section 170(c)(2) (relating to a corporation, etc., organized and operated exclusively for religious, charitable, etc., purposes),

(ii) The organization holding the interest is also described in one of the following sections:

(A) Section 170(b)(1)(A)(ii) (relating to an educational organization),

(B) Section 170(b)(1)(A)(iii) (relating to an organization that provides medical care, education, or research),

(C) Section 170(b)(1)(A)(iv) (relating to an organization operated for the benefit of a State college or university, or

(D) With respect to taxable periods beginning after December 31, 1980, section 4994(b)(1)(A)(ii) (reflecting to an organization organized and operated primarily for the residential placement, care, or treatment of delinquent, dependent, orphaned, neglected, or handicapped children).

(iii) The interest was held by the organization on January 21, 1980, and at all times thereafter before the last day of the taxable period.

(2) *Churches.* An economic interest is also a "qualified charitable interest" if all of the following four requirements are met:

(i) The interest is held by an organization described in section 170(b)(1)(A)(i) (relating to a church, convention or association of churches),

(ii) The organization holding the interest is also described in section 170(c)(2),

(iii) The interest is held for the benefit of one or more of the organizations described in paragraph (c)(1)(ii) of this section and in section 170(c)(2), and

(iv) The interest was held by the section 170(b)(1)(A)(i) organization on January 21, 1980, and at all times thereafter before the last day of the taxable period.

(3) *Trusts and estates.* (i) If legal title to an interest in crude oil is held in trust or by an estate, the character of the persons entitled to the income of the trust or estate attributable to the crude oil shall be imputed to the producer (the estate, the trust, or, in the case of a grantor trust, the grantor of the trust) to determine what portion, if any, of the interest is a qualified charitable interest. Also, for the purpose of this subparagraph, if the fiduciary maintains a reserve for depletion, or accumulates current income, the income set aside for such depletion reserve, or accumulated for future distribution, will be considered to be income of the fiduciary or of a beneficiary other than a qualifying charity to the extent that such income can under any circumstances be distributed at some future time to a beneficiary that does not meet the requirements of section 4994(b).

Accordingly, the share of the production of the trust or estate that is exempt under section 4994(b) is determined by dividing the sum of (A) the amount of income of the trust or estate attributable to crude oil for the year that is distributed to a qualified beneficiary, plus (B) the amount of income from the crude oil production that is set aside that year in a reserve for depletion for the exclusive benefit of a qualified chairty, plus (C) the amount of undistributed income for the year that is accumulated for the exclusive benefit of a qualified charity, by (D) the total income for the year (whether distributed or not) attributable to crude oil.

(ii) In applying paragraph (c)(3)(i) of this section, paragraph (c)(1)(iii) of this section will be applied both to the trust or the estate and to its beneficiaries. Accordingly, the trust or the estate must have held the interest for the benefit of a qualifying charity on January 21, 1980, and at all times thereafter before the last day of the taxable period. (See paragraph (c)(4) of this section for special rules relating to the holding requirement.) Furthermore, for the exemption to apply a charitable beneficiary must have had on January 21, 1980, and at all times thereafter before the last day of the taxable period, an unconditional right to receive, either presently or in the future, a fixed amount of the net income from the interest (*e.g.*, a specified dollar amount or an amount determined by a formula).

(4) *Private foundations.* An economic interest is also a "qualified charitable interest" if all of the following requirements are met:

(i) The interest is held by an organization described in section 509(a)(3) (relating to certain private foundations),

(ii) The organization holding the interest is operated exclusively for the benefit of an organization described in—

(A) Section 4994(b)(1)(A)(ii) (relating to organizations organized and operated primarily for the residential placement, care, or treatment of delinquent, dependent, orphaned, neglected, or handicapped children),

(B) Section 170(b)(1)(A)(ii) (relating to educational organizations) which is also described in section 170(c)(2), and

(iii) The interest was held by the section 509(a)(3) organization on January 21, 1980, and at all times thereafter before the last day of the taxable period.

(5) *Holding requirement.* An interest in crude oil is considered "held for the benefit of" one of the organizations described in paragraph (c)(1)(ii) of this section only if all the net income from such interest (as defined in paragraph (b)(2) of this section) was dedicated to the organization on January 21, 1980, and at all times thereafter before the last day of the taxable period. The dedication need not be a formal or written dedication. However, no dedication will be recognized if any of the net income from the interest was in fact used for a purpose other than to benefit the organization or organizations to which it was purportedly dedicated. The requirement of paragraph (c) (1)(iii) and (2) (iii) and (iv) of this section that the interest in crude oil be held by certain organizations on January 21, 1980, or be held on January 21, 1980, "for the benefit of" certain organizations, and at all times thereafter (before the last day of the taxable period) may be satisfied although the identical organization does not hold the interest, or the interest is not held for the benefit of the identical organization, on January 21, 1980, and thereafter. For example, the holding requirements are satisfied if, on January 21, 1980, a church or trust held the interest for the benefit of an educational institution, and later the church or trust transferred the interest to an organization providing medical care, provided that both organizations otherwise meet the requirements of paragraph (c) (1) or (2).

(6) *Relationship to section 501(c)(3).* It is not necessary under this paragraph that the organization holding the interest in crude oil be recognized as exempt under section 501(c)(3).

(d) *Exempt Indian oil.* The term "exempt Indian oil" means any domestic crude oil which meets one or more of the following three requirements:

(1) The producer of the oil is an Indian tribe, an individual member of an Indian tribe, or an Indian tribal organization, under an economic interest held by such a tribe, member, or organization on January 21, 1980, and the oil is produced from mineral interests which are—

(i) Held in trust by the United States for the tribe, member, or organization, or

(ii) Held by the tribe, member, or organization subject to a restriction on alienation imposed by the United States because it is held by an Indian tribe, a member of an Indian tribe, or an Indian tribal organization; or

(2) The producer of the oil is a native corporation organized under the Alaska Native Claims Settlement Act (as in effect on January 21, 1980), and the oil—

(i) Is produced from mineral interests held by the corporations which were received under that Act, and

(ii) Is removed from the premises before 1992; or

(3) The proceeds from the sale of the oil are deposited in the Treasury of the United States to the credit of tribal or native trust funds pursuant to a provision of law in effect on January 21, 1980. The term "Indian tribe" means any group of individuals recognized as an Indian tribe eligible for services provided to Indians by the Secretary of Interior by his or her delegate. The term "native corporation organized under the Alaska Native Claims Settlement Act" includes a corporation that is a 100 percent-owned subsidiary of such a native corporation.

(e) *Exempt Alaskan Oil*—(1) *In general.* The term "exempt Alaskan oil" means any crude oil (other than Sadlerochit oil) which is produced—

(i) From a reservoir from which oil has been produced in commercial quantities (within the meaning of paragraph (e)(2) of this section) through a well located north of the Arctic Circle,

(ii) From a well located north of the Arctic Circle, or

(iii) From a well located south of the Arctic Circle but on the northerly side of the divides of the Alaskan and Aleutian ranges and at least 75 miles from the nearest point on the Trans-Alaska Pipeline System.

(2) *Commercial quantities.* For a definition of commercial quantities, see paragraph (n) of § 51.4996–1. However, for purposes of this section, an unprofitable well located north of the Arctic Circle will not be considered to produce oil in commercial quantities if the only purpose for producing oil from that well is to exempt a reservoir from the windfall profit tax under section 4994(e)(1) and paragraph (e)(1)(i) of this section. For the purpose of the preceding sentence, for a taxable period a well will be considered to be unprofitable if the total current costs of producing the crude oil incurred during the taxable period exceeds the market value of the oil produced from that well during such period.

(3) *Definition of divides of Alaskan and Aleutian Ranges.* The term "divides of the Alaskan and Aleutian ranges" means the ridge or crest of land (with respect to those ranges) that marks the boundary between adjacent drainage basins, on either side of which the heads of steams flow in opposite directions. However, for purposes of the Aleutian Islands only, the divide is deemed to be a line constructed by connecting the main peaks or elevations in the island chain. The location of these peaks are listed in paragraph (e)(3).

(4) *Listing of peaks or elevations for purposes of line through Aleutian Islands.* The peaks or elevations used to construct a dividing line through the Aleutian Islands are as follows (within 2,000 feet accuracy):

Latitude	Longitude
61 942N	1521950W
605917N	1524742W
605337N	1525442W
604357N	1523436W
603918N	15250 7W
603716N	153 4 6W
603140N	153 650W
602612N	1531657W
60 449N	1532735W
595824N	1532831W
595414N	1532340W
594631N	15336 9W
594016N	15347 5W
592547N	154 357W
591434N	1543843W
59 653N	1544329W
59 041N	1544051W
585459N	15438 7W
5852 7N	1543236W
584743N	1543516W
5843 8N	1543614W
5841 0N	1543131W
583837N	15428 7W
583318N	1542030W
582556N	1542314W
5820 6N	15441 0W
581650N	1545654W
581513N	155 112W
5814 6N	155 6 4W
581143N	1551454W
5810 9N	1552115W
58 5 3N	1551830W
575742N	1551846W
5751 9N	1552628W
574512N	1554151W
574459N	1554557W
574011N	1555510W
573238N	156 448W
573034N	1562123W
572816N	1562625W
572535N	1563046W
571144N	1564452W
57 715N	1564612W
57 1 0N	15711 8W
5657 0N	158 659W
565614N	1581145W
565127N	158 740W
564838N	1575445W
564149N	1575455W
563814N	158 643W
563436N	1581012W
563314N	1582110W
563050N	1583543W
563236N	1584115W
563153N	1584625W
561546N	1591938W
561418N	1592142W
561319N	1591757W
561113N	1592615W
56 133N	1593529W
56 040N	1594723W
555643N	1595819W
555448N	160 234W
5552 7N	160 548W
5547 3N	160 624W
554246N	16011 2W
554226N	1602153W
554327N	1602717W
554253N	16032 3W
554037N	16037 8W
553811N	1603943W
553640N	1604314W
553819N	1605938W
553827N	1611255W
552731N	1615116W
552459N	1615351W
552227N	162 859W
551451N	162 857W
5511 5N	1621647W
55 438N	16249 7W
545838N	163 445W
545548N	163 742W
545327N	1631410W
544937N	16320 1W
5448 9N	1633530W
544610N	16344 4W
544525N	1635815W
544420N	164 917W
544412N	1642334W
544043N	1642842W
5437 3N	1642730W
543418N	1644127W
543256N	16448 2W
541735N	1653036W
5415 9N	1653932W
541134N	16554 5W
54 8 3N	1655917W
535817N	1664055W
535731N	1664714W
535644N	1665358W
535315N	1665511W
5352 2N	1664822W
535010N	1663830W
534526N	1663955W
534034N	1663846W
533857N	1664124W
5336 1N	1664723W
533425N	1665041W
533056N	1665954W
532648N	167 540W
532439N	1671056W
532241N	1672035W
532028N	1672747W
532038N	1673322W
531927N	1674517W
532228N	168 328W
532315N	1681352W
5318 0N	1681731W
53 922N	1683214W
53 737N	1684128W
525029N	1694519W
524925N	1695648W
524439N	170 649W
523915N	1703934W
523631N	1704711W
523427N	171 817W
522957N	1711515W
521925N	1722113W
5219 7N	1723050W
521627N	1723450W
52 527N	173 313W
52 513N	173 736W
52 512N	17316 2W
52 5 8N	1732617W
52 532N	1733425W
52 817N	1733742W
52 449N	1734454W
52 442N	1734841W
521840N	174 129W
522246N	174 932W
521949N	174 8 5W
52 9 8N	1741515W
52 648N	1742959W
52 3 5N	1744417W
52 315N	1745646W
52 1 9N	175 238W
52 244N	1751026W
52 117N	1751849W
5159 3N	1752643W
515727N	1754314W
515649N	1754756W
515833N	1755413W
52 429N	176 622W
52 218N	176 711W
515220N	176 157W
514938N	17613 2W
515119N	17618 5W
515116N	1762119W
515019N	1762842W
515614N	1764416W
515526N	177 927W
514953N	1774113W
514921N	1775618W
515159N	178 123W
515311N	178 826W
514724N	1784731W
515523N	17941 9E
5158 6N	1794036E
5159 4N	1793614E
515720N	1783210E
52 057N	178 617E
52 6 9N	1773542E
52 135N	1773343E
515813N	17729 5E
515654N	1772225E
515524N	1771929E
515411N	1771743E
522053N	1755513E
5230 0N	1734314E
5229 7N	17341 4E
522842N	1733842E
522731N	1733449E
525030N	1732514E
525214N	173 330E
525337N	1725912E
5256 1N	1724449E
525729N	1724122E
525527N	1723132E

(f) *Exempt royalty oil*—(1) *General rule.* The term "exempt royalty oil" means with respect to a qualified royalty owner (as defined in paragraph (f)(2) of this section) that portion of such owner's qualified royalty production (as defined in paragraph (f)(3) of this section) for a calendar quarter that does not exceed the royalty limit (as defined in paragraph (f)(4) of this section) for the quarter.

(2) *Qualified royalty owner.* The term "qualified royalty owner" means a producer (within the meaning of section 4996(a)(1)), but only if the producer is:

(i) An individual

(ii) An estate, or

(iii) A qualified family farm corporation (within the meaning of section 6429(d)(4)).

The term does not include a trust. However, in the case of a grantor trust (*i.e.*, a trust where the grantor or another person is treated as substantial owner of the trust under subpart E of subchapter J of chapter 1 of the Code), the person or entity who is treated as substantial owner may qualify if such person or entity is an individual, an estate, or a qualified family farm corporation.

(3) *Qualified royalty production*—(i) *General rule.* The term "qualified royalty production" means, with respect to any qualified royalty owner, crude oil removed after December 31, 1981, which would be taxable crude oil (within the meaning of section 4991(a)) except for the exemption in section 4991(b)(5) and which is attributable to an economic interest of such royalty owner other than an operating mineral interest (within the meaning of section 614(d)).

(ii) *Exclusion for certain interests created after June 9, 1981.* The term "qualified royalty production" does not include crude oil attributable to any overriding royalty interest, production payment, net profits interest, or similar interest of the qualified royalty owner which:

(A) Is created after June 9, 1981, out of an operating mineral interest in property which is a proven oil or gas property (within the meaning of section 613A(c)(9)(A)) on the date such interest is created, and

(B) Is not created pursuant to a binding written contract (including an irrevocable written option) entered into before June 10, 1981.

The exclusion in this subdivision, however, does not apply to a landowner that retains a royalty on a lease of a

proven property owned by such landowner.

(iii) *Exclusion for production from certain transferred properties*—(A) *In general.* In the case of a transfer of an interest in any property, the qualified royalty production of the transferee shall not include any production attributable to an interest that has been transferred after June 9, 1981, in a transfer which is described in section 613A(c)(9)(A). For the purpose of the preceding sentence, a transfer includes a sublease and property held by an estate shall be treated as owned both by the estate and proportionately by the beneficiaries of the estate.

(B) *Exception for certain transfers at death or among certain related persons.* The transfer rule of paragraph (f)(3)(iii)(A) of this section does not apply to any transfer described in section 613A(c)(9)(B) (relating to certain transfers at death or among certain related persons).

(C) *Exception for certain transfers where the transferor and the transferee are required to share the royalty limit.* The transfer rule of paragraph (f)(3)(iii)(A) of this section shall not apply to any transfer so long as the transferor and the transferee are required to share the royalty limit in accordance with the rules of paragraph (f)(4) of this section, but only if the production from the property was qualified royalty production of the transferor.

(4) *Royalty limit*—(i) *In general.* A qualified royalty owner's qualified royalty production is determined by applying section 4994(f)(2)(A).

(ii) *Production exceeds limitation.* If a qualified royalty owner's qualified royalty production for any quarter exceeds the royalty limit in section 4994(f)(2)(A) for such quarter, the royalty owner may allocate the royalty limit for such quarter to any qualified royalty production that the royalty owner selects.

(iii) *Allocation of royalty limit among taxpayers.* For the purpose of allocating the royalty limit in section 4994(f)(2)(A) among taxpayers, section 6429(c) (2) thru (4) will be applied except that the royalty limit determined under section 4994(f)(2)(A) is substituted in place of $2.500 each time it appears in section 6429(c) (2) thru (4).

(g) *Exempt stripper well oil.* [Reserved]

Par. 2. Paragraph (b)(2) of § 51.4996–1 is revised to read as follows:

§ 51.4996–1 Definitions.

* * * * *

(b) *Producer* * * *

(2) *Partnerships, trusts, and estates.* In the case of a partnership, the partnership's economic interest in the crude oil shall be allocated among the partners on the basis of each partner's proportionate share of the partnership's income from the crude oil, and the partner to whom the crude oil is allocated shall be treated as the producer of the crude oil. In the case of a trust (other than a grantor trust, *i.e.*, a trust where the grantor or another person is treated as substantial owner of the trust under subpart E of subchapter J of chapter 1 of the Internal Revenue Code) or an estate, the entity is the producer rather than the benficiaries. In the case of a grantor trust, to the extent that a person or entity (the grantor or another person) is treated for purposes of income taxation under subchapter J of chapter 1 of the Internal Revenue Code as the owner of a crude oil interest held by such trust, such person or entity shall be deemed to be the producer of the crude oil attributable to such interest for purposes of section 4996(a)(1). (See also § 51.4994–1 for special rules concerning the treatment of trusts and estates for purposes of determining the applicability of certain exemptions from the windfall profit tax.)

* * * * *

Par. 3. Paragraph (b)(1) of § 51.4995–2 is revised to read as follows:

§ 51.4995–2 Producer's certificate.

* * * * *

(b) *Exemption certificate*—(1) *In general.* For purposes of this section, an exemption certificate is a written statement certifying that all of the producer's crude oil from a property is exempt from the tax imposed by section 4986 because the crude oil constitutes exempt Indian oil or exempt royalty oil or the oil is from a qualified governmental interest or a qualified charitable interest. In the case of a trust or estate described in paragraphs (b)(4) or (c)(3) of § 51.4994–1, the exemption certificate may certify that a percentage of the oil from that property is exempt from the tax imposed by section 4986 because that portion of the oil is oil from a qualified charitable or governmental interest. The percentage referred to in the preceding sentence may be based on a reasonable estimate of the percentage of the oil from the property that is held for the benefit of a qualified charity or governmental unit for that taxable period. Any producer who furnishes an exemption certificate (other than an exempt royalty owner's certificate) to an operator, purchaser, partnership, or other disburser shall also file an exemption certificate with the Internal Revenue Service Center, Austin, Texas. Only one such certificate need be filed even though the producer may furnish certificates to more than one operator, purchaser, partnership, or other disburser.

* * * * *

Roscoe L. Egger, Jr.
Commissioner of Internal Revenue.

[FR Doc. 85–2719 Filed 2–11–85; 8:45 am]
BILLING CODE 4830–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 556]

Mimbres Valley; Establishment of Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area located in Luna and Grant Counties in southwestern New Mexico to be known as the "Mimbres Valley." The southern boundary of the proposed viticultural area reaches the U.S./Mexico International border. This proposal is the result of a petition submitted by Ms. Pam Ray, President of the Southwest Chapter of the New Mexico Vine and Wine Society. New Mexico State University, College of Agriculture and Home Economics located at Las Cruces, New Mexico, participated in gathering evidence for the petition of this proposed viticultural area. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising will enable industry to label wines more precisely and will help consumers to better identify the wines they may purchase.

DATE: Written comments must be received by March 29, 1985.

ADDRESSES: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385, (Attn: Notice No. 556.)

Copies of the petition, the proposed regulations, the appropriate maps, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4407, Federal Building, 12th and Pennsylvania Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 (202–556–7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the estblishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural area from the surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S maps with the boundaries prominently marked.

Petition

ATF has received a petition proposing a viticultural area that extends from Grant County to Luna County along the Mimbres River Valley in southwestern New Mexico. The proposed viticultural area follows the Mimbres River southward from an area located approximately 2 miles north of Mimbres to approximately 3 miles south of Columbus on the New Mexico, U.S./Mexico border. It consists of 995 square miles of land (636,800 acres) on which there is one bonded winery and 12 private grape-growers. The one bonded winery is located near Deming, New Mexico. Currently there are approximately 1,500 acres of grapes planted for viticulture in the proposed Mimbres Valley viticultural area. Local experts predict that during the next few years, grape acreage and viticultural activity is expected to increase dramaticially in the Mimbres Valley.

The petitioner claims that the proposed viticultural area is distinguised from the surrounding areas based on the following evidence submitted to ATF:

(1) *Evidence that the name "Mimbres Valley" is locally and/or nationally known as referring to the area specified in the petition.*

(a) The Mimbres Valley derives its name from the Mimbres Indians who inhabited the valley between 1100 and 1300 A.D. Today, ruins of their dwellings are still found in the valley. After the Mimbres Indians disappeared the Mimbreno Apaches moved in from the Southern Great Plains.

(b) During the period that the Apaches were inhabiting the area, the Spanish began their first explorations into New Mexico. De Vaca crossed this area as early as 1535. The famous exployer, Coronado, explored most of New Mexico in 1600. Just like the Indians, the Spanish left a strong cultural imprint upon the area. That is why many locations in the proposed viticultural area have both Spanish and Indian names. The mountain peak north of Deming was first called Picaho del Mimbres until it was later renamed Cook's Peak by the Anglo-American settlers who came during the westward expansion. The valley in which Deming is located is named Mimbres, which means "willow," or osier tree.

(c) Copies of maps submitted by the petitioner dated 1850 depict the Mimbres Mountains, Camp Mimbres (U.S. Cavalry installation), and the Rio Mimbres (Mimbres River). At that time the Rio Mimbres extended south into Mexico.

(d) Viticulture in the Mimbres Valley is documented in *The History of Luna County*, published in 1978 by the Luna County Historical Society. According to that publication, vineyards were found in Chinese gardens located east of Deming at the turn of the century. The first irrigated farms in the Mimbres Valley were documented in 1909. In 1913, the Holy Family Church was established in Deming. At that time grape vines, shade trees, shrubbery and fruit trees were planted on the church grounds.

(e) Emanuel Vocale who resides on land near Deming has 220 viens of tokay grapes that were planted by his father in 1932.

(f) The names of Mimbres Valley is in widespread usage today. Since 1850 the name has been applied to natural and manmade landmarks in the Mimbres Valley. It also appears in literature and maps of the area. Some uses of the name that are found within or near the boundaries of the proposed viticultural area are Mimbres, Mimbres Valley, Mimbres Peak, Mimbres River, Camp Mimbres, soil associations including Mimbres (Mimbres-Verhalen, Hondale-Mimbres-Bluepoint) and also the Mimbres Underground Water Basin. These references all appear on U.S.G.S. and Soil Conservation Service maps submitted by the petitioner. According to the petitioner, these names have long been established to clearly and closely associate the identity of the Mimbres Valley to the land within the proposed boundaries.

(g) There is one bonded winery located within the boundaries of the proposed viticultural area. It is known as St. Clair Vineyards and is located three miles south of Deming. The base of the operation of this new winery is 600 acres of grapes. The grape varieties being grown by St. Clair Vineyards include French Colombard, Sauvignon Blanc, Chardonnay, Malvasia, Bianca, Muscat, Canelli, Ugni Blanc, Zinfandel, Barbera, Cabernet Sauvignon, Merlot, Ruby Cabernet, Pinot Noir and Chenin Blanc. Another winery, owned by Luna County Wine Development Corporation, is proposed to be constructed near Deming in the near future.

(2) *Historical or current evidence that the boundaries of the proposed viticultural area are as specified in the petition.*

(a) The area historically known as the Mimbres Valley begins at the headwaters of the Mimbres River between Reeds Peak and McKnight Mountain, in the Black Range, near the Continental Divide in Grant County, New Mexico. This northern part of the valley which is not included in the boundaries of the proposed viticultural area is a narrow channel for the Mimbres River. I is bordered by foothills and mountains.

(b) The propsoed Mimbres Valley viticultural area begins in Luna County near Bear Canyon Dam, where the valley begins to widen and show distinct evidence of a flood plain area. As the river enters Luna County, the valley widens into a broad, gently

sloping flood plain. The course of the river winds around scattered foothill areas until it sinks from sight northeast of Deming, New Mexico. At one time, the primary river course was west of Deming and proceeded south through the pass separating the Florida Mountains and the Tres Hermanas Mountains. Over the years, the river sank at an area east of Columbus, New Mexico (U.S.G.S. Bulletin 618, 1916).

(c) Today, the Mimbres River is an intermittent stream and is usually dry except during periods of rainfall. The Mimbres River has no definite channel in the southern part of Luna County. At times, water from rainfall drainage has reached as far south as the Mexican border. The proposed viticultural extends south to the New Mexico, U.S.A.-Mexico border.

(d) According to the petitioner, the Florida, Tres Hermanas Mountains and other non-agricultural land areas were excluded from being within the boundaries of the proposed viticultural area because the soils, terrain and no available water rights make these mountain areas off limits to grape-growing or any other commercial agricultural potential. Elevations in these excluded areas that contain much rock out-croppings reach as high as 7,500 feet. Elevations within the proposed viticultural area generally range from approximately 4,000 to 6,000 feet above sea level.

(3) *Evidence of the geographical characteristics which distinguish the proposed Mimbres Valley viticultural area from the surrounding areas.*

(a) Soils. The geographical features within the proposed boundaries of this viticultural area are level to gently sloping alluvial soils. The soil associations within the boundaries of the proposed viticultural area are based upon U.S.D.A. Soil Conservation Service and Water Resources Research Institute information. Soils found within the boundaries of the proposed viticultural area include Mimbres-Verhalen, Mohave Stellar, Hondale-Mimbres-Bluepoint, Mimbres and Mimbres-Verhalen associations. These soils were formed on flood plains and stream terraces. They range from sandy to loamy alluvium, and are generally fine, mixed and deep in character. These soils are usually level to gently sloping in terrain.

The following soil associations are found within the boundaries of the proposed viticultural area:

The Mimbres association is found in the center of the proposed Mimbres Valley viticultural area. This soil association includes a relatively broad, nearly level to gently sloping basin floor or plains area near the center of Luna County in the vicinity of Deming. Except for a few dunes and hummocks and low alluvial ridges, the land surface is relatively smooth with a nearly uniform slope toward the southeast and south. These soils, which are dominantly deep, consist of alluvial materials of mixed origin. According to Soil Conservation Service information, much of the alluvial material undoubtedly was brought into this basin by the Mimbres River and its tributaries. Most of the irrigated land in Luna County is in this association. Cotton, grain sorghums, alfalfa, corn, small grains, beans, vegetables and pecans are the principal agricultural crops of the area.

Mimbres soils, the most extensive in the association, are characterized by a moderately thick surface layer of light brownish-gray loam or silty clay loam over a thick subsoil of pale brown silty clay loam or clay loam. A very high percentage of the soils in this association are well suited for use as cropland under irrigation.

The Mimbres-Verhalen association is found in the southern part of the Mimbres Valley. It occupies nearly level to very gently sloping valley bottoms and basin floors contiguous to the Mimbres and Macho intermittent drainages. These soils, which are moderately fine and fine-textured, consist of alluvial sediments of mixed origin.

The Hondale-Mimbres-Bluepoint association is found in the central and western area of the Mimbres Valley. Included in this association are broad, nearly level to very genetly sloping basin floors and valley bottoms. These soils which are deep, consist of basin-fill sediments of mixed origin.

The following soils, not found within boundaries of the viticultural area but are found within the areas surrounding it are:

The *Rockland-Lehmans association* includes the mountain ranges, isolated mountain peaks, ridges and hills that are not found within the boundaries of the proposed Mimbres Valley viticultural area. This association is formed in areas surrounding the Mimbres Valley such as in the Cook's Range (to the east), Tres Hermanas Mountains (just outside to the west of Columbus), Florida Mountains (to the east), Carrizalillo Hills (to the west), Cedar Range (to the west) and Good Sight Mountains (to the east). Their characteristic features are the steep to very steep slopes and shallow and rocky soils which contain numerous exposures of bedrock. The stony and extremely rocky soils of this association are dominated by materials of acid igneous origin.

The *Nickel-Upton-Tres Hermanas association* includes the gently to strongly sloping and undulating piedmont slopes located at the base of the desert mountains and hills found surrounding the proposed viticultural area. It is common for this general soil area to completely surround the rough broken and rockland areas that are dominated by hills and low mountains. Accourding to U.S. Soil Conservation Service maps, this association is found near the Cook's Range, Tres Hermanas Mountains and the Cedar Range.

(b) Water Availability. In the early part of this century irrigation was introduced to Luna County. By 1915 this form of delivering water to the soil reached a peak in the area. The favorable climate and suitability of soils for irrigation, coupled with the skillful management applied to the various kinds of soils by farmers, have allowed the land in the proposed viticultural area to be agriculturally productive. Water for irrigation in the proposed viticultural area has always been obtained from wells. Beause of these limited sources of water supplies and drops in water levels over the years, experts were doubtful about the future outlook for agriculture in this area of New Mexico.

In this area of the country, the potential for expanding irrigation is limited by the lack of water and by economic restrictions, rather than by a shortage of suitable soils. The State of New Mexico has devised a plan for agricultural land use based on the relationship between suitability of soils, size, and location of land in relation to developmental demand. The surrounding areas excluded from the boundaries of the viticultural area are generally steep and rocky and are not suited to viticulture either because of soil type or unavailability of water sources. According to the petitioner, some areas of land were excluded from the viticultural area because those areas lacked water rights. Areas such as those where water rights are not available have no potential for agricultural development regardless of soil, climate, location, or any other geographical feature.

Rainfall in the desert area is insufficient to support viticulture or any other type of commercial agricultural products. Therefore, grape-growers must depend on underground supplies of water that are delivered to the grape vines either by flood or drip irrigation methods. Presently, there are approximately 1,500 acres of grape vines within the Mimbres Valley viticultural area. Of the 1,500 acres of grapes now

producing, 683 acres operate under the drip irrigation method.

According to the publication titled "New Mexico Water Rights (March 1984)" written by Linda G. Harris of the New Mexico Water Resources Research Institute, virtually all of New Mexico's surface water already belongs to someone. The rights to the ground water are vested rights if existing and recognized at the time a ground water basin is declared. The state engineer must review applications for permits to withdraw or use surface or ground water. Water rights may be transferred only within basin boundaries. There are currently 31 declared ground water basins in New Mexico. The Mimbres Valley is one of those basins. The area has similar climate features, elevations and soil types. Most important, this area has potential for commercial agricultural irrigation with the existing water rights.

According to Kenneth Kunkel, Climatologist for the State of New Mexico and facts obtained from the New Mexico State University, Agriculture Experiment Station Research Report (176), precipitation averages 9 inches annually in the Mimbres Valley. At Fort Bayard, located just west, (near the north end of the proposed Mimbres Valley viticultural area) it averages 15 inches. At Lordsburg, located 40 miles to the west of the proposed viticultural area, it averages 10.5 inches annually. In the Mesilla Valley which is located 30 miles east of the Mimbres Valley, rainfall averages only 8 inches annually. The Mesilla Valley which covers approximately 445 square miles of land running along the Rio Grande River, extends from just north of Las Cruces, New Mexico to El Paso, Texas. ATF has received a petition for a proposed viticultural area for the Mesilla Valley. The process for establishing this valley as an American viticultural area is now in the rulemaking stage.

Just like the methods of irrigation used in the nearby Mesilla Valley, many of the grape vines in the Mimbres Valley are watered by the "Drip Irrigation Method" with a trickle irrigation system, which is supplied by underground pipes. The pipes are polyethylene water hoses with emitters inserted in them that run along the lines of vine stakes.

Under this relatively new method of irrigation, wells supply the system and the water is passed through filters to remove sand and avoid plugging the emitters at the delivery end. The trickle hoses are filled at intervals so pressure throughout the system is constant in order to maintain the same rate of supply at each emitter. The scheduling and volumes of irrigation water delivered to the grape vines are controlled by a computer. Such computers also have the capability to store temperature, wind, humidity and vine water consumption data.

(c) Climate. The proposed viticultural area is characterized by an arid continental climate with minimal precipitation totals, low humidity, plentiful sunshine and large diurnal and seasonal temperature changes.

Average annual precipitation totals are between 9 and 10 inches, with half of the the rainfall occurring by heavy thunderstorms from the months of July to September. Average annual snowfalls range from one to four inches. These snowfalls usually melt soon after they occur.

According to State Climatologist Kenneth E. Kunkel, there are three locations in the viticultural area where reasonably long weather records have been studied. They are at the towns of Deming, Columbus and Faywood. Outside of the proposed viticultural area at Fort Bayard, Lordsburg, and Las Cruces weather data has also been gathered for some time.

Within the area, the elevations vary from about 4,000 feet above sea level at the southern end to near 6,000 feet at the northern end. These elevation differences are the major cause of some climatic differences within the proposed Mimbres Valley viticultural area. Temperatures are found to be somewhat cooler at the northern end of the viticultural area than at the southern end. The means annual maximum temperature is about 4 degrees lower at Faywood than at Columbus. The growing season varies from 180 days at Faywood to 207 days at Columbus. The number of growing degree days varies from 3,826 at Faywood to 5,049 at Columbus.

(d) Distinct valley area. According to information provided by the petitioner, the non-mountainous part of Luna County conveniently divides into two physiographic areas, the piedmont slopes surrounding the mountains and the basin floor valley area. The nearly level to very gently sloping basin floors occupy the lower parts of the landscapes in this area. The three general soil associations recognized on these basin floors include the Hondale-Mimbres-Bluepoint association, the Mimbres association and the Mimbres-Verhalen association. Most water drainage in the proposed Mimbres Valley viticultural area flows into these closed basins. It is part of a larger closed-basin complex that drains into the Playa region of Northern Chihuahua in Mexico. The Mimbres River which originates in the mountains north of Luna County is the principal drainage of the Mimbres Valley.

The more extensive and important mountain ranges excluded from the boundaries of the proposed viticultural area include the Cook's (Cookes) Range located to the east, which attains an altitude of 8,404 feet on the summit of Cook's (Cookes) Peak, and the Florida Mountains located Southeast of Deming, with altitudes reaching 7,500 feet. These upland areas consisting of mountains and hills are steep, with considerable differences in local relief. In these mountain areas, temperatures may be expected to be a few degrees cooler and precipitation a little greater. Soils in these areas are found to be rocky and not useful for agriculture. Reports compiled by the New Mexico State University, Agricultural Experimental Station at Las Cruces titled *Soil Classification For Irrigation—Luna and Grant Counties (Research Reports 176 and 200)*, substantiate the distinction between the mountain areas surrounding the Mimbres Valley and the flood plain valley areas of the Mimbres Valley.

Although most of the land area included with the boundaries of the proposed viticultural area is similar in topography, there are a few spotted locations where independent lesser mountains are located within it. They are Red Mountain (elevation 5,422 feet), Black Mountain (elevation 5,375 feet) and Taylor Mountain (elevation 5,938). They are rather small mountains with minimal amounts of foothills associated with them.

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 proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidential effects 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 notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this proposal is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more:

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

(c) Significant adverse affect 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.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Public Participation—Written Comments

ATF requests comments from all interested persons concerning this proposed viticultural area. This document proposes possible boundaries for the Mimbres Valley viticultural area. However, comments concerning other possible boundaries for this viticultural area will be given consideration.

Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her requests, in writing, to the Director within the 45-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority

Accordingly, under the authority in 27 U.S.C. 205, the Director proposes the amendment of 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The Table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.103 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.103 Mimbres Valley

Par. 2. Subpart C, is amended by adding § 9.103 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.103 Membres Valley.

(a) Name. The name of the viticultural area described in this section is "Membres Valley."

(b) Approved maps. The appropriate maps for determining the boundaries of the Mimbres Valley viticultural area are 28 U.S.G.S. quadrangle maps (26-7.5 minute series and 2-15 minute series). They are entitled:

(1) "Akela, N. Mex.," 7.5 minute series, edition of 1972;

(2) "Antelope Hill, N. Mex.," 7.5 minute series, edition of 1963 (photoinspected 1974);

(3) "Bisbee Hills, N. Mex.," 7.5 minute series, edition of 1965;

(4) "Bowlin Ranch, N. Mex.," 7.5 minute series, edition of 1965;

(5) "Capital Dome, N. Mex.," 7.5 minute series, edition of 1965;

(6) "Carne, N. Mex.," 7.5 minute series, edition of 1965;

(7) "Columbus, N. Mex.," 7.5 minute series, edition of 1965;

(8) "Columbus NE, N. Mex.," 7.5 minute series, edition of 1966;

(9) "Columbus SE, N. Mex.," 7.5 minute series, edition of 1966;

(10) "Deeming East, N. Mex.," 7.5 minute series, edition of 1965;

(11) "Deming West, N. Mex.," 7.5 minute series, edition of 1964 (photoinspected 1972);

(12) "Dwyer, N. Mex.," 15 minute series, edition of 1956;

(13) "Faywood Station, N. Mex.," 7.5 minute series, edition of 1947;

(14) "Florida Gap, N. Mex.," 7.5 minute series, edition of 1964;

(15) "Goat Ridge, N. Mex.," 7.5 minute series, edition of 1964;

(16) "Gym Peak, N. Mex.," 7.5 minute series, edition of 1964;

(17) "Hermanas, N. Mex.," 7.5 minute series, edition of 1964;

(18) "Malpais Hill, N. Mex.," 7.5 minute series, edition of 1965;

(19) "Midway Butte, N. Mex.," 7.5 minute series, edition of 1965;

(20) "Myndus, N. Mex.," 7.5 minute series, edition of 1972;

(21) "North Peak, N. Mex.," 7.5 minute series, edition of 1965;

(22) "Red Mountain, N. Mex.," 7.5 minute series, edition of 1965;

(23) "San Lorenzo, N. Mex.," 15 minute series, edition of 1956;

(24) "Sibley Hole, N. Mex.," 7.5 minute series, edition of 1972;

(25) "South Peak, N. Mex.," 7.5 minute series, edition of 1965;

(26) "Spalding, N. Mex.," 7.5 minute series, edition of 1964;

(27) "West Lime Hills, N. Mex.," 7.5 minute series, edition of 1965; and

(28) "Williams Ranch, N. Mex.," 7.5 minute series, edition of 1964.

(c) "Boundaries. The Mimbres Valley viticultural area is located within Grant and Luna County, New Mexico. The boundaries are as follows: The beginning point is located at Faywood Station on an unimproved dirt road at benchmark 4911 in Luna County, New Mexico on the northern part of Section 2, Township 21 South (T21S), Range 12 West (R12W) on the Faywood Station Quadrangle U.S.G.S. map;

(1) From the beginning point the boundary runs northeast 2.25 miles along an unimproved dirt road until it intersects U.S. Route 180 (indicated on map as U.S. Rte. 260) at New Mexico Highway 61 (indicated on map as an unnumbered secondary highway) at the south portion of Sec. 30, T20S/R11W;

(2) The boundary proceeds in a generally northerly direction on N.M. Hwy. 61 for 34.5 miles crossing over U.S. Route 90 (indicated on map as U.S. Rte. 180) near San Lorenzo, N.M. until it meets an unimproved dirt road near Bear Canyon Dam at the west line of Sec. 28, T16S/R11W on the San Lorenzo, N. Mex. 15 minute series U.S.G.S. map;

(3) It then heads east on the unimproved dirt road for .2 mile until it meets the Mimbres River at Sec. 28, T16S/R11W;

(4) It then goes south on the Mimbres River for .25 mile until it intersects the 6,000 foot elevation contour line at Sec. 28, T16S/R11W;

(5) From there the boundary runs south along the 6,000 foot elevation

contour line until it meets the east line of Sec. 11, T17S/R11W;

(6) Then it proceeds south on the section line for .6 mile until it hits the south line of Sec. 11, T17S/R11W;

(7) Then it travels east on the section line for 1.8 miles until it intersects the Noonday Canyon unimproved dirt road on the north line of Sec. 18, T17S/R10W;

(8) It then heads south on the unimproved dirt road for 2.2 miles until it intersects a medium duty secondary road at the north part of Sec. 30, T17S/R10W;

(9) The boundary goes south on the medium duty secondary road for .8 mile until it reaches the north line of Sec. 31, T17S/R10W;

(10) The boundary goes east 5 miles on the section line to the east line of Section 36 (also known as the 1st Guide Meridian West) at T17S/R10W;

(11) The boundary proceeds south on the section line (1st Guide Meridian West) for 13 miles to the southeast corner of Section 36 (also indicated on map as Luna/Grant County line), T19S/R10W on the Dwyer, N. Mex. 15 minute U.S.G.S. map;

(12) The boundary travels west on the section line (Luna/Grant County line) three miles to the northeast corner of Section 4, T20S/R10W;

(13) The boundary goes south on the section line for three miles to the southeast corner of Section 16, T20S/R10W;

(14) Then it goes west on the south line of Section 16 for approximately .6 mile to an improved road that intersects the south line of Section 16 located 500 feet south of Benchmark 5119 on T20S/R10W;

(15) The boundary heads south on the improved dirt road for approximately 10.25 miles until it meets Hwy. 180 at the west line of Section 9, T22S/R10W on the Spalding, N. Mex. U.S.G.S. map;

(16) Then it proceeds southeasterly on Hwy. 180 for approximately 5 miles to the north line of Section 6, T23S/R9W on the Deming West, N. Mex. U.S.G.S. map;

(17) It then goes east on the section line approximately 11.75 miles to the east line of Section 1, T23S/R8W on the Carne, N. Mex. U.S.G.S. map;

(18) It then travels south on the section line for 1.5 miles until it meets an unimproved dirt road at Sec. 12, T23S/R8W;

(19) It follows the unimproved dirt road in a easterly direction for 3 miles until it goes to Carne Windmill and another unimproved dirt road at the northeast part of Sec. 17, T23S/R7W;

(20) From there it follows the unimproved dirt road in a southeasterly direction .75 miles until it meets the south line at the southeast corner of Sec. 16, T23S/R7W;

(21) Then it proceeds due east along the section line for 9 miles until it arrives at the east line of Sec. 24, T23S/R6W on the Myndus, N. Mex. U.S.G.S. map;

(22) Then it goes due south on the section line for 15 miles until it meets the south line of Section 36, T25S/R6W on the Sibley Hole, N. Mex. U.S.G.S. map;

(23) Then it heads west on the section line for 8 miles until it intersects the 4,200 foot elevation contour line at the southeast corner of Sec. 34, T25S/R7W on the Gym Peak, N. Mex. U.S.G.S. map;

(24) Then it heads north on the 4,200 foot elevation contour line for 11 miles until it meets N.M. Hwy. 549 (indicated on map as U.S. Rte. 70/80/180) at the southwest corner of Sec. 5, T24S/R7W on the Florida Gap, N. Mex. U.S.G.S. map;

(25) The boundary heads west on N.M. Hwy. 549 (indicated on map as U.S. Rte. 70/80/180) for 4.5 miles until it meets the light duty road at the east line (northeast corner) of Sec. 3, T24S/R8W on the Capital Dome, N. Mex. U.S.G.S. map;

(26) It then goes south on the light duty road/section line for 4 miles until it meets another light duty road at the south line of Sec. 22, T24S/R8W;

(27) Then the boundary heads west for 2 miles on the light duty road/section line until it intersects an unimproved dirt road at the east line of Sec. 29, T24S/R8W;

(28) Then it travels south on the unimproved dirt road/section line for 2 miles until it meets another unimproved dirt road at the south line of Sec. 32, T24S/R8W;

(29) It then moves west .25 mile on the unimproved dirt road until it reaches the east line of Sec. 5, T25S/R8W;

(30) Then it goes south on the section line for 6 miles until it reaches an unimproved dirt road near Crawford Ranch at the north line of Sec. 5, T25S/R8W on the South Peak, N. Mex. U.S.G.S. map;

(31) Then it follows the unimproved dirt road in a southwest direction for. 4 mile until it meets the east line of Sec. 6, T26S/R8W;

(32) It follows the section line south (which also partly is an unimproved dirt road) for 2.5 miles until it hits the north line of Sec. 20, T26S/R8W;

(33) It then travels east for 1 mile along the section line until it hits the east line of Sec. 20, T26S/R8W;

(34) From there it proceeds south for 2 miles on the section line until it intersects the north line of Sec. 33, T26S/R8W;

(35) It then heads east for 5 miles on the section line until it intersects the east line of Sec. 31, T26S/R7W on the Gym Peak, N. Mex. U.S.G.S. map;

(36) The boundary goes south on the section line (which also partly serves as a light duty road and unimproved dirt road) for 7 miles until it meets the north line of Sec. 5 (which also is a light duty road), T28S/R7W on the Columbus NE, N. Mex. U.S.G.S. map;

(37) Then it goes east for 4 miles on the section line (which also partly is a light duty road and unimproved dirt road) until it meets the east line of Sec. 2 near Oney Tank, T28S/R7W;

(38) Then it goes south on the section line (which also is partially an unimproved dirt road) for 8.7 miles until it meets the New Mexico, U.S.A./Mexico International border at the east line of Sec. 14, T29S/R7W of the Columbus SE, N. Mex. U.S.G.S. map;

(39) The boundary follows the section line (which also is partially an unimproved dirt road) in a west direction along the International border for 23 miles to the west line of Sec. 18, T29S/R10W on the Hermanas, N. Mex. U.S.G.S. map;

(40) It then heads north on the section line (which also is partially an unimproved dirt road and a light duty dirt road) for 3.5 miles to the north line of Sec. 31, T28S/R10W;

(41) It then moves east for 13 miles on the section line until it intersects the west line of Sec. 29, T28S/R8W on the Columbus, N. Mex. U.S.G.S. map;

(42) Then it follows the section line north for 8 miles until it meets the south line of Sec. 18, T27S/R8W on the North Peak, N. Mex. U.S.G.S. map;

(43) Then it proceeds west on the section line for 11 miles to the west part of Sec. 16 identified as longitude point 107 degrees, 52 minutes, 30 seconds, T27S/R10W on the West Lime Hills, N. Mex. U.S.G.S. map;

(44) Then it moves north on the 107 degrees, 52 minutes, 30 seconds longitude point for 9 miles until it intersects the north line of Sec. 4 (which is also partially an unimproved dirt road), T26S/R10W on the Midway Butte, N. Mex. U.S.G.S. map;

(45) Then it goes west on the section line for 6.5 miles until it hits the west line of Sec. 33, T25S/R11W on the Bisbee Hills, N. Mex. U.S.G.S. map;

(46) The boundary then travels north on the section line for 26.5 miles (crossing the Southern Pacific Railroad tracks) until it intersects with the Atchison, Topeka and Santa Fe Railroad tracks on the west line of Sec. 21, T21S/R11W on the Spalding, N. Mex. U.S.G.S. map;

(47) Finally it follows the Atchison, Topeka and Santa Fe Railroad tracks in a northwesterly direction for 5 miles until it reaches the beginning point at benchmark 4911 on an unimproved dirt road in Faywood Station at Sec. 2, T21S/R12W on the Faywood Station, N. Mex. U.S.G.S. map.

Approved: February 6, 1985.

Stephen E. Higgins,

Director.

[FR Doc. 85-3451 Filed 2-11-85; 8:45 am]

BILLING CODE 4810-31-M

PANAMA CANAL COMMISSION

35 CFR Parts 101, 107, 111, 113, and 123

Revised Rules for Arriving and Departing Vessels

AGENCY: Panama Canal Commission.

ACTION: Notice Of Proposed Rulemaking.

SUMMARY: This proposed amendment would make changes in several parts of Title 35, Code of Federal Regulations. These regulations pertain generally to the requirements for arriving and departing vessels and hazardous cargoes. The Canal Commission proposes to adopt the sandards set forth in various International Maritime Organization (IMO) Conventions. By way of background, the IMO was established in 1958 with headquarters in London, England. 9 UST 621, UKTS 54, 289 UNTS 3. It has, at present, 125 member nations. The Organization has been effective in drawing up a comprehensive body of internationally-accepted regulations and standards covering various aspects of shipping, including the prevention and control of pollution, and navigation safety. The purpose of the proposed amendment to Part 101 is to consolidate in one part the rules describing the anchorages for vessels using the Panama Canal. The amendment to Part 107 would require that officers and crews of vessels meet certain training standards recommended by the IMO. Part 111 is revised to change the flag requirements for vessels carrying toxic or radioactive commodities. Part 113 would be amended to adopt new dangerous cargo rules. Part 123 is proposed to be amended to change the requirements for advance radio notification by vessels carrying dangerous cargo.

DATES: Comments must be received on or before March 14, 1985.

ADDRESSES: Comments should be sent to Secretary, Panama Canal Commission, Suite 312, Pennsylvania Building, 425 13th Street, NW., Washington, D.C. 20004 or Panama Canal Commission, Office of General Counsel, APO Miami, Florida 34011.

Comments will be available for public inspection in the Office of the Secretary, Suite 312, Pennsylvania Building, 425 13th Street, NW., Washington, D.C. between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Secretary, Panama Canal Commission, Telephone: 202-724-0104 or Mr. John L. Haines, Jr., General Counsel, telephone in Balboa Heights, Republic of Panama, 011-507-52-7511.

SUPPLEMENTARY INFORMATION:

Part 101. Presently, the description of the anchorage areas for merchant vessels and small craft are in Part 101, while the description of the anchorage areas for vessels carrying hazardous cargoes is in Part 113. This rule will delete the description of the hazardous cargo anchorage area from Part 113 and insert it in Part 101, thereby consolidating the descriptions of all the anchorage areas in one part. In § 101.10 the list of documents which must be present to Canal boarding inspectors is revised to delete certain obsolete requirements and to add new requirements, in order to conform to the revisions in Part 113. Under this change vessels must submit a copy of the Hazardous Cargo Manifest for packaged dangerous cargo and a copy of the Loading Plan for dangerous cargo in bulk. Additional documents which must be made available for inspection by the boarding officer include certifications of training for officers and crew and the International Oil Pollution Prevention certificate.

Part 107. This part deals with the manning requirements for vessels navigating the waters of the Panama Canal. Section 107.1 is proposed to be amended to require that the officers and crews of vessels in Canal waters meet the training standards recommended by the International Maritime Organization.

Part 111. Under current regulations all vessels carrying dangerous cargo are required to fly a red flag during daylight. This amendment would require vessels carrying a dangerous cargo to fly the red flag if the cargo is a fire or explosion hazard and the international flag "T", if the cargo is toxic or radioactive.

Part 113. The Panama Canal Commission proposes to revise the rules for transporting dangerous cargoes. Because of the increasing volume and number of dangerous substances passing through the Panama Canal and the complexity of the safety requirements for them, standardized identification and reporting procedures are needed. Recognizing the international character of Canal traffic, it is proposed to adopt the International Maritime Organization's rules concerning dangerous cargoes. These rules have worldwide acceptance, and their adoption will cause minimum inconvenience to world shipping because most maritime nations already have adopted these or similar regulations. Many non-U.S. registered vessel Canal customers who do not utilize U. S. ports will find these regulations more convenient than compliance with U.S. Coast Guard Regulations, as required by current regulations. Other minor changes not directly related to the adoption of IMO standards are also proposed. For example, amended § 113.4 deletes the requirement that vessels communicate to Canal authorities the results of mandatory tests of alarms and safety devices. Instead, the results of the test must be noted in the ship's log. Certain Canal operating procedures would be deleted as being internal matters not required to be published in the Code of Federal Regulations. A more significant change concerns the carriage of nuclear materials. Under present rules, vessels not in compliance with the International Maritime Dangerous Goods (IMDG) Code could be permitted to enter Canal waters if a waiver of the Code regulations were granted by Canal authorities. This amendment would eliminate the waiver provision: Vessels carrying nuclear material must comply with the IMDG Code. In addition, these nuclear carriers shall be required to provide proof of financial responsibility.

Part 123. Section 123.4 requires vessels approaching the Panama Canal to provide advance notification by radio of their estimated time of arrival and of certain other matters. The notification requirements pertaining to dangerous cargoes are proposed to be amended to conform to the proposed changes in Part 113. Also, an obsolete reference to smallpox vaccinations is deleted from the notification requirement pertaining to quarantine and immigration.

This regulation is not a major rule within the meaning of Executive Order 12291, 3 CFR Part 127 (1981 comp.), and therefore, a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities and is not, therefore, subject to the Regulatory Flexibility Act (5 USC 601-612). The incorporation by reference in this rule were approved by the Director of the Federal Register on (insert date on

which final rule takes effect in **Federal Register**).

List of Subjects

35 CFR Parts 101 and 113

Anchorages, Boarding officers, Dangerous cargo, Incorporation by reference, Manning of vessels, Radio Communication.

35 CFR Part 107

Seamen, Vessels.

35 CFR Part 111

Aircraft, Anchorage grounds, Navigation (water), Vessels.

35 CFR Part 123

Vessels, Waste treatment and disposal.

Accordingly, it is proposed to amend 35 CFR Parts 101, 107, 111, 113 and 123 as follows.

PART 101—[AMENDED]

1. Section 101.8 is revised to read as follows:

§ 101.8 Vessel anchorage areas.

The following areas are designated as authorized anchorages within Canal waters:

(a) *Atlantic Entrance.*—(1) *Merchant-Vessel Anchorage.* An area to the west of the Canal channel bounded as follows: Starting at a point "A", located in position 9°21'25" N., 79°55'31" W., and marked by lighted buoy No. 2, thence 900 yards 270° true to a point "B" located in position 9°21'25" N., 79°55'58" W., thence to lighted buoy "I", thence to lighted buoy "H", thence due north to a point "C" located in position 9°22'07" N., 79°56'41" W., thence 2,800 yards 59° true to a point "D" located in position 9°22'50" N., 79°55'29" W., and thence to the starting point. The line extending due west from the Cristobal Mole through lighted beacon No. 1 and lighted buoy No. 2 (9°21'25" North) marks the southern limit of the anchorage area. Except as provided by § 105.3, no vessel shall pass this line without having been passed by the boarding officer and without having a Canal pilot on board.

(2) *Outside Explosive Anchorage.* An area bounded by a line from Point A at position 9°23'53" N., 79°56'29" W., thence to Point B at position 9°24'40" N., 79°56'29" W., thence to Point C at position 9°24'40" N., 79°57'00" W., thence to Point D at position 9°23'53" N., 79°57'00" W., thence to Point A.

(3) *Inside Explosive Anchorage.* The area included in a rectangle one thousand yards wide immediately south of the West breakwater, the rectangle extending 2,000 yards along the west breakwater from a point on the west breakwater one thousand yards from the west breakwater light.

(4) *Small-Craft Anchorage.* An area to the east of the Canal channel bounded as follows: Starting at buoy "A" a flashing amber buoy located in position 9°43" N., 79°55'10" W., thence 1,075 yards 066° true, through fixed amber lighted buoy "B" to fixed amber lighted buoy "C", thence 375 yards 143° true, thence 1,760 yards 233° true to the east prism of the Canal channel, thence due north 410 yards to flashing special anchorage buoy "3", thence 525 yards 023° true to the starting point at buoy "A".

(b) *Gatun Lake Anchorage.* An area immediately east of the Canal channel line, bounded by a line extending from the south end of the east wing-wall of Gatun Locks, thence 450 yards 120° true, thence 676 yards 146° true to flashing special anchorage buoy "A", thence 1,415 yards 078° true to flashing special anchorage buoy "1", thence 1,199 yards 155° true to flashing special anchorage buoy "3", thence 2,314 yards 225° true through special anchorage buoy "5" to special anchorage buoy "7", thence 901 yards 220° true to special anchorage buoy "9", thence 952 yards 205° true to the Canal channel line at flashing buoy "11", the channel prism line being the westerly boundary line of the anchorage area.

(c) *Pacific Entrance.*—(1) *Merchant-Vessel Anchorage.* An area bounded as follows: beginning at a point in position 8°51'50" N., 79°30'00" W., marked by a lighted, whistle buoy which is painted with alternating black and white vertical stripes and which shows short-long flashing white light every 8 seconds (i.e., light 0.4 second, eclipse 0.4 second, light 1.6 seconds, eclipse 5.6 seconds), thence due east to longitude 79°28'00" W., thence due north to 8°54'31" N., thence due west toward Flamenco Island Light to a point 8°54'31" N., 79°30'46" W., thence southwestward touching the northwest corner of San Jose Rock to position 8°53'27" N., 79°31'23" W., marked by canal-entrance lighted buoy No. 2, thence southeastward to the point of beginning.

(2) *Explosive Anchorage.* An area south of Naos Island bounded on the east by a line drawn south (true) from canal-entrance lighted buoy No. 1; on the south by a line drawn east (true) from Tortolita Island, and in the north and west by the curve of 30 foot depth.

(d) If there are any discrepancies between the designated anchorage areas as described in this section and the anchorage areas described in paragraph 4 of Annex A of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977 and the attachments thereto, the description in the treaty documents shall govern.

2. Section 101.10 is revised to read as follows:

§ 101.10 Same; List.

(a) *Documents for Commission Boarding Officer.* All documents listed below shall be ready for immediate delivery to the boarding officer when he boards the vessel upon each arrival of the vessel at the Canal.

Documents Required

(1) Ship's Information and Quarantine Declaration (Panama Canal Form 4398)—1 copy.

(2) Cargo Declaration (Panama Canal Form 4363)—1 copy.[1]

(3) Crew List (Panama Canal Form 1509)—2 copies.

(4) Passenger List (Panama Canal Form 20)—1 copy.

(5) Dangerous Cargo Manifest—1 copy.[2]

(6) Loading Plan—1 copy.[3]

(7) Panama Canal Tonnage Certificate—1 copy.1

(8) Ship's plans (general arrangement, engine room, capacity, mid-ship, etc.)—1 copy.[1]

(b) *Documents for Examination Only.* The following documents shall be available for inspection by the Commission boarding officer:

(1) Ship's log,

(2) All ship's documents pertaining to cargo, classification, construction, load line, equipment, safety, sanitation, and tonnage,

(3) SOLAS certificate, for ships carrying dangerous cargo in bulk or liquefied gas in bulk,

(4) An International Oil Pollution certificate, for ships carrying dangerous cargo in bulk or liquefied gas in bulk, and

(5) Certificates showing compliance with the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978.

(c) *Crew List.* For the purposes of additional identification of crew members, all copies of the crew list required by this section shall include for each seaman the serial number of his certificate of identification, continuous discharge book, passport or other satisfactory identifying documentation. In addition, the given name and middle

[1] Required only if vessel transits Canal.

[2] Required only if vessel is carrying packaged dangerous goods.

[3] Required only if vessel is carrying dangerous cargo in bulk.

initial, as well as the family name, shall be shown for all seamen.

(d) *Passenger List.* The passenger list required by this section shall be in accurate and legible form and shall be delivered to the boarding officer. The list shall show passengers in alphabetical order.

(e) *Dangerous Cargo Manifest.* The dangerous cargo manifest for vessels carrying packaged dangerous goods, as defined in § 113.2(m) of this subchapter, shall show the correct technical name, United Nations number, International Maritime Organization class, storage location, and quantity for each packaged dangerous good carried as cargo.

(f) *Loading Plan.* The loading plan for vessels carrying dangerous cargoes in bulk, as defined in § 113.2(f) of this subchapter, shall show the location of cargo tanks or holds and the correct technical name, United Nations number, International Maritime Organization class, and quantity of dangerous cargo carried in each cargo tank or hold.

PART 107—[AMENDED]

(The information collection requirement in paragraph (d) approved by the Office of Management and Budget under control number 3207–0001)

3. Section 107.1 is revised to read as follows:

§ 107.1 Vessels to be fully manned.

(a) A vessel navigating the waters of the Canal shall be sufficiently manned in officers and crew to permit safe handling of the vessel.

(b) The officers and crew shall meet the standards set forth in the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, which is hereby incorporated by reference. This Convention is contained in the International Maritime Organization publication number 938 78.15.E "International Conference on Training and Certification of Seafarers, 1978," for sale from the International Maritime Organization, Publications Section, 4 Albert Embankment, London SE1 7SR, England. Copies of this publication are also available for inspection in the office of the Chief of the Navigation Division, Panama Canal Commission, Building 729, Balboa, Republic of Panama.

(c) The Canal authorities may deny transit of the Canal to any vessel which, in their opinion, is insufficiently manned as to officers and crew.

PART 111—[AMENDED]

4. Subsection 111.23(d) is revised to read as follows:

§ 111.23 Power-driven vessels underway (Rule 23).

* * * * *

(d) A vessel employed in the transportation or transfer of flammable, explosive, toxic, or radioactive commodities shall carry, in addition to her appropriate mooring, anchor, or navigation lights, where it can best be seen, a red light of such a character as to be visible all around the horizon at a distance of at least 2 miles. By day she shall display, where it can best be seen, a red flag if the cargo includes flammable or explosive commodities and the international single flag hoist signal "T" if the commodity is toxic or radioactive only.

5. Part 113 is revised to read as follows:

PART 113—DANGEROUS CARGOES

Subpart A—General Provisions

Sec.

Subpart B—Vessels Carrying Dangerous Cargoes in Bulk

Subpart C—Vessels Carrying Dangerous Packaged Goods

Authority: Issued under authority vested in the President by section 1801 of Pub. L. 96–70, 93 Stat. 492; E.O. 12215, 45 FR 36043.

Subpart A—General Provisions

§ 113.1 Application.

This part does not apply to vessels of war or auxiliary vessels, as those terms are defined in the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (September 7, 1977). This part applies to all other vessels, regardless of character, tonnage, size, service, and whether self-propelled or not, and whether arriving or departing, under way, moored, anchored, aground, transiting or passing through Canal waters, that are carrying dangerous cargo as defined in § 113.2(e).

§ 113.2 Definitions.

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

(a) *"Bulk Chemical Code"* means the Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, including amendments thereto, which is generally applicable to ships built on or after April 12, 1972, but before July 1, 1986, and the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, which is generally applicable to ships built on or after July 1, 1986.

(b) *"Certificate of Compliance"* means a certificate issued by a national government, or a society on behalf of a government, certifying that the ship is in compliance with the requirements of the Bulk Chemical Code or Gas Carrier Codes.

(c) *"Certificate of Fitness"* means a certificate issued by or on behalf of a national governemnt in accordance with the Bulk Chemical Code or the Gas Carrier Codes, certifying that the construction and equipment of the vessel are adequate to permit the safe carriage of specified dangerous substances in the vessel.

(d) *"Combustible Liquids"* means a volatile liquid having a flashpoint at 61 °C (141 °F) or above.

(e) *"Dangerous Cargo"* means (1) any substance whether packaged or in bulk, intended for carriage or storage and having properties coming within the classes listed in the IMDG Code, and (2) any substance shipped in bulk not coming within the IMDG Code classes but which is subject to the requirements of the Bulk Chemical Code, the Gas Carrier Codes, or appendix B of the Solid Bulk Code.

(f) *"Dangerous Cargo in Bulk"* means any dangerous substance, carried without any intermediate form of containment, in a tank or cargo space which is a structural part of a vessel or in a tank permanently fixed in or on a vessel.

(g) *"Gas Carrier Codes"* means the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, which is generally applicable to ships built on or after July 1, 1986, and the Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, which is generally applicable to ships built on or after December 31, 1976, but before July 1, 1986, and the Code for Existing Ships Carrying Liquefied Gases in Bulk,

which is generally applicable to ships delivered before December 31, 1976.

(h) *"IMDG"* means the International Maritime Dangerous Goods Code.

(i) *"IMO"* means the International Maritime Organization (formerly International Maritime Consultative Organization).

(j) *"IMO Class"* means the classification of a dangerous substance under the International Convention for the Safety of Life at Sea, 1960, as amended. Under this system of classification, dangerous substances are divided into 9 classes and subdivisions based on their particular properties.

(k) *"IOPP"* means an IMO International Oil Pollution Prevention Certificate certifying that the ship has been surveyed in accordance with regulations of MARPOL 73/78.

(l) *"MARPOL 73/78"* means the IMO International Convention for the Prevention of Pollution From Ships, 1973, as modified by the Protocol of 1978 relating thereto. Any annex thereto applies to vesels in waters of the Panama Canal beginning the date on which the annex enters into force by its terms.

(m) *"Packaged Dangerous Goods"* means any dangerous cargo contained in a receptacle, portable tank, freight container or vehicle. The term includes an empty receptable, portable tank or tank vehicle which has previously been used for the carriage of a dangerous substance unless such receptacle or tank has been cleaned and dried, or when the nature of the former contents permits transport with safety.

(n) *"SOLAS"* means the International Convention for the Safety of Life at Sea, 1974, as amended.

(o) *"Solid Bulk Code"* means the International Code of Safe Practice for Solid Bulk Cargoes.

(p) Reference to codes, international agreements, or other regulations shall also be deemed to refer to any amendments or additions thereto on or after the date such amendments or additions become effective.

§ 113.3 Classifications.

(a) Dangerous cargo shall be classified in accordance with the class. Whenever there is a doubt as to the explosive or dangerous nature of any commodity, or in case of conflict as to its classification, determination of the nature and classification of such cargoes shall be made by the Chief, Navigation Division or his designee. Dangerous cargoes shall be divided into the following classes:

(1) Class 1—Explosives.

(i) 1.1—Substances and articles which have a mass explosion hazard.

(ii) 1.2—Substances and articles which have a projection hazard but not a mass explosion hazard.

(iii) 1.3—Substances and articles which have a fire hazard and either a minor blast hazard or a minor projection hazard, or both, but not a mass explosion hazard.

(iv) 1.4—Substances and articles which present no significant hazard.

(v) 1.5—Very insensitive substances which have a mass explosion hazard.

(2) Class 2—Gases: Compressed, liquefied or dissolved under pressure.

(i) 2.1—Inflammable gases.

(ii) 2.2—Nonflammable gases.

(iii) 2.3—Poisonous gases.

(3) Class 3—Inflammable liquids.

(i) 3.1—Low flashpoint group (flashpoint below −18 °C or 0 °F).

(ii) 3.2—Intermediate flashpoint group (flashpoint between −18 °C (0 °F) and 23 °C (73 °F)).

(iii) 3.3—High flashpoint group (flashpoint between 23 °C (73 °F) to 61 °C (141 °F)).

(4) Class 4—Inflammable solids or substances.

(i) 4.1—Inflammable solids.

(ii) 4.2—Substances liable to spontaneous combustion.

(iii) 4.3—Substances emitting inflammable gases when wet.

(5) Class 5—Oxidizing substances and organic peroxides.

(i) 5.1—Oxidizing substances.

(ii) 5.2—Organic peroxides.

(6) Class 6—Poisonous and infectious substances.

(i) 6.1—Poisonous substances.

(ii) 6.2—Infectious substances.

(7) Class 7—Radioactive substances.

(8) Class 8—Corrosives.

(9) Class 9—Miscellaneous dangerous substances. This class includes any other substance which experience has shown, or may show, to be of such a dangerous character that the application of the hazardous cargo rules are warranted. Class 9 includes a number of substances and articles which cannot be properly covered by the provisions applicable to the other classes, or which present a relatively low transportation hazard.

(b) Combustible liquids having flashpoints above 61 °C (141 °F) are not considered to be dangerous by virtue of their fire hazard.

§113.4 Safety and alarm systems.

(a) All dangerous cargo alarms, safety and shutdown devices, and the vessel's firefighting systems shall be tested within 24 hours prior to arrival in Canal waters by any vessel carrying dangerous cargoes. An entry shall be made in the ship's log stating that such tests were conducted and the systems found in proper working order or, if not in proper working order, a detailed listing of discrepancies shall be included.

(b) This log entry shall be available for inspection by the boarding officer. Any deviations from the "proper working order" condition shall be brought to the attention of the boarding officer.

§ 113.5 Inspections.

The Chief, Navigation Division or his designee may inspect vessels carrying dangerous cargoes to ensure that such vessels are in compliance with the requirements of this part.

Subpart B—Vessels Carrying Dangerous Cargoes in Bulk

§ 113.21 Application.

This subpart applies to vessels carrying dangerous gases, liquids, and solids in bulk, or tankers in ballast condition which are not gas free. It does not apply to vessels carrying combustible liquids in bulk or tankers in ballast condition when their last cargo was a combustible liquid.

§ 113.22 Advance notice.

Vessels subject to this subpart shall provide advance notice to Canal authorities by radio of the information required by the "GOLF" item in the prearrival radio message prescribed in § 123.4(a) of this subchapter.

§ 113.23 Anchoring requirements.

(a) Vessels subject to this subpart shall communicate with the signal stations at Flamenco Island or Cristobal prior to arrival as required by § 101.1 of this subchapter and await instructions before anchoring.

(b) Such vessels will be instructed to anchor in one of the explosive anchorage areas as described in § 101.8(a) (2) (3) and 101.8(c)(2) of this subchapter.

§ 113.24 Signals.

Vessels subject to this subpart shall display the flags and lights described in § 111.23(d) of this subchapter.

§ 113.25 Vessel requirements.

(a) Vessels subject to this subpart shall comply with the following standards as set forth in IMO Conventions and Codes, which are hereby incorporated by reference:

(1) All vessels subject to this subpart shall comply with MARPOL 73/78.

(2) Vessels carrying dangerous chemicals in bulk shall comply with the Bulk Chemical Code.

(3) Bulk liquefied gas carriers shall comply with the Gas Carrier Codes.

(4) Solid bulk carriers shall comply with the Solid Bulk Code.

(b) The standards incorporated by reference in paragraph (a) are further described as follows:

(1) MARPOL 73/78 is the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto. The Convention is contained in IMO publication number 520 77.14.E "International Conference on Marine Pollution, 1973." The 1978 Protocol is contained in IMO publication number 988 78.09.E "International Conference on Tanker Safety and Pollution Prevention, 1978." The Bulk Chemical Code is in two parts: the Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, which is generally applicable to ships built on or after April 12, 1972, and before July 1, 1986, and is contained in IMO publications 767 80.13.E and 770 83.13.E. (For a complete set of the Code and its most recent amendments, both of these publications must be consulted.) The other part is the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, which is generally applicable to ships built on or after July 1, 1986, and is contained in IMO publication number 100 83.11.E. The Gas Carrier Codes are the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, which is generally applicable to ships built on or after July 1, 1986, and which is contained in IMO publication number 104 83.12.E, the Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, which is generally applicable to ships built on or after December 31, 1976, but before July 1, 1976, and which is contained in IMO publication number 782 83.16.E, and the Code for Existing Ships Carrying Liquefied Gases in Bulk, which is generally applicable to ships delivered before December 31, 1976, and which is contained in IMO publication number 788 76.11.E. The Solid Bulk Code is the International Code of Safe Practice for Solid Bulk Cargoes, contained in IMO publication number 258 83.18.E. These publications are for sale from the International Maritime Organization, Publications Section, 4 Albert Embankment, London, SE1 7SR, England. Copies of these publications are also available for inspection in the office of the Chief of the Navigation Division, Panama Canal Commission, Building 729, Balboa, Republic of Panama.

§ 113.26 Transit requirements.

(a) To better assure the safe passage of vessels subject to this subpart, operating restrictions beyond those applicable to other vessels may be imposed by the Chief, Navigation Division, or his designee.

(b) Such vessels shall have safety towing pendants ready at hand, fore and aft, prior to entering the locks. Such pendants shall be rigged over the side when anchored or moored in Canal waters.

§ 113.27 Cargo requirements.

(a) The loading, handling inspection, stowage, segregation, maintenance, and certification of dangerous bulk cargoes, shall be in compliance with the IMO standards and regulations which are incorporated by reference in § 113.25.

(b) Any special requirements for carrying chemicals or liquefied gases in bulk as stated on a vessel's Certificate of Fitness or Certificate of Compliance shall be complied with.

§ 113.28 Documents.

(a) Vessels subject to this subpart shall have ready for delivery to the Canal boarding officer a loading plan, as decribed in § 101.10(e) of this subchapter.

(b) Such vessels shall have ready for examination, as prescribed by § 101.10(a), the following certificaties:

(1) A valid MAROL 73/78 Certificate (same as International Oil Pollution Prevention Certificate).

(2) A valid SOLAS Certificate.

(3) A valid Certificate of Fitness or Certificate of Compliance (required for bulk chemical and liquefied gas carriers only).

§ 113.29 Prohibited cargoes.

(a) Unstable or explosive substances in bulk which are unduly sensitive or so reactive as to be subject to spontaneous reaction are prohibited in Canal waters.

(b) Bulk dangerous cargoes not listed in the Bulk Chemical Code, Gas Carrier Codes, or Solid Bulk Code are prohibited in Canal waters unless advance approval is given by the Chief, Navigation Division, or his designee to carry such cargoes.

(c) Bulk chemical and liquefied gas carriers are prohibited from carrying in Canal waters dangerous cargoes that are not listed on their Certificate of Fitness or Certificate of Compliance, unless 30 days advance notice is given by the vessel and the Chief, Navigation Division, or his designee approves the carriage of such cargoes in Canal waters.

§ 113.30 Special training.

(a) The officers and crew of oil tankers shall meet the standards of training as set forth in Regulation V/1 of the International Convention on Standards of Training, Certification and Watchstanding for Seafarers, 1978, which is hereby incorporated by reference.

(b) The officers and crew of chemical tankers shall meet the standards of training as set forth in Regulation V/2 of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, which is hereby incorporated by reference.

(c) The officers and crew on liquefied gas tankers shall meet the standards of training as set forth in Regulation V/3 of the International Convention on Training, Certification and Watchkeeping for Seafarers, 1978, which is hereby incorporated by reference.

(d) The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, is contained in IMO publication number 938 78.15.E "International Conference on Training and Certification of Seafarers, 1978" for sale from the International Maritime Organization, Publications Section, 4 Albert Embankment, London SE1 7SR, England. This publication is also available for inspection in the office of the Chief of the Navigation Division, Panama Canal Commission, Building 729, Balboa, Republic of Panama.

Subpart C—Vessels Carrying Dangerous Packaged Goods

§ 113.41 Application.

This subpart applies to vessels carrying packaged dangerous goods.

§ 113.42 Advance notice.

Vessels subject to this subpart shall provide advance notice to Canal authorities by radio of the information required in the "HOTEL" item of the radio message prescribed in § 123.4 of this subchapter, except that vessels carrying explosives shall provide the information required in the "GOLF" item of the message.

§ 113.43 Anchoring requirements.

(a) Vessels subject to this subpart shall communicate with the signal stations at Flamenco Island or Cristobal prior to arrival as required in § 101.1 of this subchapter and await instructions before anchoring.

(b) Such vessels will be instructed to anchor in one of the designated anchorage areas as described in § 101.8(a) or 101.8(c).

(c) Vessels carrying explosives or especially reactive or large amounts of dangerous materials as determined by the Chief, Navigation Division, or his designee may be instructed to anchor in one of the explosive anchorge areas described in § 101.8(a)(2)(3) and 101.8(c)(2) of this subchapter.

§ 113.44 Vessel requirements.

(a) Vessels subject to this subpart shall comply with the standards set forth in SOLAS and the IMDG pertaining to the construction, maintenance, inspection, certification, and classification of the vessel, its safety equipment including alarms, and its cargo stowage and handling systems, which are hereby incorporated by reference.

(d) SOLAS, which is incorporated by reference in paragraph (a), is the International Convention for the Safety of Life at Sea, 1974, together with the Protocol of 1978 relating thereto. The Convention is set forth in Treaties and Other International Acts Series number 9700 and the Protocol is set forth in number 10009 of the same series. These publications are for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Convention is also contained in IMO publication number 080 75.01.E "International Conference on Safety of Life at Sea, 1974," and the Protocol is contained in IMO publication number 088 78.09.E "International Conference on Tanker Safety and Pollution Prevention, 1978." IMDG is the International Maritime Dangerous Good Code, which is contained in IMO publication numbers 200 81.10.E, 236 81.17.E, and 238 82.21.E. (For a current version of the IMDG, all three publications must be consulted.) The IMO publications referred to in this paragraph are for sale from the International Maritime Organization, Publications Section, 4 Albert Embankment, London SE1 7SR, England, and are available for inspection in the office of the Chief of the Navigation Division, Panama Canal Commission, Building 729, Balboa, Republic of Panama.

§ 113.45 Transit requirements.

Normal operating restrictions will generally apply unless such vessels are carrying more than 5 tons of explosives or carrying especially reactive or large amounts of dangerous goods as determined by the Chief, Navigation Division, or his designee, in which case, additional operating restrictions may be imposed.

§ 113.46 Cargo requirements.

The loading, packing, labeling, marking, handling, stowage, segregation, maintenance, inspection, and certification of packaged dangerous goods shall be in compliance with the IMDG Code, which is incorporated by reference. See § 113.44, Vessel Requirements.

§ 113.47 Documents.

Vessels subject to this subpart shall have ready for delivery to the Commission boarding officer a dangerous cargo manifest, as described in § 101.10(d) of this subchapter.

§ 113.48 Prohibited cargoes.

Packaged dangerous goods which are not carried in compliance with the IMDG Code are prohibited in Canal waters.

§ 113.49 Special training.

The officers and crew of tank vessels shall meet the standards of training as set forth in Chapter V of the Annex to the International Convention on Standards of Training, Certification and Watchstanding for Seafarers, 1978, which is incorporated by reference. See § 113.30, Special Training.

§ 113.50 Class 1, explosives.

(a) Vessels carrying explosives shall comply with the IMDG Code, which is incorporated by reference. See §§ 113.44, Vessel Requirements, and 113.46, Cargo Requirements.

(b) Explosive cargo may be loaded and discharged only at the Mindi Dock. Explosive anchorages prescribed in § 101.8(a)(2)(3) and 101.8(c)(2), respectively, may be used upon approval of the Chief, Navigation Division, or his designee.

(c) The Chief, Navigation Division, or his designee, upon application, may permit the discharge of explosives, whether intended for civilian or military use, at Commission docks and piers within Canal waters in an emergency or when the character or packing of the explosives permits their safe discharge there.

§ 113.51 Class 7, Radioactive substances.

(a) Vessels carrying radioactive substances shall comply with the IMDG Code, which is incorporated by reference. See § 113.44, Vessel Requirements, and 113.46, Cargo Requirements.

(b) Any cask or container radioactive substances, together with any attachments thereto, may not weigh more than 150 tons.

(c) For the purpose of approval of shipments and prior notification of radioactive substances under the IMDG Code, Panama Canal waters will be considered a country en route. Notification shall be given to Canal authorities 30 days in advance of the arrival of the vessel in Canal waters, in order that approval may be given by the Chief, Navigation Division, or his designee to carry such cargoes.

(d) Vessels carrying nuclear materials shall be required to provide proof of financial responsibility.

(e) Prior approval and notification is not necessary for the following substances:

(1) Low Specific Activity Substances or Low Level Solid Radioactive Substances as specified in Class 7 of the IMDG Code.

(2) Radioactive substances carried in limited quantities as specified in Class 7 of the IMDG Code.

PART 123—[AMENDED]

5. In § 123.4(a), the items GOLF and HOTEL are revised to read as follows:

§ 123.4 Advance information required by radio from vessels approaching the Panama Canal.

(a) * * *

GOLF—If the vessel is carrying any explosives or dangerous cargoes in bulk, state the correct technical name, quantity (in long tons), United Nations number, and the International Maritime Organization class for each dangerous cargo carried. If the vessel is a tanker in ballast condition and not gas free, state the correct technical name, United Nations number, and International Maritime Organization class of the previously carried cargo.

HOTEL—If the vessel is carrying any packaged dangerous goods other than explosives, state the International Maritime Organization class and the total quantity (in long tons) within each class.

* * * * *

6. In § 123.4, the INDIA item is amended by removing subitem (5) and by redesignating, subitems (6) through (11) and (5) through (10), respectively.

(22 U.S.C. 3811)

Dated: January 15, 1985.

D.P. McAuliffe,

Administrator, Panama Canal Commission.

[FR Doc. 85-3402 Filed 2-11-85; 8:45 am]

BILLING CODE 3640-04-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 720

[OPTS-50002K; TSH-FRL 2743-6]

Premanufacture Notification; Proposed Revisions of Regulation

Correction

In FR Doc. 84-33591 beginning on page 50201 in the issue of Thursday, December 27, 1984, make the following corrections:

1. On page 50204, third column, second complete paragraph, ninth line, "or 100 kilograms" should follow "10 kilograms".

§ 720.36 [Corrected]

2. On page 50208, third column, § 720.36(a), first line, "aply" should read "apply".

BILLING CODE 1505-01-M

40 CFR Part 721

[OPTS-50512; FRL-2563-5]

Certain Polyamino Chemical Substances; Proposed Determination of Significant New Uses

Correction

In FR Doc 84-33593, beginning on page 50209, in the issue of Thursday, December 27, 1984, make the following corrections:

1. On page 50209, summary paragraph, insert the following after the word "premanufacture": "notices (PMNs) P-81-69 and P-81-125. The Agency believes that these substances may be hazardous and that uncontrolled manufacture,".

2. On page 50211, in the first complete paragraph, ninth line, the word "sumittter" should read "submitter".

3. On page 50211, same paragraph, twelfth line, delete the last word "in" and insert "a".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC-273-P]

Medicare Program; Procedures for Determining Whether Providers, Practitioners, or Other Suppliers of Services Are Liable for Certain Noncovered Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: These proposed regulations would revise the way we apply the limitation of liability provision under section 1879 of the Social Security Act (the Act). This proposal would preserve the provider's right to appeal a finding that the entity knew or could reasonably have been expected to know that a furnished service was not covered by Medicare.

The proposal would not eliminate the limitation of liability for a provider that did not know services furnished were noncovered. We would make program payments when we determine that the provider and the beneficiary did not know and could not reasonably have been expected to know that services were not covered. However, we would eliminate criteria that if met make a provider of Part A services eligible for a presumption that it should not be held liable. The decision to make or deny payment for noncovered services would be made after an analysis of the circumstances without the general assumption that the provider did not know or could not be expected to know that furnished services were noncovered.

These proposed regulations also implement section 145 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248). That section provides that a provider, practitioner or other supplier of services shall be deemed to have knowledge that payment cannot be made for certain noncovered items or services if the entity had been notified previously by the Secretary that a pattern of inappropriate utilization had occurred but has continued the practice after having a reasonable opportunity to correct the inappropriate utilization.

DATES: To assure consideration, comments must be received by March 14, 1985.

ADDRESS: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-273-P, P.O. Box 26676, Baltimore, Maryland 21207.

Please address a copy of any comments relating to information collection requirements to: Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503, Attention: Desk Officer for HCFA.

If you prefer, you may deliver your comments to Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to BERC-273-P.

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 offices at 200 Independence Ave., SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

FOR FURTHER INFORMATION CONTACT: Jack Wasserman, (301) 597-3703.

SUPPLEMENTARY INFORMATION:

I. Background

Under title XVIII of the Act, HCFA pays for covered items and services furnished to Medicare beneficiaries. In some instances, the Act defines covered and excluded services; in other instances, regulations and program instructions distinguish covered from noncovered services. Nonetheless, circumstances arise that may result in a bill being submitted for what is determined by HCFA to be noncovered services.

Section 1879 of the Act provides financial relief for a beneficiary and provider by permitting payment where a claim is denied because the items or services were found not to be medically reasonable and necessary, or to constitute custodial care (see 42 CFR 405.310(g) and 405.310(k)) and a finding is made that neither the beneficiary nor the provider knew or could reasonably have been expected to know that the items or services were not covered. However, if we determine that the provider did know or could reasonably have been expected to know, the provider will be held liable for the charges for the denied service. If the provider seeks and collects payment for these charges from the beneficiary, the program will reimburse the beneficiary less applicable deductible and coinsurance amounts. Any such payments are considered overpayments to the provider and are recovered by us. For additional information concerning a provider's liability for furnishing noncovered services, see 42 CFR 405.331, Liability for certain noncovered items or services.

We have set forth certain performance criteria for providers in current regulations at §§ 405.195 and 405.196 that we will now delete. A provider meeting those five criteria has had the advantage of a presumption (in the absence of specific evidence to the contrary) that it neither knew nor could

reasonably have been expected to know of the noncoverage of items or services found not medically reasonable and necessary, or found to constitute custodial care:

(1) The provider complies with the standards for utilization review applicable to each type of provider (see 42 CFR 405.1035 for utilization review standards for hospitals and 42 CFR 405.1137 for skilled nursing facilities (SNFs). Home health agencies must comply with the procedures described in 42 CFR 405.196.).

(2) The provider complies with the procedures that have been established by us to assure that bills for payment and medical documentation are submitted in a timely manner.

(3) Procedures have been established by the provider that give us reasonable assurance that the provider promptly notifies the patient and his or her attending physician that the patient is being furnished noncovered services, if that has been determined by the provider, HCFA, or the intermediary.

(4) on the basis of bills submitted by the provider, the facility effectively distinguishes between cases where the items or services furnished by the facility are covered under Medicare and cases where the furnished items or services are excluded from Medicare coverage.

(5) The provider has demonstrated that it is effectively applying the conditions for certification and recertification (see §§ 405.160, 405.165(b) and 405.170(b)).

Whether these five criteria are met is determined by an administratively established mathematical formula. Under the current administrative formula, to meet all of these criteria, a hospital or a home health agency (HHA) must have a denial rate that does not exceed 2½ percent, and a SNF must have a denial rate that does not exceed 5 percent. The denial rate is determined by the percentage of days or visits billed by the provider as covered that we later determine to be noncovered when the bill is reviewed.)

II. Purpose of This Proposal

We are proposing to revise the way we apply the limitation of liability provision for providers of Part A services. (We are not proposing any changes in the way we apply the limitation of liability provisions for beneficiaries.) Under these proposed rules, we would continue to make program payment on a case-by-case basis when we find that both the beneficiary and the provider did not know and could not reasonably have been expected to know that the denied items or services were excluded from coverage because they were not medically reasonable and necessary or constituted custodial care. However, we would no longer apply the five administrative criteria that have been used in determining whether a provider should be given a favorable presumption as to whether that provider knew or should have known that a service would be excluded by Medicare.

We would consider carefully all the circumstances in each individual case. Our case determinations would take into account that a provider that has recently started participating in the Medicare program may have some difficulty at first in making accurate coverage determinations in certain areas due to a lack of knowledge as to what constitutes covered items or services under specified circumstances. In such instances, the intermediary would, of course, provide appropriate relief under section 1879 of the Act.

Similarly, in making each limitation of liability determination, we would continue to consider any problems that arise in the notification to providers about the coverage or noncoverage of medical items, procedures and techniques.

As a result of Pub. L. 97-248, we also would add a provision that a provider, practitioner or other supplier of a service would be deemed to have knowledge that payment cannot be made for a noncovered service under the limitation of liability provision if that provider, practitioner or other supplier of a service had previously been notified of a pattern of inappropriate utilization of a similar or reasonably comparable service and has not taken corrective action after passage of a reasonable time period.

III. Need for Amended Regulations

In light of program experience and legislative changes since the 1972 amendments to the Social Security Act, which added the limitation of liability provision, there has been a growing consensus that the continued use of a administrative presumption to determine provider liability for excluded services is no longer justified. There are several major reasons for revising the way we apply the limitation of liability provision for providers of Part A services, including:

A. Prospective Payment

Effective with hospital cost-reporting periods that began on or after October 1, 1983, Medicare payment for inpatient services is based on a prospective payment system (PPS) for almost all acute care hospitals located in non-waivered States. (Approximately 20 percent of all fiscal year (FY) 1983 limitation of liability determinations involved inpatient hospital claims.) Under PPS, hospitals are paid in accordance with a predetermined rate for medically necessary services furnished during an inpatient stay based on one of 468 diagnosis-related groups (DRGs), regardless of the number of days of the hospital stay. Consequently, the number of claims for services denied because a hospitalization (or part of a hospitalization) was not reasonable and necessary or constituted custodial care (exclusions under sections 1862 (a)(1) and (a)(9) of the Act) should decline sharply. Hospitals also have greater incentive under the prospective payment system to avoid furnishing inappropriate or medically unnecessary services, thereby effecting significant cost savings.

Limitation of liability considerations could apply if a claim for inpatient services is denied because the admission is found not to be medically necessary. In addition, limitation of liability could also apply in a limited number of outlier (excessive days or costs as defined under PPS) cases. Day outliers are cases involving unusually long stays and result in per diem payments beyond the DRG rate for each day exceeding a specified number of days. Cost outliers are cases in which payment can be made beyond the DRG prospective payment rate because extraordinarily high costs are incurred in treating a beneficiary.

As a result of the sharp reduction in the volume of claims involving length of stay denials subject to limitation of liability considerations brought about by PPS, intermediaries and other medical review entities, including utilization and quality control peer review organizations (PROs) as they become operative, will be in a better position to review specific PPS denials, and based on the individual case findings, undertake the development needed to ascertain if the hospital knew or should have known that the items or services furnished were excluded from coverage.

B. GAO Recommendation to Modify Waiver of Liability Rules

In March 1983, the United States General Accounting Office (GAO) recommended that HCFA "establish more stringent eligibility requirements for the application of waiver of liability for health care providers under Part A of Medicare." GAO/HRD-83-38. It was GAO's view that a provider that has participated in Medicare over a period of several years should generally have knowledge of which services are covered, based on its experience with the program. GAO found that tightening the requirements for the limitation of provider liability by moving to a system of case by case determinations would (1) Achieve savings; and (2) Increase incentives for providers to furnish necessary and covered care only. However, tightened requirements would retain the limitation of liability provisions, thus addressing concerns that equity considerations be applied where warranted.

C. Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA)

This proposed rule implements section 145 of TEFRA, which amended section 1879(a) of the Social Security Act to state that a provider, practitioner or other supplier of service that has previously been "notified by the Secretary (including notification by a utilization and quality control peer review organization)" of a "pattern of inappropriate utilization" of a noncovered service and that continues the practice although a reasonable period of time to end the pattern has elapsed, will be deemed to have knowledge that Medicare payment cannot be made for such items or services.

Patterns of inappropriate utilization in this context means recurring instances of care by practitioners, providers or suppliers that are excluded from Medicare coverage because the care is not medically reasonable and necessary or constitutes custodial care.

We have not established national bases for identifying a pattern of inappropriate utilization. However, we are interested in receiving comments from the public about whether adopting national bases would be appropriate and, if so, what these bases should be. (Of course, we are only referring to adopting national bases for identifying a pattern of inappropriate utilization; we are not developing criteria for use in medical determinations.)

This statutory provision specifically requires medical reviewers who make limitation of liability determinations always to consider inappropriate patterns of utilization involving prior denials of the same, similar, or reasonably comparable services when determining whether a provider, practitioner or other supplier of services knew or could reasonably have been expected to know of the noncoverage of a service. Under prior policy, a provider's liability could have been waived based on the provider's overall performance even when the small number of incorrect decisions involve the same or similar circumstances.

Under these proposed regulations, the medical reviewer would notify the provider, practitioner or other supplier of services in writing that certain delivered services constitute a pattern of inappropriate utilization. This notice would explain when, where, and to whom these services were furnished. In addition, these notice would contain information necessary to explain fully—

- Which future same, similar, or reasonably comparable services would not be paid for under the limitation of liability because the provider, practitioner or supplier now would have knowledge that these services would be determined to be medically unnecessary, unreasonable, or constitute custodial care.
- The time period that would be allowed for the provider, practitioner, or supplier to correct the pattern of inappropriate utilization. During this period, a provider, practitioner or supplier would not be found financially liable for noncovered services because of the notice. If, during this period, financial liability is assigned to the provider, practitioner or supplier for furnishing additional noncovered services during this period, the provider, practitioner or supplier is free to show that it did not know nor could reasonably have been expected to know that the furnished services would not be covered.
- That the Department may impose sanctions in future cases involving the same, similar or reasonably comparable services. Possible sanction cases would be referred to the Department's Office of the Inspector General for determinations in accordance with its authority under sections 1156, 1862(d) and 1866(b)(2) of the Act.
- That this notice would be the only notice that the medical reviewer issues concerning liability for all future same, similar or reasonably comparable noncovered services.

Generally, we believe that a 30-day period would be a reasonable time period to end the pattern of inappropriate utilization. (The 30 days may be extended for an additional 30 days if HCFA or the medical reviewer finds that a provider, practitioner, or other supplier of services is making substantial progress towards ending the pattern of inappropriate utilization involving services furnished, for example, by several practitioners or within several departments of a hospital.) However, if the inappropriate utilization endangers a patient's safety or health, corrective action must be taken immediately.

If the medical reviewer determines that a description of corrective steps would be useful in ensuring that timely appropriate action is taken, the notice may also include the requirement that the provider, practitioner or other supplier of services submit a description of corrective steps. This description would explain the actions that the provider, practitioner or other supplier of services would take to correct the pattern of inappropriate utilization. For example, in the case of a hospital where a Utilization and Quality Control Peer Review Organization (PRO) performs medical review, and the PRO finds that the ordering of noncovered services is restricted to one or a few attending physicians, the PRO may require that the hospital administrator set up a meeting between the chief of the appropriate service (that is, medical service, surgical service, etc.) and the physicians who have been ordering the noncovered services. The PRO might also request the date of the meeting, so that if the meeting is not scheduled, the PRO may then intervene to resolve the problem promptly.

IV. Changes in the Regulations

We would delete 42 CFR 405.195 and 405.196. These sections prescribe criteria that a Part A provider furnishing services must meet in order to receive a favorable limitation of liability presumption. We would make corresponding changes to § 405.332 and add a provision concerning notification to the provider, practitioner or other person by HCFA, an intermediary, carrier, peer review organization, or the provider's utilization review committee, of a pattern of inappropriate utilization. When such notification has been given, a provider, practitioner or other person would be deemed to have knowledge that payment cannot be made for the same or similar services.

V. Impact Analyses

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to have an annual effect on the economy of $100 million or more, cause

a major increase in costs or prices, or meet other threshold critieria that are specified in the Executive Order. In addition, the Regulatory Flexibility Act, Pub. L. 96–354, requires us to prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities. (For purposes of the Regulatory Flexibility Act, small entities include all nonprofit and most for-profit providers.)

Under both the Executive Order and the Regulatory Flexibility Act, such analyses must, when prepared, show that the agency issuing the regulations has examined alternatives that might minimize an unnecessary burden or otherwise ensure that the regulations are cost-effective. Alternatives that we considered and rejected are:

- Tightening the denial rate criteria used to determine eligibility for a favorable presumption. However, tightening the denial rate criteria would still allow some providers to receive payment for noncovered services which would run counter to our intended objective of paying for noncovered services only when the provider and beneficiary *actually* did not know nor could reasonably have been expected to know that the services were not covered.
- Providing that after a provider furnishes Medicare services for a period of time and gains experience with Medicare coverage determinations, we would require case by case limitation of liability determinations. However, permitting payment for noncovered services, for any length of time, reinforces a misplaced economic-incentive among providers in that we would continue to pay for improper coverage decisions even though it had not been determined that the provider and beneficiary *actually* did not know nor could reasonably have been expected to know that the services were not covered.

A. Executive Order

We listed earlier the changes to the Medicare law and the manner of paying for hospital services that support our conclusion that it would be beneficial to the program, our fiscal intermediaries and to the provider community to revise our application of the limitation of liability provision. An estimate of reduced program costs under the proposed regulations further supports that conclusion.

In FY 1985, we estimate combined Part A and Part B benefit savings of up to $78.6 million. In deriving these budget savings, we assumed that initial program savings would equal the total expenditures that hospitals, SNFs, and HHAs would have received under the current limitation policy. We further assumed that 85 percent of all denied claims that are now paid under limitation of liability at the initial level would result in reconsiderations during FY 1985. Thus, we established an upper limit of the extent of the budget impact that could occur during this fiscal year.

We next reduced our initial program savings by a factor to reflect reconsideration reversals that result in payments for claims that were denied. Using our most current data for provider reconsideration reversal rates (that is, 4 percent for inpatient hospital services, 22.5 percent for SNFs, and 32.4 percent for HHAs), we calculated the following reductions from our initial savings projections:

REDUCTIONS IN HUNDREDTHS

Part A	$12,470
Part B	1,401
Total	13,871

This adjustment to projected initial savings results in the following net program savings:

NET SAVINGS IN HUNDREDTHS

Part A	$42,586
Part B	22,135
Total	64,721

Furthermore, we anticipate a marked incremental increase in our administrative reconsideration activity resulting from this proposal. This increase is the result of the decision that determinations as to a provider's liability will be based solely on the findings in each individual case. This procedural change preserves the providers' right to appeal a denial, and we expect that providers will use the appeals process as long as it remains cost-effective for them. We have already noted that hospitals under the prospective payment system will experience a reduction in their denials during FY 1984, since denials will be limited to cases where the entire stay on an outlier is found to be medically unnecessary. We also assume that the trend of bill processing workload for outpatient services, SNFs, and HHAs will remain unchanged under this proposed policy. Based on these assumptions, and projecting from our current data, we estimate administrative costs for the anticipated additional reconsideration activity as follows:

COST IN HUNDREDTHS

Part A	$12,054
Part B	4,377
Total	16,431

These administrative costs will offset the net program savings noted above. This will result in program savings, less administrative costs, of $48.3 million in FY 1985.

Since the net budget impact in FY 1985 and in subsequent fiscal years will not meet the $100 million threshold criterion, and since no other threshold criteria are met by the effects of this proposed rule, we have determined that this proposed rule is not a major rule as determined by section 1(b) of the Executive Order.

B. Regulatory Flexibility Act

Under the current policy, 85 percent of all providers (that is, about 17,200) meet the criteria for a presumption that they should not be liable for certain items or services excluded from coverage. Eliminating the presumptive criteria would have several effects upon these providers. First, those providers furnishing noncovered care would realize some initial reduction in Medicare revenues. To the extent that the provider could not justify, on a case-by-case basis, application of the limitation of liability provision, individual reduction amounts would be equal to the difference between what a provider received under the current policy and what the provider would receive after these regulations are finalized. Although we can make certain assumptions about the aggregate effects of these proposed provisions on affected providers, we cannot determine the fiscal impact on any specific provider.

Our estimate also incorporates assumptions about denial rates, reconsideration requests, determinations and denial reversal trends, and the effects of the prospective payment system on hospital determinations. Again, although specific projections of reductions in payments for noncovered care can be estimated, reductions to individual providers are indeterminate; we can only estimate the relative impact of our net savings on afffected providers.

The FY 1985 estimated net program savings of $64.7 million represents about one-tenth of a percent reduction in the Part A and Part B expenditures ($54.9 billion) in FY 1985. As this relative measure of impact is negligible in its effect, we have determined that in the aggregate, providers will not be significantly affected.

Our conclusion about the minimal aggregate impact of this proposed rule does not mean that some individual providers would not be significantly affected. Newly participating providers especially may experience significant effects. But we believe that there will rarely be a significant impact on other providers because those providers with the worst disallowance problems are already subject to case-by-case determinations.

Providers can take active steps to minimize the impact on them by assuring that consistently accurate judgments are made as to Medicare coverage of their services. Under the prospective payment system, where hospitals receive a diagnosis related payment or denial on a per discharge basis, there may be an incentive for hospitals to circumvent the fiscal controls inherent in the system by relaxing admission policies. Elimination of the use of thresholds and substitution of a case-by-case approach removes this incentive and establishes a corrective counterbalance for hospitals to make accurate preadmission determinations of the appropriateness of care. Thus, not only should there be a reduction in the provision of noncovered services by these providers, but also a corresponding reduction in the marginal operating costs for provision of these services.

A second possible effect on providers relates to incurring legal expenses to rebut denial determinations. As we have already discussed, some providers might be more involved for a time in appealing denial determinations, than under the current regulations. However, for nonprospective payment system providers, these expenses should be minimal because Medicare continues to reimburse a portion of their legal expenses equal to the ratio of their Medicare patient volume to total patient volume. For those under the prospective payment system, expenses also should be limited because, as previously explained, the number of denied cases will drop under the prospective payment system. Further, we believe that these costs would not be significant to all providers because: (1) Providers would probably request a reconsideration or appeal only when the probability of success is high relative to the expense of the reconsideration or the appeal; and (2) After a given period of time, denials, and thus appeals, should decline as provider judgment concerning the Medicare coverage of their services improves.

For the reasons stated above, the Secretary certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act of 1980, Pub. L. 96-354, that these proposed regulations will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

Section 405.332(b) of this proposed rule contains information collection requirements. As required by the Paperwork Reduction Act of 1980, title 44 U.S.C. Chapter 35, we will be submitting a copy of this proposed rule to the Office of Management and Budget for its review of these information collection requirements.

VI. Response to Comments

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments received timely and respond to them in the preamble of the rule.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Contracts (Agreements), End-Stage Renal Disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Reporting requirements, Rural areas, X-rays.

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

42 CFR Part 405 would be amended as set forth below:

A. Subpart A is amended as follows:

Subpart A—Hospital Insurance Benefits

1. The authority for Subpart A of Part 405 reads as follows:

Authority: Secs. 1102, 1814, 1815, 1861, 1866(d) and 1871 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395g, 1395x, 1395cc(d), and 1395hh).

§§ 405.195 and 405.196 [Removed]

2. Sections 405.195 and 405.196 are removed.

B. Subpart C is amended as follows:

Subpart C—Exclusions, Recovery of Overpayment, Liability of a Certifying Officer and Suspension of Payment

1. The authority citation for Subpart C is revised to read as follows:

Authority: Secs. 1102, 1815, 1833, 1842, 1861, 1862, 1866, 1870, 1871, and 1879 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395l, 1395u, 1395x, 1395y, 1395cc, 1395gg, 1395hh, and 1395pp) and 31 U.S.C 3711.

2. In § 405.332, the introductory part of paragraph (a) is reprinted, and paragraphs (a)(3) and (b) are revised to read as follows:

§ 405.332 Criteria for determining that there was knowledge that certain items or services were excluded from coverage

(a) *The individual to whom items or services are furnished.* An individual shall be found to have known that items or services furnished to him were excluded from coverage only if he, or someone acting on his behalf, had been given written notice stating that the items or services were excluded from coverage. This paragraph applies only to items and services excluded from coverage as "custodial care" (§ 405.310(g)) or as "not reasonable and necessary for the diagnosis or treatment of illness or injury" (§ 405.310(k)). Written notice must consist of the following:

* * * * *

(3) The provider of services or other person furnishing the items of services to the individual informed the individual (or a person acting on his behalf) in writing that the items or services are excluded from coverage.

* * * * *

(b) *The provider of services or other person who furnished items or services to an individual.* A provider of services or other person who furnished items or services to an individual that are excluded from coverage by reason of § 405.310(g) or § 405.310(k) will be held to have knowledge that such items or services are so excluded when any of the following apply:

(1) The intermediary or carrier had informed the provider or other person that the expenses for the items or services furnished the individual were not reimbursable or that items or services similar or reasonably comparable thereto were not covered.

(2) The provider's utilization review committee (see § 405.1035 and § 405.1137) or the Medicare patient's attending physician informed the provider that such items or services were not covered or not required.

(3) An intermediary, carrier, utilization and quality control peer

review organization (PRO), or utilization review committee had given written notice to the provider, practitioner or other person who furnished the items or services that there has been a pattern of inappropriate utilization of the same, similar or reasonably comparable items or services and the provider, practitioner or other supplier of services has had 30 days notice to correct the identified pattern of inappropriate utilization.

(i) Inappropriate utilization means recurring instances of furnishing items or services that are not covered by Medicare by reason of sections 1862(a)(1) or (a)(9) of the Act because the items or services were not medically reasonable and necessary or were for custodial care.

(ii) The written notice of a finding of a pattern of inappropriate utilization must include the following information—

(A) The patient cases, including dates and locations (e.g., at which part of the facility), illustrating the inappropriate pattern of utilization;

(B) The time period for correcting the pattern of inappropriate utilization (The time period will be 30 days from receipt of the notice; however, if the inappropriate utilization endangers a patient's safety or health, corrective action must be taken immediately.);

(C) The consequences of not correcting the pattern of inappropriate utilization, i.e., a finding of liability in all future similar cases that are denied and referral to the Department's Office of the Inspector General for determinations in accordance with its authority under sections 1156, 1862(d), and 1866(b)(2) of the Act;

(D) Procedures for submitting a description of corrective steps, but only if the reviewing organization determines that a description of corrective steps would be useful in ensuring that timely appropriate action is taken; and

(E) Procedures for meeting with a representative of the reviewing organization to discuss problems arising from the notification of the pattern of inappropriate utilization.

(iii) If, at the end of the 30 day period allowed for correcting the pattern of inappropriate utilization, the PRO finds that substantial progress has been made to correct the pattern of inappropriate utilization, the PRO may provide one additional 30 day period for correction.

(4) It is clear that the provider, practitioner, or supplier could have been expected to have known that such items or services were excluded from coverage, based on its ongoing relationship with the Medicare program and its receipt of HCFA notices, including manual issuances, bulletins and other written guides and directives from PSROs, PROs, intermediaries and carriers concerning coverage and utilization of services, as well as its knowledge of what are considered acceptable standards of practice by the general medical community.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance; No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: May 18, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: January 7, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-3510 Filed 2-11-85; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 83-842; FCC 85-26]

Elimination of Unnecessary Broadcast Regulation

AGENCY: Federal Communications Commission.

ACTION: Second Notice of proposed rulemaking.

SUMMARY: This action proposes for elimination or modification three policy areas concerning broadcast business practices set forth in Part 73 of the Commission's Rules. These policies are no longer warranted or required by public interest.

DATES: Comments due March 29, 1985; Reply Comments due April 15, 1985.

ADDRESS: Send comments to the Federal Communications Commission, 1919 M St. NW., Washington, D.C. 20554

FOR FURTHER INFORMATION CONTACT: James A. Hudgens, Office of Plans and Policy, (202) 653-5940.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Second Notice of Proposed Rule Making

In the matter of Elimination of Unnecessary Broadcast Regulation (MM Docket 83-842).

Adopted: January 18, 1985.

Released: February 5, 1985.

By the Commission: Commissioner Rivera concurring in part and issuing a statement at a later date.

Introduction

1. In a companion action taken today in this docket,[1] the Commission eliminated some six broadcast regulatory "underbrush" policy areas broadly dealing with broadcast business practices. In this *Second Notice of Proposed Rule Making*, we seek comment as to whether we should eliminate—or substantially modify—three additional broadcast business practice policies dealing with Fraudulent Billing, Network Clipping, and Combination Advertising Rates and Joint Sales Practices.

2. "Underbrush" is defined as the accumulation of Commission policies, doctrines, declaratory rulings, rules, informal rulings, and interpretative statements that have grown up around major regulations (and broadcast licensees) over the years. We deem it important to review such matters in this docket for their continued necessity in today's broadcast environment and to eliminate or modify those matters which are no longer justified and not required. This is a continuing process.

3. Two of the policies we are considering (Fraudulent Billing and Network Clipping) forbid practices addressed by other federal or state proscriptions, either by statute or tort law. The other policy (Combination Advertising Rates and Joint Sales Practices) regulates economic conduct not prohibited by antitrust laws.

4. With respect to those rules that address practices prohibited by legal norms other than the antitrust laws, we believe that this agency has no special expertise or speed that would justify preempting other law enforcement mechanisms. With respect to network clipping, fraudulent billing practices, and the like, we believe the party wronged has effective remedies under state law, and that the remedy for such wrongs can be best tailored by state courts to fit the misdeeds. Further, our limited resources can more effectively be devoted to other endeavors where our expertise is critical to promoting the public interest.

5. In today's companion *Policy Statement and Order, supra*—which is hereby incorporated by reference—we reached several broad conclusions which are relevant to the matters raised in this *Notice*. We concluded that it is appropriate to leave the parties involved in these practices to private remedial mechanisms; this Commission should

[1] *Policy Statement and Order in the Matter of Elimination of Unnecessary Broadcast Regulation*, MM Docket 83-842, adopted January 18, 1985, FCC 85——, —— FCC 2d —— (1985).

not directly enforce private rights and obligations of its licensees without a showing that without such enforcement a substantial and immediate danger to viewers or listeners would ensue. We further observed with respect to policies which circumscribe economic arrangements more tightly than the antitrust laws that this Commission should not attempt to outlaw practices sanctioned by the antitrust laws, at least where the viewers or listeners receive no offsetting benefits. Indeed, in their effort to promote competition, these policies may have unwittingly obstructed economic efficiencies. Lastly, we noted that literal compliance with such policies imposes certain unwarranted managerial costs upon licensees, particularly smaller broadcasters, and that their elimination will free the licensees to concentrate their managerial effort on more important matters such as programming and sales.

6. Even though listed as "Policy Statements" in Section 73.4000 of our Rules, our policies with respect to Fraudulent Billings and Network Clipping have been codified in our Rules in Section 73.1205. (We note, however, that neither policy has any express statutory basis.) Therefore, for that reason, and because we seek public comment before taking action in this important area, we are utilizing the instant notice and comment procedures. We also have elected to add a third policy—Combination Advertising Rates; Joint Sales Practices—to this *Notice of Proposed Rule Making* because we seek comment upon the continued validity of such policies and the extent of discretionary alternative action available. It is our tentative position that the policies with respect to Fraudulent Billing and Network Clipping should be eliminated and that the policy with respect to Combination Advertising Rates and Joint Sales Practices should be modified or eliminated.

Character Issue

7. Before treating these three policies, we note that the actions prohibited by them may be considered as reflecting on the "character"of a licensee. Consideration of how such conduct should be treated and the weight to be accorded thereto are addressed in a separate proceeding.[2]

[2] *Notice of Inquiry in General Docket 81-500*, 87 FCC 2d 836 (1981).

Discussion

1. Fraudulent Billing

8. *Section 73.4115. Fraudulent billing practices.* (See also Section 73.1205.) This policy was first announced in a Public Notice in 1962 (FCC 62-272). Later, in 1965, the Commission adopted rules prohibiting fraudulent practices and issued a companion Public Notice with examples of prohibited practices. (*Applicability of the Fraudulent Billing Rule*, 1 FCC 2d 1068 and 1075 (1965)). In 1970 the Commission by Memorandum Opinion and Order added language to the rule to clarify the existing prohibition against any form of false billing and in the same action issued two new examples and consolidated the three original fraudulent billing rules as § 73.1205, which is applicable to all three broadcast services (23 FCC 2d 70 (1970)). In 1972, noting continued violations of the rule, the Commission issued a Public Notice reiterating the seriousness of such violations (38 FCC 2d 1051 (1972)). A similar Public Notice was issued in 1975 calling licensees' attention to the need for accuracy of station invoices, etc. (56 FCC 2d 371 (1975)). In 1975-1976 the Commission amended the rule to encompass network clipping (discussed at length, *infra*) and issued further examples (56 FCC 2d 371 (1975) and 59 FCC 2d 786 and 1268 (1976)). In late 1976, the Commission issued a Public Notice containing an interpretation of the applicability of the rule concerning certain rebates (62 FCC 2d 568 (1976)).

9. The 1965 action, which first enacted a rule in this area, contains an explanation of the prohibited practice:

> The practice at which the proposed rules are aimed is commonly known as "double billing." The main ingredient of the practice is the furnishing of false information concerning broadcast advertising to any party contributing to the payment of such advertising, the purpose being to induce such party to pay more than the actual rate for the advertising. Although "double billing" may take many forms (the proposed rule is concerned with the principle involved rather than the form in which it appears), the classic illustrations of "double billing" are: (1) The situation where the station submits to a local advertiser two bills, one in the amount agreed upon for the advertising matter broadcast, and the second in a larger amount for submission by the local advertiser to a manufacturer or national advertiser to support a claim for reimbursement pursuant to a cooperative advertising arrangement; and (2) a situation where a station enables or assists an advertising agency to mislead its clients as to the amounts charged by the station for advertising and thereby to induce them to reimburse the advertising agency upon the basis of a fictitious advertising rate. (1 FCC 2d at 1068.)

The practice, the Commission continued, is reprehensible in itself, usually involves the use of the mails to defraud, and often involves unfair competition with other stations and advertising media that do not engage in the practice. (*Id.* at 1069.) As noted above, over the years the Commission has issued a series of interpretive examples of specific practices which violate the rule.

10. The rule, as last amended in 1976, reads as follows:

Section 73.1205 Fraudulent billing practices.

(a) No licensee of an AM, FM, or television broadcast station shall knowingly issue or knowingly cause to be issued to any local, regional or national advertiser, advertising agency, station representative, manufacturer, distributor, jobber, or any other party, any bill, invoice, affidavit or other document which contains false information concerning the amount actually charged by the licensee for the broadcast advertising for which such bill, invoice, affidavit or other document is issued, or which misrepresents the nature or content of such advertising, or which misrepresents the quantity or advertising actually broadcast (number or length of advertising messages) or which substantially and/or materially misrepresents the time of day at which it was broadcast, or which misrepresents the date on which it was broadcast.

(b) Where a licensee and any program supplier have entered into a contract or other agreement obligating the licensee to supply any document providing specified information concerning the broadcast of the program or program matter supplied, including noncommercial matter, the licensee shall not knowingly issue such a document containing information required by the contract or agreement that is false.

(c) A licensee shall be deemed to have violated this section if it fails to exercise reasonable diligence to see that its agents and employees do not issue documents containing the false information specified in paragraphs (a) and (b) of this section.

11. In the initial period following the adoption of this policy, considerable administrative resources were expended in its enforcement. Some ten radio and television stations had their licenses revoked or renewal applications denied for fraudulent billing violations, and additional violation investigations were conducted and fines imposed.

12. At the outset of this discussion, we must observe that this Commission certainly does not condone the actions of broadcasters who abet others in violating their contracts—e.g., retailers who defraud manufacturers. Rather, what we are raising here is the issue of whether it is appropriate for this agency to continue to police this area. In order to properly evaluate this rule it is necessary to determine the precise extent of harm—both direct and

indirect—from the misconduct. While we recognize the difficulty in assessing the costs and benefits or fraudulent billing practices, we believe that certain predictable results do normally ensue when licensees fraudulently bill advertisers. One result may be artificially higher advertising costs to manufacturers, which are likely to be partially passed on to consumers in the form of higher product prices. On the other hand, local retailer or advertising prices may be lower as result. In either event, theses effects will be very indirect and diffused, and the total dollar burden on any individual consumer will be very small. Similarly, fraudulent billing will probably not result in a significant increase in the total amount of commercials; the local retailer might, however, receive more time at the expense of the manufacturer. If the practice is sufficiently widespread, manufacturers may switch away from underwriting local retailers and choose as an alternative to air their own commercials. But this might not reduce the total number of radio commercials, and the effect on the public of this sort of fraudulent billing may be minimal.

13. If the Commission terminates it involvement in policing fraudulent billing, advertisers and manufacturers who are victims of such practices will not be left remediless. They are able to monitor the amount of advertising broadcast. Monitoring need not be a large burden if spot checks are used. Or, advertisers may pay others for monitoring services—a practice already followed by large network advertisers—and large markets might even support a company to provide such services. Advertising agencies also have an interest in seeing that their clients obtain the advertising they purchase, and may well pay for monitoring even though individual advertisers might not. For the manufacturer who is the victim of a licensee-local retail advertiser scheme, the monitoring task will be considerably more difficult, and it is unlikely that a national or regional company will attempt to monitor many local markets. Again, however, information about individual station reputations will be available, and presumably manufacturers will refuse to deal with stations with poor reputations. If fraudulent billing occurs, the aggrieved party has effective private remedies available.

14. Also, retailers are not likely to cheat a manufacturer if they want to retain access to that manufacturer's product. In this situation, the manufacturer is likely to have considerable leverage in gaining compensation for the fraud. In general, the threat to the retailer of having the manufacturer of a name product go to a competing retail outlet will likely be a strong deterrent to such activity.

15. From the standpoint of this Commission, there also are alternative courses of action. One in which the Commission engages now is the referral of complaints to the U.S. Postal Service for mail fraud under 18 U.S.C. 1342 (Mail Fraud). It is important to note that if this Commission ceases its enforcement of fraudulent billing violations, the continued existence of this mail fraud statute, with its criminal penalties, should serve as a strong deterrent to the practice. Yet another alternative course of action would be referral of matters in this area to the Federal Trade Commission for its review of alleged fraudulent and deceptive advertising practices and unfair competitive practices. Lastly, in the event that a licensee's actions with respect to fraudulent billing result in a judicial or agency finding of a violation of law, we will, of course, continue to consider such finding in proceedings where a licensee's "character" is in issue. (See Par. 7, *supra*).

2. Network Clipping

16. *Section 73.4155. Network clipping.*[3] (See also § 73.1205(b).) This Commission policy was announced in a 1973 Public Notice. The Commission said that because a number of complaints, often confirmed upon investigation, had been filed concerning network clipping, it was issuing the Public Notice to clarify its policy in this area. Network program "clipping" arises when radio or television stations do not allow network or syndicated programs to run in full, but "clip" them and insert other material. The gravamen of the offense is in the station's subsequently certifying to the network or syndicator that the programs were run in their entirety, in order to obtain full payment. The 1973 Public Notice said:

Licensees are cautioned that as a general proposition the Commission considers falsely certifying that network material has been carried to be a use of licensed facility for fraudulent purposes, which raises serious questions as to a licensee's qualifications to hold a broadcast authorization. The Commission's concern exists regardless of whether the material clipped consists of advertising, program content, or other material provided by the network, and regardless of whether network clipping exists because of the licensee's knowing participation, its indifference, or its failure to adequately supervise or control its employees or agents.

The Commission further cautioned licensees that if the clipped material contained advertising, there would be a violation of the fraudulent billing rule and that clipped material at the end of programs might also contain the sponsorship identification required by Section 317 of the Act and Section 73.1212 of the Commission rules, providing another basis for the imposition of forfeitures or other sanctions.

17. In 1976, while amending the fraudulent billing rules, *supra*, the Commission also treated the related issue of network clipping, observing that under the rule then in effect the Commission was in the anomalous situation of being able to fine a station if it deleted a network commercial and fraudulently certified that it was broadcast, but unable to impose a fine if the station issued a similar fraudulent statement as to deletion of noncommercial matters in order to insert local commercials or other material. Accordingly, the Commission amended § 73.1205 by adding new subsection (b):

Where a licensee and any program supplier have entered into a contract or other agreement obligating the licensee to supply any document providing specified information concerning the broadcast of the program or program matter supplied, including noncommercial matter, the licensee shall not knowingly include in that document information required by the contract or agreement which is false.

18. Since the enactment of this rule, the Commission has fined stations and even denied license renewal for clipping program credits, commercial announcements and and network promotions from network programs—see, e.g., *Las Vegas Valley Broadcasting Co. v. FCC*, 589 F. 2d 594 (D.C. Cir. 1978). Although there have been no recent investigations into alleged violations of this rule, even a single investigation resulting in a hearing would require considerable Commission resources, even in instances where license revocation is not the ultimate result. We therefore wish to review the need for our continued oversight in this area.

9. Network clipping and fraudulent billing are related; they both involve the same basic issue of fraudulent action by a station and, indeed, the two provisions are even contained in the same Commission rule. Thus, many of the previous comments concerning fraudulent billing would generally be applicable to network clipping. There

[3] *Network clipping*, 40 FCC 2d 136 (1973).

are, however, certain considerations which are somewhat unique to network clipping. The first such topic is the effect of clipping upon the viewing/listening public. That, in turn, depends upon the context in which it occurs. If network program credits are clipped to run a local commercial, the effect upon the public is essentially one of additional commercial impression. From the network's standpoint, this practice probably would be in conflict with the network's obligation to the program's producers to run the credits in full, but the public generally would have little concern. If, for example, a station deletes a network commercial and substitutes a local commercial, the licensee gains at the expense of the network and network advertisers, but the effect upon the public is minimal. Indirectly, consumers of nationally advertised products might face slightly higher prices, but again the effect would appear to be *de minimis*. But if network *programming* is clipped and replaced by local advertising, then the audience bears the burden of the loss of programming intended for it and must view/hear additional commercial impressions. This type of clipping is the most likely to generate consumer complaints. If the practice occurred with frequency, dissatisfied members of the public might switch to competing stations, and lower ratings could result. We request comment upon the likely effect of all such forms of clipping upon the public and our proper role with respect thereto.

20. Another consideration unique to network clipping is the interdependent nature of the network-affiliate relationship. This is present to some extent in radio networking and *ad hoc* television networking but is particularly notable with respect to the three national commercial television networks. The networks need the affiliates in order to reach a nationwide audience, and the affiliates need the network for the majority of their programming and audience base. It would appear that there normally would be such mutuality of interest that clipping would not occur, but apparently it does—primarily in the smaller, more remote markets. Under these circumstances it would appear that the networks have a very strong incentive to ensure that their programs are broadcast in their entirety. This could be accomplished by monitoring compliance, which would not be a large burden if spot checks were made. Networks and major advertisers might combine to pay others for monitoring services. Music licensing companies, for example, over the years have successfully monitored radio stations for compliance with their licensing requirements. Should clipping violations be detected, there are alternatives available to the networks other than recourse to this Commission—e.g., threat of loss of affiliation; private civil action to enforce the terms of the network affiliation contract, including remuneration; actions for fraud; and in some instances perhaps actions for mail fraud as well.

21. Indeed, with all these alternative courses of action available, we question whether the Commission, with its limited resources, should continue to enforce this policy. In the past, the Commission has acted in response to complaints, undertaking on-site investigations and, occasionally, adjudicative hearings. These hearings are expensive and time consuming, requiring significant Commission and licensee resources. Moreover, the matter at issue essentially is a private contractual matter between the network/syndicator and a station, and generally of little concern to the public except in the instance of program content clipping. We ask, then, for comments on this subject.

3. Combination Advertising and Sales Practices

22. *Section 73.4065. Combination advertising rates; joint sales practices.* The Commission's combination advertising rate policies were developed through two principal actions—a brief 1963 Policy Statement [4] and a broader three-part proceeding in the mid-1970's in Docket 19789 [5]—together with subsequent interpretive actions. The 1963 statement expressed the Commission's basic policy and rationale, and the second proceeding amplified and summarized all policies in this area, including those with respect to joint sales practices.

23. *Combination Advertising Rates.* The basic policy, set forth in 1963, concerns combination advertising rates offered by two or more independently owned stations serving substantially the same area. The policy is that agreements which—either directly or indirectly through a representative acting for all—offer combination rates to advertisers who purchase time on all participating stations raise serious questions under the antitrust laws (15 U.S.C. 1), conflict with established Commission policy, and are contrary to the public interest. The Commission explained that although it does not enforce the antitrust laws as such, it has the authority and responsibility to take cognizance of the public policy considerations underlying such laws. And, it continued, inherent in such agreements is the element of price fixing by independent parties who should be competing with one another. It further stated that such practices by independent stations serving substantially the same area are also inconsistent with the underlying policy of its multiple ownership rules—namely, that of promoting "arms length competition" among broadcast stations. The Commission concluded:

> We wish to make clear that our ruling is not designed solely to insure that the public, including advertising members of the public, find the field of broadcasting to be one of open and fair competition. The broadcast station in the area is also entitled to face broadcast competitors—not combinations. Otherwise, the station not participating in such combination rate arrangements might lose substantial revenues because of these improper arrangements—to the possible detriment of its overall operation and its service to the public in its area.

24. That basic 1963 policy subsequently was expanded and clarified so as to encompass a broad range of prohibited activities. Following is a summary of present specific Commission policies with respect to combination rates. Commenting parties, however, are referred to all the cited proceedings for a more thorough explanation of all policies. The basic policy, that *separately owned stations* serving the same area may not offer combination rates, has been applied to the use of combination rates by independently owned stations whether they are in the same or different services (42 FCC 2d 207 (1973)). "Serving the same area" means both where the stations serve the same community (42 FCC 2d 282 (1973)) and where the stations are licensed to nearby cities (42 FCC 2d 271 (1973)). The proceeding in Docket 19789, *supra*, originally proposed rules which would define "serving the same area" by means of overlap of specified contours; the Commission, however, ultimately concluded, "we do not believe that contours or any suggested substitute would be suitable for representing the area served by a station in view of the manner in which broadcast time is sold," and stated that

[4] *Combination Advertising Rates*, 45 FCC 581 (1963).

[5] The three proceedings in Docket 19789, *Combination Advertising Rates and Other Joint Sales Practices*, are: (1) *Notice of Inquiry and Notice of Proposed Rule Making*, 41 FCC 2d 951 (1973); (2) *First Report and Further Notice of Proposed Rule Making*, 51 FCC 2d 679 (1975); and (3) *Report and Order*, 59 FCC 2d 894 (1976).

the policy would continue to be applied on a case-by-case basis.[6]

25. With respect to *commonly owned stations* serving the same area, the Commission's policy prohibits TV-radio combination advertising rates. With respect to commonly owned AM-FM stations, there is no flat prohibition against combination advertising rates, but the Commission has adopted guidelines to be applied upon a case-by-case basis; namely, combination rates are permissible where (1) separate rates also are offered so that the combination rate is not required, and (2) the combination rate does not result in an "unfair advantage" over other stations.[7] (Note: these guidelines also apply to combination rates for commonly owned stations of all types serving distinct markets.)[8]

26. *Joint Sales Practices:* The Commission also has specific policies concerning the representation of two or more stations in the same market by a single sales representatives—i.e., joint sales representation. Although multiple representation is permissible, the representative may not sell advertising time on two separately owned stations in combination; the representative should enter into separate contracts for each and leave all decisions as to contracting for the sale of time, including rates charged, to each individual licensee (51 FCC 2d 679 (1975)). The Commission at one time also had a policy[9] prohibiting a national or regional sales representative owned by a licensee in the market (a "house rep") from representing other stations in the same market, but that policy was eliminated in 1981 (*Golden West Policy*, 87 FCC 2d 668 (1981)). In that action, which is the Commission's most recent major action in this area, the Commission concluded that its policy was no longer warranted in view of competitive marketplace factors (*Id.* at 680) and that "other existing policies and enforcement mechanisms provide ample protection should anticompetitive activities arise." (*Id.* at 681.)

27. We request comments upon whether these policies concerning combination advertising rates and joint sales policies should be retained, eliminated, or modified. The policies in this area relate to activities within the purview of the antitrust laws, but we believe they also forbid activities not prohibited by those laws. We request comments as to whether it is appropriate for this Commission, with its limited antitrust responsibility, to forbid conduct which is not prohibited by the antitrust laws. We further question whether the conduct prohibited by those practices is indeed anticompetitive or whether it merely takes advantage of economies of scale. For example, if two or more stations jointly seek advertising, their combined appeal might help advertisers to reach a more diverse or better targeted audience, particularly where paricipating stations have different formats. Further, combining sales may reduce costs through the reduction of advertising sales forces. Similarly, a combined sales force might result in certain promotional activities)—e.g., of an entire market versus neighboring markets—which individual stations could not undertake alone. Considering the limited number of national sales representatives versus the number of existing broadcast outlets, this practice might allow a station without such a representative to procure one. These consequences may all be in the public interest and may offset the potential for abuse.

28. There may, of course, also be negative effects from combined sales. In non-competitive markets, participating stations may have sufficient market power to require the purchase of advertising on all participating stations, not just one, but such practices would probably constitute antitrust violations. As there are alternate remedies available to victims of such activities, we seek comment as to whether those remedies would not be more effective than our process in achieving effective, prompt redress.[10]

29. Another area in which we seek comment is whether it is desirable for the Commission to attempt to enforce policies with respect to national sales representatives who are not licensees of the Commission. If anticompetitive joint sales practices are being followed by these representatives, it may be more appropriate to allow governmental agencies with direct jurisdiction—for example, the Justice Department or the Federal Trade Commission—to undertake enforcement.

30. In sum, we seek comments upon the advisability of, and the legal authority for, removing or modifying present Commission policies on combination rates and joint sales representation. In this connection, we specifically ask whether, as we found in the 1981 *Golden West* policy reversal, the marketplace will provide ample protection should anticompetitive practices arise, thus obviating any need for our involvement in this area. Lastly, we will be particularly interested in comments concerning any need for a different approach for radio as opposed to television licensees.

31. Accordingly, public comment is requested upon the advisability of deleting or substantially modifying the policies referred to in Par. 1, *supra*.

32. Pursuant to Section 605 of the Regulatory Flexibility Act, 5 U.S.C. Section 601 *et. seq.*, the Commission certifies that the action proposed will not have a significant economic impact on a substantial number of small entities. What is proposed here is relief for all licensees from three areas of regulation affecting the business practices of stations. The economic effect upon small entities, if any, thus would be beneficial.

33. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a Public Notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation to the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments for the proceeding must prepare a written summary, which must be served on the Commission official receiving the oral presentation. Each *ex parte* presentation described above must also state by docket number the proceeding to which it relates. *See generally*, §§ 1.1241 and 1.1243 of the Commission's Rules and Regulations, 47 CFR 1.1241 and 1.1243.

[6] 59 FCC 2d 894 at 903.

[7] 51 FCC 2d 679 at 684-5.

[8] *Id.* at 868.

[9] *Golden West Broadcasters*, 16 FCC 2d 918 (1969).

[10] As noted in the companion *Policy Statement and Order*, we recognize that the Commission has some antitrust enforcement responsibility, and "competitive considerations are an important element of the 'public interest' " standard. *United States v. FCC*, 652 F 2d 72 (D.C. Cir. 1980). However, the Commission also has discretion to determine the appropriate weight that should be accorded such considerations in particular circumstances. *See id* at 82.

34. Pursuant to applicable procedures set out in §§ 1.4 and 1.415 of the Commission's Rules and Regulations, 47 CFR 1.4 and Section 1.415, interested parties may file comments on or before March 29, 1985 and reply comments on or before April 15, 1985. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Reply comments shall be served on the person(s) who filed comments to which the reply is directed.

35. In accordance with the provisions of § 1.419 of the Commission's Rules and Regulations, 47 CFR 1.419, an original and 5 copies of all comments, reply comments, pleadings, briefs or other documents shall be furnished to the Commission. Members of the general public who wish to participate informally in the proceeding may submit one copy of their comments, specifying the docket number in the hearing. All filings in this proceeding will be available for public inspection by interested persons during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C. 20554.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-3381 Filed 2-11-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 97

[FCC 85-39, PR Docket No. 85-23]

Implementing the Final Acts of the World Administrative Radio Conference, Geneva, 1979

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: This document proposes to amend FCC amateur radio rules to conform them to the Final Acts of the World Administrative Radio Conference, Geneva, 1979.

DATES: Comments are due by April 8, 1985 and replies by May 10, 1985.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Private Radio Bureau, Washington, D.C. 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Amateur radio.

Notice of Proposed Rule Making

In the matter of Amendment of Part 97 of the Commission's Rules to Implement the Final Acts of the World Administrative Radio Conference, Geneva, 1979 (PR Docket No. 85-23).

Adopted: January 23, 1985.
Released: January 31, 1985.

By the Commission.

Background

1. The Final Acts of the 1979 World Administrative Radio Conference (1979 WARC) comprise an international treaty which was ratified by the United States on September 6, 1983. In the *Second Report and Order* in General Docket No. 80-739, 49 FR 2357 (January 19, 1984), we conformed the Table of Frequency Allocations in 47 CFR § 2.106 to the results of the 1979 WARC.

2. Many of these changes affected 47 CFR Part 97, the Amateur Radio Service rules. We proposed in this document to amend Part 97 consistent with the new Table of Frequency Allocations.

3. Some of the recent changes in our Table of Frequency Allocations are currently the subject of a *Notice of Proposed Rule Making* in PR Docket No. 84-960, 49 FR 40611 (October 17, 1984), and are excluded from consideration in this proceeding. These include: (1) Adding amateur operations on a primary basis in the 10.100-10.150 MHz frequency band; (2) adding the frequency bands 18.068-18.168 MHz and 24.890-24.990 MHz to the Amateur and Amateur Satellite Radio Services; (3) prohibiting use of the frequency band 420-430 MHz north of Line A;[1] and (4) adding the frequency band 902-928 MHz to the Amateur Radio Service for use on a secondary basis.

Proposals

(4) *1800-2000 kHz.* While the restrictions of footnote NG15 to the Table of Frequency Allocations regarding Canadian LORAN-A radiolocation operations in the 1900-2000 kHz band were recently removed (see *Order*, FCC 84-103, March 27, 1984), current footnotes US 290 makes amateur operation in this band secondary to the domestic radiolocation service. We propose to list the 1900-2000 kHz band separately from the 1800-1900 kHz band (which is not similarly restricted) and to add appropriate limitations to the 1900-2000 kHz band.

(5) *All current bands between 3500 and 29700 kHz.* We propose editorial revisions to the frequency table in § 97.61 to eliminate the need to restate particular frequency bands in the limitations. Instead, the limitations have been rewritten generically and the frequency bands have been listed differently to allow application of the generic limitations, without any substantive changes in amateur operating privileges.

(6) *50-54 MHz.* Under the new International Table of Allocations adopted pursuant to the 1979 WARC, the 50-54 MHz band is now allocated in Region 1 and in certain countries in Region 3 for broadcasting. Moreover, certain countries in Regions 1 and 3 have also been allocated this spectrum on a primary basis for fixed and mobile services (see footnotes 553-561 of 47 CFR § 2.106). Therefore, we propose to add a footnote cautioning that the principle of equality of right to operate applies internationally in this band.

(7) *144-148 MHz.* Fixed and mobile operation in Singapore in the 144-145 MHz band and certain other primary uses in Regions 1 and 3 in the 146-148 MHz band (see footnote 605 of 47 CFR § 2.106) were permitted by the 1979 WARC. The equality of right to operate limitation is also proposed for this band.

(8) *220-225 MHz.* A limitation making amateur use of this band secondary to the Government radiolocation service is required until January 1, 1990 (see footnote 607 of 47 CFR § 2.106). Additionally, the international and domestic Tables of Frequency Allocation have changed substantially for this band. The Amateur Radio Service is now co-primary with both the government and non-Government fixed and mobile services. This entire band is now allocated only for broadcasting in Region 1 and only for the fixed, mobile and broadcasting services on a co-equal primary basis in Region 3. We propose a series of limitations to this band to reflect these changes.

(9) *420-450 MHz.* Under the new Table of Allocations U.S. amateur stations in this band have secondary status. They are not protected from interference due to operation of the Government radiolocation service. Additionally, U.S. amateur stations share secondary status with foreign radiolocation services in the 420-430 and 440-450 MHz bands. Moreover, in the 430-440 MHz band U.S. amateur station operation is secondary to all other authorized operations world wide. Footnotes 668 and US 87 in the Table of Allocations make amateur stations in the 449.5-450 MHz band secondary to the space services. Also, stations operating in the Amateur Satellite Service in the 435-438 MHz band have

[1] Line A is defined at 47 CFR 97.185(c)(5).

been limited to Earth-to-space transmissions. We propose limitations consistent with these changes.

10. *1215–1300 MHz.* The frequency band 1215–1240 MHz. is no longer allocated to the Amateur Radio Service and we therefore propose to remove this band from the Part 97 frequency table. U.S. amateur stations which operate in the remaining *1240–1300 MHz. band are not protected from interference due to the operations of Government radiolocation stations, and are in fact now secondary to all other stetion operations world wide. We propose limitations to U.S. amateur stations consistent with this status. We also propose the addition of the band 1260–1270 MHz to the Amateur Satellite Service, consistent with footnote 664 to 47 CFR 2.106.*

11. *2300–2450 MHz.* The band *2310–2390 MHz. is no longer allocated to the Amateur Radio Service, and has instead been allocated for aeronautical telemetry. See Second Report and Order,* General Docket No. 80–739, *supra,* at paras. 52 and 53. See also *Order,* Mimeo No. 735, November 8, 1984. However, the band 2400–2405 Mhz has been added to the Amateur Satellite Service. Amateur operations in the remaining 2300–2310 and 2390–2450 MHz bands are now secondary to the fixed services world wide and to the mobile and radiolocation services in Regions 2 and 3. U.S. amateur operations are now also secondary to Government radiolocation operations in the United States. Also, U.S. amateur operations are co-equal with other secondary services in Region 1. We propose to alter §§ 97.61 and 97.415 to reflect these changes.

12. *3.3–3.5 GHz.* Amateur operations in this band are now secondary to all radiolocation operations outside the United States and to Government radiolocation operations domestically. In the 3.4–3.5 GHz band, amateur operations are now secondary to the fixed services and to the fixed-satellite service. We propose limitations accordingly. Additionally, new footnote 778 to the Table of Allocations urges that all practicable steps be taken to protect the spectral line observations of the radio astronomy service from harmful interference in the 3.260–3.267, 3.332–3.339 and 3.3458–3.3525 GHz bands. We seek comments about how best to do this, particularly on whether it is necessary to remove this spectrum from the amateur Radio Service or whether imposition of limitations on amateur operations in these bands would protect these observations. We also propose to add the 3.40–341 GHz band to the Amateur Satellite Service.

13. *5.650–5.925 GHz.* We propose new limitations to reflect: (1) The co-equal secondary status of amateur operations with foreign deep space research operations at 5.650–5.725 GHz and with foreign radiolocation operations at 5.850–5.925 GHz; (2) that domestic amateur operations are secondary to domestic Government radiolocation operations; (3) that amateur operations in this band are secondary to certain foreign primary services; and (4) that amateur operatios in the 5.850–5.925 GHz band are secondary to the domestic fixed-satellite service. We also propose to add the 5.65–5.67 and the 5.83–5.85 GHz bands (see footnotes 664 and 808 to the Table of allocations) to the Amateur Satellite Service.

14. *10.0–10.5 GHz.* We propose new limitations to reflect: (1) The co-equal secondary status of amateur operations with Part 90 private land mobile radiolocation operations; (2) that amateur operations are secondary to Government radiolocation operations; and (3) that amateur operations are secondary to certain foreign station operations. We also propose to add the 10.45–10.50 GHz band to the Amateur Satellite Service.

15. *24.00–24.25 GHz.* In the band 24.00–24.05 GHz, we propose to remove the previous limitations regarding the Government radiolocation service because this band in now allocated exclusively for amateur operation. However, additional limitations are proposed for the 24.05–24.25 GHz band in order to: (1) Clarify the secondary status of amateur operations to Government radiolocation operations; (2) set forth the amateur service's co-equal secondary status with the domestic non-Government radiolocation service, and the domestic and international earth exploration services; and (3) express that operation in the amateur service is secondary to operation in all foreign radiolocation services.

16. *47.0–47.2 GHz.* We propose to add this band to the Amateur Radio Service and the Amateur Satellite Service.

17. *48–50 GHz.* This spectrum has been allocated to the fixed, fixed-satellite (Earth-to-space) and mobile services. In addition, footnote US 297 to the Table of Allocations makes this band available for feeder links for the broadcasting-satellite service. It is no longer available to the Amateur Radio Service. Therefore, we propose to remove the band from the frequency table in § 97.61 of the rules.

18. *71–76 GHz.* The 71–74 GHz band has been allocated to the fixed, fixed-satellite (Earth-to-space), mobile and mobile-satellite (Earth-to-space) services. The 74–75.5 GHz band has been allocated to the fixed, fixed-satellite (Earth-to-space) and mobile services, and, pursuant to footnote US 297 to the Table of Allocations, has been made available for feeder links for the broadcasting-satellite service. Neither of the bands are now available to the Amateur Radio Service. Therefore, we propose to remove the 71–75.5 GHz band from the frequency table in § 97.61 of the rules. We propose to retain the 75.5–76 GHz band in the Amateur Radio Service, and to add it to the Amateur Satellite Service.

19. *76–81 GHz.* We propose to add this band both to the Amateur Radio Service and to the Amateur Satellite Service with limitations indicating that amateur operations in this band are secondary to all radiolocation operations and that amateur operations in the 78–79 GHz band are secondary to certain radar operations on space stations (see footnote 912 to 47 CFR 2.106).

20. *142–149 GHz.* We propose to add this band both to the Amateur Radio Service and to the Amateur Satellite Service. The 142–144 GHz band is allocated exclusively for amateur radio operation and would be added without any restrictions. In the 144–149 GHz band amateur operation would be secondary to radiolocation operations. Additionally, we propose limitations in the 144–149 GHz band stating that the 144.68–144.98, 145.45–145.75 and 146.82–147.12 GHz frequency bands are allocated to the radio astronomy service on a primary basis for spectral line observations.

21. *165–170 GHz.* The frequency band 164–168 GHz has been allocated for the Earth exploration-satellite (passive), the radio astronomy and the space research (passive) services. The frequency band 168–170 GHz has been allocated for the fixed and mobile services. The 165–170 GHz band is no longer allocated for the amateur service. We therefore propose to remove the 165–170 GHz band from the frequency table in § 97.61 of the rules.

22. *240–250 GHz.* The 240–241 GHz band has been allocated for the fixed, fixed-satellite (space-to Earth), mobile and radiolocation services. It is no longer available for the amateur service. Therefore, we propose to remove the 240–241 GHz band from the frequency table in § 97.61 of the rules. While the 241–250 GHz frequency band has been retained for the amateur service, amateur operation in the 241–248 GHz

band is now secondary to domestic radiolocation operation, and we propose limitations so stating.

23. *Above 300 GHz.* We propose to retain this spectrum for the Amateur Radio Service. However, we note that footnote 927 to the Table of Allocations identifies a need for certain spectral line measurements for passive services. Specifically, in the space research service (passive) and in the Earth exploration-satellite service (passive), a need was identified for the 300-302, 324-326, 345-347, 363-365 and 379-381 GHz bands. Additionally, in the radio astronomy service a need was identified for the 343-348 GHz band. We seek comments on how best to comply with the admonition in footnote 927 that all practicable steps be taken to protect these passive services operating in these bands from harmful interference until the next competent world administrative radio conference.

24. *Emissions.* Generally, when proposing to add additional spectrum to the Amateur Radio Service above 3 GHz, we have proposed no FCC-imposed band plans. Instead, consistent with our policy of favoring voluntary (or no) band plans over Commission-imposed subbands in the Amateur Radio Service (See *Order*, Mimeo No. 6670 (September 18, 1984); *Order*, Mimeo No. 3676 (April 18, 1984), at para. 5; *Order*, RM-3671, Mimeo No. PR 1069 (December 14, 1981), at paras. 4-6), we have proposed that each entire band be authorized for N0N,A1A,A2A,A2B,A3E,A3C,A3F,F1B, F2B,F3E,G3E,F3C,F3F and P0N emissions. We seek comments on this approach.

25. *National Radio Quiet Zone.* We propose to require that notification must be given to the National Radio Astronomy Observatory at Green Bank, West Virginia before commencing any amateur operation in the frequency bands 3.260-3.267, 3.332-3.339, 3.3458-3.3525, 2144.68-244-98, 145.45-145.75, 146.82-147.12, 300-302, 234-326, 345-347, 363-365 and 379-381 GHz in the National Radio Quiet Zone. We make this proposal to protect the astronomical observations of the National Radio Astronomy Observatory and the Naval Research Laboratory at Sugar Grove, West Virginia. We seek comment on whether the inherent straight-line nature of transmissions at these frequencies would allow for some protection short of this type of broad-area geographical protection. We also seek comment on whether other astronomical (particularly spectral-line) observatories need to be further protected in other geographical areas in the United States, and, if so, how best to protect them.

26. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. Presentations are prohibited between the time this public notice is issued until a full text of the order is released, or until it becomes clear that the Commission has postponed final consideration and returned the matter to the staff for further work. Thereafter, in either case, *ex parte* presentations are again permitted. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of the presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally Section 1.1231 of the Commission's rules (47 CFR 1.1231). A summary of the Commission's procedures governing *ex parte* contacts in informal rule makings is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554 (202) 632-7000.

27. Authority for issuance of this Notice is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Pursuant to applicable procedures set forth in § 1.415 of the Commission's Rules (47 CFR 1.415) interested persons may file comments on or before April 8, 1985, and reply comments on or before May 10, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and providing that the fact of the Commission's reliance on such information is noted in the Report and Order.

28. In accordance with § 1.419 of the Commission's Rules (47 CFR 1.419), formal participants must file an original and five copies of their comments and other materials. Participants who wish each Commissioner to have a personal copy of their comments should file an original and eleven copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. Each set of comments must state on its face the proceeding to which it relates (PR Docket Number) and should be submitted to: The Secretary, Federal Communications Commission, Washington, D.C. 20554. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

29. In accordance with section 605 of the Regulatory Flexibility Act of 1980 (5 U.S.C. 605), the Commission certifies that these rules would not, if promulgated, have a significant economic impact on a substantial number of small entities, because these entities may not use the Amateur Radio Service for commercial radiocommunication (See 47 CFR 97.3(b)).

30. It is ordered, that the Secretary shall cause a copy of this *Notice* to be served upon the Chief Counsel for Advocacy of the Small Business Administration and that the Secretary shall also cause a copy of this *Notice* to be published in the **Federal Register.**

31. For information concerning this proceeding, contact John J. Borkowski, Federal Communications Commission, Private Radio Bureau, Washington, D.C. 20554 (202) 632-4964.

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

William J. Tricarico,
Secretary.

Appendix

PART 97—[AMENDED]

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations would be amended as follows:

1. Paragraph (i) of § 97.3 would be revised to read:

§97.3 Definitions.

* * * * *

(i) *National Radio Quiet Zone.* The area bounded by 39° 15′ N. on the north, 78° 30′ W. on the east, 37° 30′ N. on the south and 80° 30′ W. on the west.

* * * * *

2. Section 97.61 would be amended by revising (a) and (b) and adding (f) to read as follows:

§ 97.61 Authorized frequencies and emissions.

(a) The following frequency bands and associated emissions are available to amateur radio stations for amateur radio operation, other than repeater operation, auxiliary operation and automatically-controlled beacon operation, subject to the limitations of § 97.65 and paragraph (b) of this section:

Frequency band	Emissions	Limitations (see paragraph (b))
Kilohertz (kHz):		
1800-1900	A1A,A3E	15
1900-2000	A1A,A3E	1,5,15
3500-3700	A1A,F1B	
3750-3900	A1A,A3E,G3E,A3C,A3F,F3C,F3F	15
3900-4000	A1A,A3E,G3E,A3C,A3F,F3C,F3F	4,15
5167.5	R3E,J3E	13
7000-7075	A1A,F1B	
7075-7100	A1A,F1B,A3E,F3E,G3E	11,15
7100-7150	A1A,F1B	3,4
7150-7300	A1A,A3E,F3E,G3E, A3C, F3C,A3F,F3F	3,4,15
14000-14150	A1A,F1B	
14150-14350	A1A,A3E,F3E,A3C,F3C,A3F,F3F	15
21000-21200	A1A,F1B	
21200-21450	A1A,A3E,F3E,A3C,F3C,A3F,F3F	15
28000-28300	A1A,F1B	
28300-29700	A1A,A3E,F3E,G3E,A3C F3C,A3F,F3F	15
Megahertz (MHz):		
50.0-54.0	A1A	3
50.1-54.0	A2A,A2B,A3E,A3C,A3F,F1B,F2B,F3E,G3E,F3C,F3F	3,15
51.0-54.0	N0N	3
144.0-148.0	A1A	3
144.1-148.0	N0N,A2A,A2B,A3E,A3C,A3F,F1B,F2B,F3E,G3E,F3C,F3F	3,15
202-225	N0N,A1A,A2A,A2B,A3E,A3C,A3F,F1B,F2B,F3E,G3E,F3C,F3F	2,3,4,5,15
420-450	N0N,A1A,A2A,A2B,A3E,A3C,A3F,F1B,F2B,F3E,G3E,F3C,F3F	3,5,6,7,15,17,18
1240-1300	N0N,A1A,A2A,A2B,A3E,A3C,A3F,F1B,F2B,F3E,G3E,F3C,F3F	5,6,15,18
2300-2310	N0N,A1A,A2A,A2B,A3E,A3C,A3F,F1B,F2B,F3E,G3E,F3C,F3F,P0N	3,5,6,8,14,15,19
2390-2450	N0N,A1A,A2A,A2B,A3E,A3C,A3F,F1B,F2B,F3E,G3E,F3C,F3F,P0N	3,5,6,8,14,15,19
Gigahertz (GHz):		
3.3-3.5	N0N,A1A,A2A,A2B,A3E,A3C,A3F,F1B,F2B,F3E,G3E,F3C,F3F,P0N	3,5,6,9,14,15
5.650-5.925	N0N,A1A,A2A,A2B,A3E,A3C,A3F,F1B,F2B,F3E,G3E,F3C,F3F,P0N	3,5,6,9,14,15,20
10.0-10.5	N0N,A1A,A2A,A2B,A3E,A3C,A3F,F1B,F2B,F3E,G3E,F3C,F3F,P0N	1,5,6,15,21,23
24.00-24.05	N0N,A1A,A2A,A2B,A3E,A3C,A3F,F1B,F2B,F3E,G3E,F3C,F3F,P0N	10,14,15
24.05-24.25	N0N,A1A,A2A,A2B,A3E,A3C,A3F,F1B,F2B,F3E,G3E,F3C,F3F,P0N	1,3,5,6,10,14,15,22
47.0-47.2	N0N,A1A,A2A,A2B,A3E,A3C,A3F,F1B,F2B,F3E,G3E,F3C,F3FP,0N	14,15
75.5-76.0	N0N,A1A,A2A,A2B,A3E,A3C,A3F,F1B,F2B,F3E,G3E,F3C,F3FP,0N	14,15
76-81	N0N,A1A,A2A,A2B,A3E,A3C,A3F,F1B,F2B,F3E,G3E,F3C,F3F,P0N	1,5,6,14,15,23,24,25
142-144	N0N,A1A,A2A,A2B,A3E,A3C,A3F,F1B,F2B,F3E,G3E,F3C,F3F,P0N	14,15
144-149	N0N,A1A,A2A,A2B,A3E,A3C,A3F,F1B,F2B,F3E,G3E,F3C,F3F,P0N	1,5,6,14,15,23,24,26
241-248	N0N,A1A,A2A,A2B,A3E,A3C,A3F,F1B,F2B,F3E,G3E,F3C,F3F,P0N	1,5,6,14,15,16,23,24
248-250	N0N,A1A,A2A,A2B,A3E,A3C,A3F,F1B,F2B,F3E,G3E,F3C,F3F,P0N	14,15
Above 300	N0N,A1A,A2A,A2B,A3E,A3C,A3F,F1B,F2B,F3E,G3E,F3C,F3F,P0N	14,15

(b) *Limitations.* (1) Amateur stations in this band must not cause harmful interference to the non-government radiolocation service.

(2) Amateur stations in this band must not cause harmful interference to the fixed and mobile services.

(3) Where, in adjacent regions or subregions, a band of frequencies is allocated to different services of the same category, the basic principle is the equality of right to operate. Accordingly, the stations of each service in one region or subregion must operate so as not to cause harmful interference to services in the other regions or subregions. (See International Telecommunication Union Radio Regulations, RR 346 (Geneva, 1979).)

(4) This band is not available in the following U.S. possessions: American Samoa (seven islands), Baker Island, the Commonwealth of Northern Mariana Islands, Guam Island, Howland Island, Jarvis Island, Palmyra Island (more than 50 islets) and Wake Island (Islets Peale, Wake and Wilkes).

(5) Amateur stations in this band must not cause interference to the Government radiolocation service.

(6) Amateur stations in this band are are not protected from interference due to the operation of stations in the Government radiolocation service.

(7) Within the following areas, the peak envelope power output of a transmitter employed in this band shall not exceed 50 watts, unless expressly authorized by the Commission after mutual agreement, on a case-by-case basis, between the Federal Communications Commission Engineer-In-Charge at the applicable District office and the Military Area Frequency Coordinator at the applicable military base:

(i) Those portions of Texas and New Mexico bounded on the south by latitude 31° 45′ North, or the east by 104° 00′ West, on the north by latitutde 34° 30′ North, and on the west by longitude 107° 30′ West;

(ii) The entire State of Florida including the Key West area and the areas enclosed within a 320 kilometer (200 mile) radius of Patrick Air Force Base, Florida (latitude 28° 21′ North, longitude 80° 43′ West), and within a 320 kilometer (200 mile) radius of Eglin Air Force Base, Florida (latitude 30° 30′ North, longitude 86° 30′ West);

(iii) The entire State of Arizona;

(iv) Those portions of California and Nevada south of latitude 37° 10′ North, and the areas enclosed within a 320 kilometer (200 mile) radius of the Pacific Missile Test Center, Point Mugu.

California (latitude 34° 09' North, longitude 119° 11' West).

(v) In the State of Massachusetts within a 160 kilometer (100 mile) radius around locations at Otis Air Force Base, Massachusetts (latitude 41° 45' North, longitude 70° 32' West).

(vi) In the State of California within a 240 kilometer (150 mile) radius around locations at Beale Air Force Base, California (latitude 39° 08' North, longitude 121° 26' West).

(vii) In the State of Alaska within a 160 kilometer (100 mile) radius of Clear, Alaska (latitude 64°17' North, longitude 149°10' West). (The Military Area Frequency Coordinator for this area is located at Elmendorf Air Force Base, Alaska.)

(viii) In the State of North Dakota within a 160 kilometer (100 mile) radius of Concrete, North Dakota (latitude 48°43' North, longitude 97°54' West). (The Military Area Frequency Coordinator for this area can be contacted at: HQ SAC/SXQE, Offutt Air Force Base, Nebraska 68113.)

(ix) In the States of Alabama, Florida, Georgia, and South Carolina within a 200 kilometer (124 mile) radius of Warner Robins Air Force Base, Georgia (latitude 32°38' North, longitude 83°35' West).

(x) In the State of Texas within a 200 kilometer (124 mile) radius of Goodfellow Air Force Base, Texas (latitude 31°25' North, longitude 100°24' West).

(8) Amateur stations in the 2400–2450 MHz band are not protected from interference due to the operation of industrial, scientific and medical services on 2450 MHz.

(9) Amateur stations in the 5.725–5.875 GHz band are not protected from interference due to the operation of industrial, scientific and medical devices on 5.8 GHz.

(10) Amateur stations in this band are not protected from interference due to the operation of industrial, scientific and medical devices on 24.125 GHz.

(11) The use of A3E, F3E and G3E in this band is limited to amateur radio stations located outside Region 2.

(12) Amateur stations in this band shall not cause harmful interference to and are not protected from interference due to the operation of foreign stations in the radiolocation service or foreign stations in the 3400–3500 MHz band in the fixed or fixed-satellite services.

(13) This frequency may be used at a transmitter power not to exceed 150 watts peak envelope output power by any station authorized under this part to communicate with any other station authorized in the State of Alaska for emergency communications. All stations operating on this frequency must be located in or within 50 nautical miles of the State of Alaska. This frequency may be used by licensees in the Alaska-private fixed service for calling and listening, but only for establishing communication before switching to another frequency.

(14) The letters "K,L,M,Q,V,W, and X" may also be used in place of the letter "P" for pulsed radars.

(15) J3E, R3E and H3E emissions may also be used.

(16) Amateur stations in the 244–246 GHz band are not protected from interference due to the operation of industrial, scientific and medical devices on 245 GHz.

(17) Amateur stations in the 449.5–450 MHz band are not protected from interference due to the operation of stations in the space operation service, the space research service, or for space telecommand.

(18) Amateur stations in the 430–440 MHz and 1240–1300 MHZ bands must not cause harmful interference to other stations operating in this band, and are not protected from interference due to the operation of other authorized stations in this band.

(19) Amateur stations in this band must not cause harmful interference to and are not protected from interference due to the operation of foreign stations in the fixed, mobile and radiolocation services.

(20) In the 5.650–5.850 GHz band amateur stations must not cause harmful interference to and are not protected from interference due to the operation of foreign stations in the radiolocation service. In the 5.725–5.925 GHz band amateur stations must not cause harmful interference to and are not protected from interference due to the operation of foreign stations in the fixed-satellite service. In the 5.650–5.925 GHz band amateur stations must not cause harmful interference to and are not protected from interference due to the operation of foreign stations in the fixed and mobile services, or stations authorized by the United States in the fixed-satellite service.

(21) Amateur stations in the 10.00–10.45 GHz band must not cause harmful interference to and are not protected from interference due to the operation of foreign stations in the fixed and mobile services.

(22) Amateur stations in this band must not cause harmful interference to the Government Earth exploration service or to foreign stations in the radiolocation service or the Earth exploration service. Amateur stations in this band are not protected from interference due to the operation of foreign stations in the radiolocation service.

(23) Amateur stations in this band must not cause harmful interference to and are not protected from interference due to the operation of foreign stations in the radiolocation service.

(24) Amateur stations in this band are not protected from interference due to the operation of stations in the non-Government radiolocation service.

(25) Amateur stations in the 78–79 GHz band must not cause harmful interference to and are not protected from interference due to the operation of radars located on space stations in the Earth exploration-satellite service and in the space research service.

(26) Amateur stations in the frequency bands 144.69–144.98 GHz, 145.45–145.75 GHz and 146.82–147.12 GHz must not cause harmful interference to stations in the radio astronomy service.

* * * * *

(f) *National Radio Quiet Zone.* (1) Before placing an amateur station in operation or modifying the operation of an existing station on the frequency bands 3.260–3.267, 3.332–3.339, 3.3458–3.3525, 144.68–144.98, 145.45–145.75, 146.82–147.12, 300–302, 324–326, 345–347, 363–365 or 379–381 GHz in the National Radio Quiet Zone, an amateur licensee must give written notification to the Director, National Radio Astronomy Observatory, P.O. Box No. 2, Green Bank, West Virginia 24944. Station modification in this context includes any change in frequency, power, antenna height or directivity, or the location of the station. The notification must include the geographical coordinates of the antenna, antenna height, antenna directivity, if any, proposed frequency, type of emission and maximum peak envelope output power.

(2) If an objection to the proposed operation is received by the Commission from the National Radio Astronomy Observatory for itself or on behalf of the Naval Research Laboratory at Sugar Grove, West Virginia within twenty days from the date the notification was received, the Commission will consider all aspects of the problem and take appropriate action.

§ 97.85 [Amended]

3. Section 97.85 would be amended by removing current paragraph (f)(2) and redesignating current paragraph (f)(3) as paragraph (f)(2).

4. The last sentence of paragraph (d) of § 97.87 would be revised to read: "In such cases, the rules of § 97.85(f) (1) and (2) shall apply."

5. Section 97.415 would be revised to read:

§ 97.415 Frequencies available.

The following frequency bands are available for space operation, Earth operation and telecommand operation:

FREQUENCY BANDS [1]

kHz	MHz	GHz
7000–71000	144–148	[3] 3.40–3.41
14000–14250	[2,3] 435–436	[3,4] 5.65–5.67
21000–21450	[2,3] 1260–1270	[3,4] 5.83–5.85
28000–29700	[2] 2400–2405	10.45–10.50
		24.00–24.05
		47.0–47.2
		75.5–81.0
		142–149
		241–250

[1] The emission designations and limitations set forth in § 97.61 for each of the listed frequency bands also apply.

[2] Stations operating in the Amateur Satellite Service must not cause harmful interference to other authorized stations operating in this band. (See International Telecommunication Union Radio Regulations, RR 664 (Geneva, 1979).)

[3] Stations operating in the Amateur Satellite Service in this band are limited to Earth-to-space transmissions.

[4] Stations operating in the Amateur Satellite Service in this band are limited to space-to-Earth transmissions.

[FR Doc. 85–3380 Filed 2–11–85; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 50, No. 29
Tuesday, February 12, 1985

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

Agricultural Marketing Service

National Advisory Committee for Tobacco Inspection Services; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I) announcement is made of the following Committee meeting:

Name: National Advisory Committee for Tobacco Inspection Services.

Date: February 27, 1985.

Place: The Ramada Inn, 525 Waller Avenue, Lexington, Kentucky, 40504.

Purpose: To review various regulations issued pursuant to the Tobacco Inspection Act (49 Stat. 731; 7 U.S.C. 511 *et seq.*), to hear from individuals who have requested to address the Committee and who have been prescheduled to do so, and to discuss the level of tobacco inspection and related services and the fees and charges associated with providing these services.

The meeting is open to the public. Public participation will be limited to written statements submitted before or at the meeting unless otherwise requested by the Committee Chairperson. Persons, other than members, who wish to address the Committee at the meeting are requested to contact Lioniel S. Edwards, Director, Tobacco Division, Agricultural Marketing Service, 300 12th Street, S.W., U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-2567.

Dated: February 7, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-3601 Filed 2-11-85; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

[Docket No. 85-011]

Secretary's Advisory Committee for Swine Health Protection; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of Meeting of the Secretary's Advisory Committee for Swine Health Protection.

SUMMARY: This document gives notice of a meeting of the Secretary's Advisory Committee for Swine Health Protection.

Place, Dates, and Time of Meeting

The meeting will be held at Room 104-A of the Administration Building, United States Department of Agriculture, 14th Street and Independence Avenue, Washington, D.C., February 26, 1985, from 9 a.m. to 4:30 p.m. and February 27, 1985, from 8:30 a.m. to 12 noon.

FOR FURTHER INFORMATION CONTACT: Dr. John L. Williams, Staff Veterinarian, Swine Health Protection Program, VS, APHIS, USDA, Room 821, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8487.

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to advise the Secretary of Agriculture concerning matters within the scope of the Swine Health Protection Act. The meeting will focus on means of coordination between Federal and State programs for regulating the treatment of garbage to be fed to swine. The meeting will be open to the public.

Written statements concerning these matters may be filed with the committee before or at the time of the meeting. Written statements concerning the meeting may be forwarded to Dr. John L. Williams, Staff Veterinarian, Swine Health Protection Program, VS, APHIS, USDA, Room 821, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8087. Comments received may also be inspected at this address from 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

Dated: February 7, 1985.

Karen Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 85-3577 Filed 2-8-85; 12:55 pm]

BILLING CODE 3410-34-M

Forest Service

Western Spruce Budworm Insect Control; Pacific Northwest Region Baker, Clackamas, Crook, Deschutes, Grant, Hood River, Harney, Jefferson, Malheur, Morrow, Multnomah Union, Umatilla, Wasco, Wheeler Counties, OR; Yakima, and Okanogan Counties, WA; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement for the control of Western Spruce Budworm insect infestations on National Forest lands; lands administered by the Bureau of Indian Affairs and The Bureau of Land Management, U.S. Department of Interior; certain other lands administered by the State of Oregon and State of Washington; and certain lands of cooperating private landowners.

A range of alternatives for control of the Western Spruce Budworm insect will be considered, including the application of chemical and/or biological insecticides and the alternative of taking no action for control.

Federal, State, and Local agencies, potential private cooperators, and individuals and organizations who may be interested in or affected by the decision will be invited to participate in the Scoping process.

This process will include:

1. Identification of those issues to be addressed.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Determination of potential Cooperating agencies and the assignment of responsibilities.

The Bureau of Indian Affairs, and Bureau of Land Management, U.S. Department of Interior; The Department of Natural Resources, State of Washington; and the Department of Forestry, State of Oregon will be invited to participate as cooperating agencies to evaluate the potential impacts of the insect infestation and impacts of various control alternatives on the lands and

resources managed by these agencies. Impacts considered will include economical, biological, physical and social effects of the various alternatives.

Public meetings may be held near population centers affected by the infestation, and if so, such meetings will be announced in newspapers of general circulation in the area.

This Notice of Intent supercedes and replaces an earlier notice published in **Federal Register** Vol. 49, No. 185, dated Friday, September 21, 1984. Since that time economic and other analyses have been completed, which indicate that an Environmental Impact Statement should be prepared for a control program in the 1986 season. A Draft Environmental Impact Statement should be available about October 15, 1985.

Written comments and questions about the proposed action and Environmental Impact Statement should be directed to V.R. Turnbull, La Grande Ranger Station, Wallowa-Whitman National Forest, Rt 2, Box 2108, La Grande, Oregon 97850, Telephone (503) 963–7186.

Dated: February 4, 1985.

James C. Space,

Acting Regional Forester.

[FR Doc. 85–3452 Filed 2–11–85; 8:45 am]

BILLING CODE 3410–11–M

Update of the Status of Participation in the Systemwide Site-Specific Metropolitan Denver Water Supply Environmental Impact Statement; Rocky Mountain Region; Lakewood, CO

The purpose of this notice is to bring up to date those persons and groups interested in Forest Service participation in Denver Water Department's Systemwide Site-Specific Metropolitan Denver Water Supply Environmental Impact Statement (EIS). The lead agency in preparing the EIS is the U.S. Army Corps of Engineers (COE).

On April 9, 1982, the COE published a Notice of Intent to prepare an EIS in the **Federal Register** (Vol. 47, No. 69, Page 15405). The notice contained the schedule of several scoping meetings. Also, in that notice the Rocky Mountain Region of the Forest Service was identified as a cooperating agency under the National Environmental Policy Act. Subsequent to analysis the scope of the EIS changed to emphasize site-specific projects and the COE published second Notice of Intent to prepare an EIS in the **Federal Register** on April 19, 1984 (Vol. 49, No. 77, Page 15600). The public was again asked to comment and to help define the scope of the issues to be analyzed in the EIS and to allow project sponors to select the specific features of a plan which will provide water to the Metro Area through the year 2035.

The sponsors expect to identify the projects which will have to be built in the near-term (10 to 15 years) and to apply for the necessary land use authorizations, 404 permits, and other project requirements in October 1985. The site specific portion of the study has to have sufficient detail and scope for all the involved Federal agencies to assure compliance with the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), and the Federal Land Policy Mangement Act (FLPMA), and other laws and regulations.

The National Forests which are involved are the Arapaho and Roosevelt, the Pike and San Isabel, the Routt, and the White River. All four administrative units have implemented Land and Resource Management Plans prepared under NFMA. Therefore, the Forests will evaluate the potential effects of project alternatives upon planning decisions and prescriptions in the Forest Plans, and determine changes that would be necessary to bring the Plans and permitting decisions into agreement. If changes in the Forest Plans are necessary a Notice of Intent will be published in the **Federal Register** in early October 1985. Those changes and alternatives, including a no action alternative, will be addressed in the site-specific EIS to a degree that will allow the Regional Forester to make the decision on Forest Plans in the same Record of Decision in which the project decisons are documented.

In addition, the Forest Service will participate in, or lead, the resource work groups established for the purpose of identifying, defining, and describing data needs, and conducting analyses and evaluations at a level of detail consistent with the needs to respond to permit applications and the accompaning NEPA documents. At this time the resource groups to be studied include soils, vegetation, recreation and visual resources, stream hydrology, terrestial wildlife, water quality, cultural resources, wetlands, aquatic life, threatened and endangered plants and animals, water conservation, social, economic, institutional, engineering, and transportation. This work is underway and will be completed during the upcoming field season.

Comments and/or concerns may be addressed to Regional Forester (2560), USDA Forest Service, P.O. Box 25127, Lakewood, CO 80225.

Dated: January 31, 1985.

James F. Torrence,

Regional Forester.

[FR Doc. 85–3456 Filed 2–11–85; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Colbert Roadside Critical Area Treatment RC&D Measure, OK

AGENCY: Soil Conservation Service, Agriculture.

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 Colbert Roadside Critical Area Treatment RC&D Measure, Bryan County, Oklahoma.

FOR FURTHER INFORMATION CONTACT: Roland R. Willis, State Conservationist, Soil Conservation Service, USDA Agricultural Center Building, Stillwater, Oklahoma 74074, telephone (405) 624–4360.

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, Roland R. Willis, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan to stabilize the erosion along the county roadside. The planned works of improvement include the construction of gabions and concrete channel liners.

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 Roland R. Willis, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: February 4, 1985.

[FR Doc. 85-3455 Filed 2-11-85; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-101]

Greige Polyester/Cotton Printcloth From the People's Republic of China; Final Results of Administrative Review of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Duty Order.

SUMMARY: On December 11, 1984, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on greige polyester/cotton printcloth from the People's Republic of China. The review covers the one known Chinese exporter of this merchandise to the United States and the period March 9, 1983, through November 30, 1983.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. The final results of review are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: February 12, 1985.

FOR FURTHER INFORMATION CONTACT: Maureen A. Flannery or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On December 11, 1984, the Department of Commerce ("the Department") published in the Federal Register (49 FR 48205) the preliminary results of its administrative review of the antidumping duty order on greige polyester/cotton printcloth from the People's Republic of China (48 FR 41614, September 16, 1983). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of greige polyester/cotton printcloth, other than 80 x 80 type. Greige polyester/cotton printcloth is unbleached and uncolored printcloth and is currently classifiable under items 326.26 through 326.40 of the Tariff Schedules of the United States Annotated. The appropriate statistical suffix is 32. The term "printcloth" refers to plain-woven fabric, not napped, not fancy or figured, of singles yarn, not combed, of average yarn number 26 to 40, weighing not more than 6 ounces per square yard, of a total count of more than 85 yarns per square inch, of which the total count of the warp yarns per inch and the total count of the filling yarns per inch are each less than 62 percent of the total count of the warp and filling yarns per square inch.

The review covers the one known Chinese exporter of this merchandise to the United States, China National Textiles Import and Export Corporation (Chinatex), and the period March 9, 1983, through November 30, 1983.

Final Results of the Review

Interested parties were invited to comment on the preliminary results. The Department received no written comments or requests for a hearing. Based on our analysis, the final results of our review remain unchanged from the preliminary results of review, and we determine that, for the period March 9, 1983, through November 30, 1983, a margin of 22.4 percent exists.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties of 22.4 percent shall be required on all shipments of Chinese greige polyester/cotton printcloth entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible after the Department's receipt of the requested information.

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).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

January 31, 1985.

[FR Doc. 85-3468 Filed 2-11-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Technical Services, Inc.; Issuance of Letter of Authorization

Notice is hereby given that on February 5, 1985, the National Marine Fisheries Service issued a Letter of Authorization under the authority of section 101(a)(5) of the Marine Mammal Protection Act of 1972 and 50 CFR Part 228, Subpart B—Taking of Ringed Seals Incidental to On-Ice Seismic Activities to the following: Marine Technical Services, Inc., P.O. Box 1369, Stafford, Texas 77477.

This Letter of Authorization is valid for 1985 and is subject to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities (50 CFR Part 228, Subparts A and B).

Issuance of this letter is based on a finding that the total level of taking will have a negligible impact on the ringed seal species or stock, its habitat and its availability for subsistence use.

This Letter of Authorization is 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, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: February 5, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 3521 Filed 2-11-85; 8:45 am]

BILLING CODE 3510-22-M

Scan Ocean, Inc.; Issuance of General Permit

On February 1, 1985, a general permit to incidentally take marine mammals during commercial fishing operations in 1985 was issued to: Scan Ocean, Inc., 42 Rogers Street, Gloucester, Massachusetts 01930, in Category 1:

Towed or Dragged Gear, to take 5 harbor seals and cetaceans.

All takings are incidental to commercial fishing operations within the U.S. Fishery Conservation Zone, pursuant to 50 CFR 216.24.

This general permit is available for public review in the office of the Assistant Administrator for Fisheries, 3300 Whitehaven Street, NW., Washington, D.C.

Dated: February 1, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-3522 Filed 2-11-85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Receipt of Application for Permit; Baltimore Aquarium, Inc.

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by 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).

1. Applicant:

a. Name, Baltimore Aquarium, Inc. (P261A).

b. Address, 501 E Pratt Street, Pier 3, Baltimore, Maryland 21202.

2. Type of Permit: Public Display.

3. Name and Number of Animals: Belukha whales (Delphinapterus leucas) 2.

4. Type of Take: Live Import.

5. Location of Activity: Within a radius of 250 miles of the Seal River estuary on the southwest shore of Hudson's Bay, Churchill, Manitoba, Canada.

6. Period of Activity: 3 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application 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, within 30 days of the publication of this notice. 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 this application 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 application 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, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930-3799.

Dated: February 5, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-3519 Filed 2-11-85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Receipt of Application for Permit; Craig O. Matkin

Notice is hereby given than an Applicant has applied in due form for a Permit to take marine mammals as authorized by 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).

1. Applicant:

a. Name: Mr. Craig O. Matkin (P351).

b. Address: North Gulf Oceanic Society, P.O. Box 156, Cordova, Alaska 99574.

2. Type of Permit: Scientific Research.

3. Name and Number of Animals: Killer whale (*Orcinus orca*) 250 (maximum).

4. Type of Take: HARASSMENT: Photo identification.

5. Location of Activity: Prince William Sound, Alaska and adjacent waters.

6. Period of Activity: April 1985-April 1987.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application 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, within 30 days of the publication of this notice. 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 the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application 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 application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802; and Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 97031.

Dated: February 5, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-3520 Filed 2-11-85; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent to Grant Exclusive Patent License; Hoefer Scientific Instruments

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Hoefer Scientific Instruments, having an office in San Francisco, California, an exclusive right to practice the invention embodied in U.S. Patent Application No. 6-618,949, "Rapid Visualization System for Gel Electrophoresis." The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101-4.1. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed

license must be submitted to the Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

George Kudravetz,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 85-3490 Filed 2-11-85; 8:45 am]

BILLING CODE 3510-04-M

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to:

Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-423,402
Microemulsions from Vegetable Oil and Aqueous Alcohol with 1-Butanol Surfactant as Alternative Fuel for Diesel Engines

SN 6-426,438 (4,488,996)
Rapid Production of Ispropenyl Esters

SN 6-436,497 (4,489,161)
Strain of Trichoderma Viride to Control Fusarium Wilt

SN 6-461,299 (4,474,991)
Synthetic Pheromone 10-Methyl-2-Tridecanone and its Use in Controlling the Southern Corn Rootworm and Related Diabroticites

SN 6-586,618 (4,488,878)
Process to Produce Durable Press Low Formaldehyde Release Cellulosic Textiles

SN 6-600,259
Unnatural Sex Attractants for Male Pink Bollworms and Pinkspotted Bollworms and Use Thereof

Department of Health and Human Services

SN 6-664,953
Biologically-Active Xanthine Derivatives

SN 6-672,451
Isolation and Culture of Adrenal Medullary Endothelial Cells Producing Blood Clotting Factor VIII: C

Department of Interior

SN 6-473,298 (4,491,971)
Short Range Trapped Miner Locator

SN 6-574,499 (4,489,044)
Formation of Tungsten Monocarbide from a Molten Tungstate Halide Phase by a Gas Sparging

Department of the Air Force

SN 6-473,384
Low Voltage Two Wire to Four Wire Telephone Circuit Converter Apparatus

SN 6-569,644
Tropospheric Scatter Communication System having Angle Diversity

SN 6-610,148
Survivable Local Area Network

SN 6-610,911
Mask Aligner for Solar Cell Fabrication

SN 6-610,912
Method for Making Heterocyclic Block Copolymers

SN 6-610,913
Contact Insertion and Wire Lay Robotic End Effector Apparatus

SN 6-616,380
One-Piece HPTR Blade Squealer Tip

SN 6-618,287
Noise Jammer Discrimination by Noise Modulation Bandwidth

SN 6-657,097
Mechanical Locking Between Multi-Layer Printed Wiring Board Conductors and Through-Hole Plating

SN 6-661,623
Method for Synthesizing Indium Phosphide

SN 6-661,833
Fine Figuring Actuator

SN 6-662,478
Optical Mark Reader

SN 6-664,193
Improved Magnetic Bias and Delay Linearity in a Magnetostatic Wave Delay Line

SN 6-666,511
Extracting Digital Data from a Bus and Multiplexing it with a Video Signal

SN 6-666,784
Trandigitizer for Relaying Signals from Global Positioning System (GPS) Satellites

SN 6-666,785
Variable Density Frangible Projectile

SN 6-666,786
Vibration Isolated Cold Plate Assembly

SN 6-666,841
Bistatic Coherent Radar Receiving System

SN 6-667,194
Deffraction Diffusion Screen with Holographically-Suppressed Zero-Order Beam

SN 6-671,391
Missile Launcher Integral Shock Isolation and Running Gear System

SN 6-671,393
Conformal Phased Array Antenna Pattern Corrector

SN 6-672,237
Method for Continuously Casting

SN 6-672,239
High Voltage Disconnect Protection

SN 6-675,173
Double Pinch-Push Contact Insertion End-Effector

SN 6-675,174
Charge Depletion Meter

Department of the Army

SN 6-328,766 (4,376,663)
Method for Growing an Epitaxial Layer of CDTE on an Epitaxial Layer of HGCDTE Grown on a CDTE substrate

SN 6-497,455 (4,473,494)
Preparation of Stroma-Free, Non-Heme Protein-Free Hemoglobin

SN 6-658,945
Polyactic-Polyglycolic Acid Copolymer Combined with Decalcified Freeze-Dried Bone for Use as a Bone Repair Material

SN 6-660,574
Sealing Assembly

SN 6-667,315
Curvilinear Solid Propellant Grain

SN 6-669,131
Tire Deflation Mechanism

SN 6-669,911
Adjustment Structure

SN 6-672,056
Tire Inflation/Deflation System

SN 6-675,916
An Electronically Controlled Array for Simulation of Passive Target/Background Signatures at Millimeter Wavelengths

SN 6-679,432
Hoist

SN 6-679,969
Integrated Circuit Tunable Cavity Oscillator

SN 6-679,970
Filter Reflection Image Guide Oscillator and Solid State Line Scanning Device

SN 6-679,971
Image Line Voltage Controlled Oscillator with Replaceable Components

SN 6-679,972
A Coaxial Cavity Gunn Oscillator Using Probe Coupled Microstrip

SN 6-679,974
An Integrated Varactor Tuned

Coaxial Gunn Oscillator for 60 GHz Operation
SN 6-681,733
Method of Heating Quartz Resonators
SN 6-682,126
Digital High Speed Programmable Convolver
SN 6-685,426
Lightweight Cladding for Magnetic Circuits

[FR Doc. 85-3489 Filed 2-11-85; 8:45 am]
BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group D. (Production) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 10:00 a.m., Wednesday, 13 March 1985.

ADDRESS: Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, Suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Thomas Henion, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group D meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Working Group D area includes all production aspects of critical electronic components for the defense electronic supply base; the transition of components from research and development into production, e.g. manufacturing technology; policy and acquisition steps necessary to insure that there is a sufficient domestic supply base for critical electronic components; and steps necessary to insure the continuing availability of skilled people to support the critical electronic component supply base. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92-463, as amended (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

February 7, 1985.

Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 85-3514 Filed 2-11-85; 8:45 am]
BILLING CODE 3810-01-M

Department of the Air Force

Air Force Activities for Conversion to Contract

ACTION: Notice.

The Air Force recently announced that the South Range Operations function at Nellis AFB, Nevada will be evaluated for possible conversion to contract. A cost comparison of this function will commence no sooner than 30 days after the date of this announcement. In addition, 7 activities were announced for direct conversion to contract. Since these activities involve ten or fewer civilian employees, a cost comparison is not required per Pub. L. 96-342, as amended. However, based on local evaluations, contracting is expected to be cost effective in each case. A summary of these activities and installations follows: South Range Maintenance at Nellis AFB, NV; Glider Maintenance at Air Force Academy; Medical Linen Control at Altus AFB, OK, Andrews AFB, MD, Kirtland AFB, NM, Little Rock AFB, AR, and Scott AFB, IL.

For further information contact: Major Mel Martocchia, Telephone (202) 697-4935.

Norita C. Koritko,
Air Force Federal Register Liaison Officer.

[FR Doc. 85-3454 Filed 2-11-85; 8:45 am]
BILLING CODE 3910-01-M

Department of the Army

U.S. Army Medical Research and Development Advisory Committee, Subcommittee on Medical Defense Against Chemical Agents; Notice of Partially Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix, Sections 1-15), announcement is made of the following Subcommittee meeting:

Name of Committee: United States Army Medical Research and Development Advisory Committee, Subcommittee on Medical Defense Against Chemical Agents.

Date of Meeting: 7-8 March 1985.

Time and Place: 0830 hours, Room 202, Building E-3081, Aberdeen Proving Ground, MD.

Proposed Agenda: This meeting will be open to the public from 0830 to 0930 hours on 7 March for the administrative review and discussion of the scientific research program of the United States Army Medical Research Institute of Chemical Defense. Attendance by the public at open sessions will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), United States Code, Title 5 and Sections 1-15 of Appendix, the meeting will be closed to the public from 0930 to 1630 hours on 7 March and from 0830 to 1630 hours on 8 March for the review, discussion and evaluation of individual programs and projects conducted by the United States Army Medical Research and Development Command, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Col. Richard Lindstrom, United States Army Medical Research Institute of Chemical Defense, Aberdeen Proving Ground, MD 21010 (301/671-2833) will furnish summary minutes, roster of Subcommittee members and substantive program information.

Philip Z. Sobocinski,
Colonel, MSC, Deputy Commander for Science and Technology.

[FR Doc. 85-3453 Filed 2-11-85; 8:45 am]
BILLING CODE 3710-08-M

Army Science Board Ad Hoc Subgroup on U.S. Army Research and Technology Laboratories Effectiveness Review; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Wednesday & Thursday, 27 & 28 February 1985.

Times of meeting: 0830-1700 hours, both days (Closed).

Place: Propulsion Lab, Lewis Research Center, Cleveland, Ohio

Agenda

The Army Science Board Ad Hoc Subgroup on U.S. Army Research and Technology Laboratories Effectiveness Review will meet for classified briefings and discussions. The study purpose is to ensure continued excellence by providing independent evaluation on problems and causes of deficiencies, if any. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5,

U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85–3580 Filed 2–11–85; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Ad Hoc Subgroup on Ballistic Missile Defense Follow On; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of meeting: Wednesday & Thursday, 27 & 28 February 1985

Times of meeting: 0930–1630 hours on 27 February (Closed); 0800–1500 hours on 28 February (Closed)

Place: BMD Program Office, Crystal City, Virginia

Agenda

The Army Science Board Ad Hoc Subgroup on Ballistic Missile Defense Follow-On will meet for classified briefings on HEDS (High Endo-atmospheric Defense System), ERIS (Exo-atmoshperic Reentry Interceptor System), and near-term deployment options. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85–3579 Filed 2–11–85; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education; Meeting

AGENCY: National Advisory Council on Indian Education.

ACTION: Notice of Partially Closed Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming partially closed meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: February 26, 1985, 8:30 A.M. until conclusion of business February 27–28, 1985, 9:00 A.M. until conclusion of business each day.

ADDRESS: U.S. Department of Education, 400 Maryland Avenue, SW., Room 2177, Washington, DC 20202 (202/732–1887).

FOR FURTHER INFORMATION CONTACT: Lincoln C. White, Executive Director, National Advisory Council on Indian Education, Pennsylvania Building, Suite 326, 425 13th Street, NW., Washington, D.C. 20004 (202)/376–8882.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 442 of the Indian Education Act (20 U.S.C. 1221g). The Council is established to assist the Secretary in carrying out responsibilities under section 441(a) of the Indian Education Act (Title IV of Pub. L. 92–318), through advising Congress, the Secretary of Education, the Under Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to education programs benefiting Indian children and adults.

On February 26, 1985, the open portion of the meeting will start at 8:30 A.M., and the agenda will include a brief meeting of the Council to organize Council review teams for the remainder of the review process in March, April, and May.

The closed meeting will start at the conclusion of the organizational meeting at approximately 9:00 A.M., and will end at the conclusion of business each day, approximately 5:00 P.M. The Council will be reviewing applications submitted under the Planning, Pilot and Demonstration Projects for Indian Adults program and Education Services for Indian adults program authorized by Part C of the Indian Education Act. The reviewing of applications must be held in the highest confidence until the announcement is released by the proper authorities as to which projects will be funded. The premature disclosure of information discussed during the review process is likely to significantly frustrate implementation of agency action. Financial information which is privileged or confidential contained in and related to these proposals will be discussed at the review session. Discussions will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (9), (4) and (6) of Section 552b(c) of Title 5 U.S.C. The agenda includes the review of applications submitted under the Planning, Pilot and Demonstration Projects for Indian Adults program and Educational Services for Indian Adults program authorized by Part C of the Indian Education Act and making recommendations to the Secretary of Education with respect to their approval, as authorized under section 442(b)(2) of the Act.

A summary of the activities of the partially closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Dated: January 30, 1985.

Signed at Washington, D.C.

Lincoln C. White,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 85–3493 Filed 2–11–85; 8:45 am]

BILLING CODE 4000–01–M

Office of Bilingual Education and Minority Languages Affairs

Transition Program for Refugee Children

AGENCY: Department of Education.

ACTION: Application Notice for Fiscal Year 1985.

Applications are invited for grants under the Transition Program for Refugee Children.

Authority for this program is contained in section 412(d)(1) of the Immigration and Nationality Act, as amended by the Refugee Act of 1980 (Pub. L. 96–212), and the Refugee Assistance Amendments of 1982 (Pub. L. 97–363).

(8 U.S.C. 1522(d))

Eligible applicants are State educational agencies (SEAs).

This program supports educational activities designed to meet the special needs of eligible refugee children and to enhance their transition into American society.

Closing date for transmittal of applications: An applicant SEA must mail or hand deliver its application by March 29, 1985.

Applications delivered by mail: An applicant SEA that sends its application

by mail must address its application to the U.S. Department of Education, Application Control Center, Attention: 84.146, Washington, D.C. 20202.

An applicant SEA must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an applicant SEA sends its application through the U.S. Postal Service, the Secretary does not accept either of the following as a proof of mailing: (a) a private metered postmark, or (b) a mail receipt that is not dated by the U.S. Postal Service.

An applicant SEA should note that the U.S. Postal Service does not uniformly provide a dated postmak. Before relying on this method, an applicant should check with its local post office.

The Secretary encourages applicants to use registered or at least first class mail. The Secretary notifies a late applicant that its application will not be considered.

Applications delivered by hand: An SEA applicant that hand delivers its application must take the application to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

The Application Control Center will not accept an application that is hand delivered after 4:30 p.m. on the closing date.

Program information: To be eligible for a grant, and SEA must conduct a count of refugee children eligible for assistance under the Transition Program for Refugee Children by February 28, 1985. A grant is made to an SEA based on the number of eligible children enrolled in public and nonprofit private schools in the State, using the weighting factors announced in this notice. Using the same formula, the SEA awards subgrants to local educational agencies (LEAs) in its State that proposed to serve eligible children within their jurisdictions. As provided in 34 CFR 538.20, the SEA makes subgrants to LEAs within 60 days after the State receives the grant award funds. When an LEA does not apply to serve its eligible children, the SEA provides services directly to those children or arranges for provision of services to those children through subgrants, contracts, and cooperative agreements with other public and private nonprofit organizations, agencies, and institutions.

Awards under this program are to provide educational services to eligible children during the 1985–1986 school year.

Weighting factors: Section 538.31 of the program regulations authorizes the Secretary to announce the weighting factors to be used in distributing funds under this program. For the award of Fiscal Year 1985 funds, the Secretary uses the following formula for distributing funds:

Regency of arrival in the United States (in years)	Weighting factors by school level	
	Elementary grade levels	Secondary grade levels
Less than 1 year	10	10
1 to 2 years	3	5
2 to 3 years	0	3
3 to 4 years	0	0
More than 4 years	0	0

Intergovernmental Review

On June 24, 1983, the Secretary published in the **Federal Register** final regulations (34 CFR Part 79, published at 48 FR 29158) implementing Executive Order 12372 entitled "Intergovernmental Review of Federal Programs." The regulations took effect September 30, 1983.

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance,
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated, and
- Revokes OMB Circular A–95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is the current list of States that have established a process, designated a single point of contact, and have selected this program for review:

State	
Arizona	North Dakota
Arkansas	Ohio
Connecticut	Oklahoma
Delaware	Oregon
Florida	Pennsylvania
Hawaii	Rhode Island
Indiana	South Carolina
Kansas	South Dakota
Maine	Tennessee
Massachusetts	Utah
Michigan	Vermont
Minnesota	Virginia
Missouri	Washington
Montana	Wyoming
Nebraska	Virgin Islands
Nevada	Guam
New Hampshire	Northern Mariana Islands
New Jersey	
New Mexico	

Immediately upon receipt of this notice, an SEA applicant must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States not listed above, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State process recommendation and other comments submitted by a State single point of contact and any comments from State, areawide, regional, and local entities must be mailed or hand delivered by May 29, 1985, to the following address:

The Secretary, U.S. Department of Education, Room 4181, 84.146, 400 Maryland Avenue, SW., Washington, D.C. 20202. (Proof of mailing will be determined on the same basis as applications.)

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

Available funds: It is expected that approximately $16.6 million will be available for grants to SEAs. These funds are the Fiscal Year 1985 appropriation.

It is estimated that these funds will provide approximately $200 in assistance per eligible child. The approximate amount of funds available per eligible child may increase or decrease depending on the total number of eligible children that the SEAs report.

These estimates, however, do not bind the U.S. Department of Education to specific numbers of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Application forms: Application forms and program information packages will be mailed to all SEAs. Additional forms and program information packages may be obtained by writing to the Division of State and Local Programs, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education (Room 421, Reporters Building), 400 Maryland Avenue, SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations governing this program. The Secretary strongly urges that the narrative portion of the application not exceed four pages. The Secretary further urges that applicants not submit information that is not requested.

(Approved by OMB under control number 1885-0503)

Applicable regulations: Regulations applicable to this program include the following:

(1) Regulations governing the Transition Program for Refugee Children (34 CFR Part 538) published on January 14, 1981 (46 FR 3378).

(2) Regulations governing the Refugee Resettlement Program (45 CFR Part 400) published on September 9, 1980 (45 FR 59818).

(3) Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 74, 76, 77, 78, and 79).

Further Information: For further information, contact Mr. Jonathan Chang in the Division of State and Local Programs, Office of Bilingual Education and Minority Languages Affairs, U.S Department of Education (Room 421, Reporters Building), 400 Maryland Avenue, SW., Washington, D.C. 20202, Telephone (202) 732-1842.

(8 U.S.C. 1522(d))

(Catalog of Federal Domestic Assistance Number 84.146, Transition Program for Refugee Children)

Dated: February 6, 1985.

Gary L. Jones,

Acting Secretary of Education.

[FR Doc. 85-3533 Filed 2-11-85; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-66116; PH-FRL 2747-7]

Certain Pesticide Products; Intent To Cancel Registrations

Correction

In FR Doc. 84-33967 beginning on page 167 in the issue of Wednesday, January 2, 1985, make the following corrections:

1. The docket line in the heading was inaccurate and should have appeared as set forth above.

2. On page 169, in the table, in the entry beginning with Registration No. "1616-4", fourth column, "Do." should have read "Mar. 16, 1949".

BILLING CODE 1505-01-M

[SAB-FRL-2776-7]

Science Advisory Board; Risk Assessment Guidelines Review Group; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of the Risk Assessment Guidelines Review Group of the Science Advisory Board will be held at the Crystal City Mariott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting will begin on March 4, 1985, at 9:00 a.m. and last until approximately 4:00 p.m.

This is the first meeting of the Risk Assessment Guidelines Review Group. The purpose of this meeting is to discuss the process for Science Advisory Board review of the EPA Risk Assessment Guidelines for Carcinogenicity, Mutagenicity, Developmental Effects, Complex Mixtures, and Exposure. Among the issues for discussion are the delineation of the scientific issues to be addressed by the Board and the timetable for carrying out the review.

The meeting is open to the public. Any member of the public wishing to attend or to obtain further information about the meeting should contact Dr. Terry F. Yosie, Director, Science Advisory Board, U.S. Environmental Protection Agency (A-101), 401 M Street, SW., Washington, D.C. 20460, by close of business February 28, 1985. The telephone number is (202) 382-2552.

Dated: February 5, 1985.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 85-3487 Filed 2-11-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51555; TSH-FRL 2764-5]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 85-1990, beginning on page 3592 in the issue of Friday, January 25, 1985, make the following correction: On page 3593, in the first column, the seventh line should read, "Nil; BOD_{10}: Nil; BOD_{20}: Nil."

BILLING CODE 1505-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 15 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010424-009.

Title: United States Atlantic and Gulf/Hispaniola Steamship Conference.

Parties:

CTMT, Inc./Trailer Marine Transport Corporation

Puerto Rico Maritime Shipping Authority

Sea-Land Service, Inc.

Coordinated Caribbean Transport, Inc.

Seaboard Caribe, Ltd.

Synopsis: The proposed amendment would authorize the parties to provide intermodal service in the trade via

Atlantic & Gulf ports. It would change the title of the agreement to reflect the deletion of Jamaica from the geographic scope of the conference and delete Concorde Nopal Line as a party to the agreement. It would also provide that Seaboard Caribe, Ltd. is limiting its participation in the conference to the Dominican Republic only. Additionally, it would substitute final, permanent provisions for previously submitted interim mandatory provisions and would restate the agreement in accordance with the Commission's format, organization and content requirements.

By Order of the Federal Maritime Commission.

Dated: February 7, 1985.

Bruce A. Lombrowski,

Assistant Secretary.

[FR Doc. 85-3500 Filed 2-11-85; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-003705-003.

Title: Port of Long Beach Terminal Agreement.

Parties:

The City of Long Beach (City)

Cooper Stevedoring Co., Inc. (Cooper)

Synopsis: The agreement amends the basic agreement by providing the relocation of Cooper's operations with the Port of Long Beach from Berths 9, 10 and 201, Pier A to Berths 12, 13, 17 and 18 on Pier B and Berths 3 and 4 on Pier A. The term of the agreement is extended to October 31, 1987. A new compensation formula is established, i.e., Cooper shall pay to the City 50% of all dockage and wharfage. The remaining 50% shall be paid to Cooper. All other tariff charges are to be retained by the City. The guaranteed minimum tonnage shall be 384,000 revenue tons for each 12 month period.

Agreement No.: 224-003800-003.

Title: Long Beach Terminal Agreement.

Parties:

The City of Long Beach (City)

California United Terminals (CUT)

Synopsis: This agreement amends the basic agreement between the parties for leased terminal facilities with the Port of Long Beach. The amendment sets forth the commencement and ending dates of the initial term, and two additional option terms are granted to CUT permitting a maximum term of thirty years for the agreement. Additional areas are assigned to CUT with the temporary relinquishment of possession of its existing areas, thus providing for ultimate expansion of the marine terminal permises assigned to CUT. The formula for calculating the amount of compensation payable to the City is revised. The provision for periodic adjustment of compensation is also revised.

Agreement No.: 202-008650-011.

Title: Calcutta, East Coast of India and Bangladesh/U.S.A. Conference.

Parties:

Bangladesh Shipping Corporation

The Scindia, Steam Navigation Co., Ltd.

The Shipping Corporation of India, Ltd.

Waterman Isthmian Line

Synopsis: The proposed amendment would delete provisions governing the agreement's dual rate contract system. The parties have been granted a waiver of the format requirements of the Commission's regulations.

Agreement No.: 202-010390-006.

Title: United States Atlantic & Gulf/Ecuador Freight Conference.

Parties:

Delta Steamship Lines

Ecuadorian Line, Inc.

Transportes Navieros Equatorianos

Synopsis: The proposed amendment would admit United States Lines, Inc. as a party to the agreement. The parties have requested a shortened review period and a waiver of the Commission's form requirements.

Agreement No.: 202-010390-007.

Title: United States Atlantic & Gulf/Ecuador Freight Conference.

Parties:

Ecuadorian Line, Inc.

Transportes Navieros Equatorianos

Synopsis: The proposed amendment would delete Delta Line as a party to the agreement. The parties have requested a shortened review period and a waiver of the Commission's form requirements.

Agreement No.: 221-010722.

Title: San Francisco Terminal Agreement.

Parties:

The Port of San Francisco (Port)

Empressa Lineas Maritimas Argentinas S.A. (ELMA)

Synopsis: The agreement provides that ELMA promises to use the Port as its published, regularly scheduled Northern California port of call. In consideration for this promise ELMA will pay the Port 60% of revenue from dockage and wharfage generated under the agreement instead of 100%. The term of the agreement will be for 5 years commencing on the first day of the month following the determination of its effective date by the Commission.

By Order of the Federal Maritime Commission.

Dated: February 7, 1985.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 85-3501 Filed 2-11-85; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants; Coleman International, Inc. et al.

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

Coleman International, Incorporated, 2221 Sandalwood Road, Virginia Beach, VA 23451

Officers: Burwell Wayne Coleman, President/Treasurer, Judith Ann Coleman, Vice President/Secretary

Great World Express Corp., 1305 Grandview Drive, South San Francisco, CA 94080

Officers: Judy Ting, President, Therese Lu

Apollo Express Inc., 22 South Broad Street, Norwich, NY 13815

Officer: Richard C. Williams, Vice President

T.G. International, Inc., 8602 Heatherview, Houston, TX 77099

Officers: Tony Garcia, President, Alan I. Newhouse, Vice President

Interport Systems, Inc., 11821 East Freeway, Suite 510, Houston, TX 77029

Officers: Scott W. Taylor, President,

Frank J. Fink, Vice President, John P. Cummings, Secretary, Joseph T. Hessling, Treasurer
Charles Pagan dba Sea-Air International, 1941 N.W. 97nd Avenue, Miami, FL 33172
Oceanair, Inc., 6 Eagle Square, East Boston, MA 02128
Officers: Edward S. Kaplan, President, Joseph J. Wyson, Vice President, Harvey R. Waite, II, Arlene V. Cohn, Director Ocean Operations
Jorge M. Hernandez dba Atlantic Cargo Service, 1222 N.W. 72nd Avenue, Miami, FA 33126
Key International, Inc., 1700 South Highland Avenue, Baltimore, MD 21224
Officer: Richard Viahacos, President

Dated: February 6, 1985.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 85-3497 Filed 2-11-85; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Reissuance of License; J.B. Fong and Co., Inc. et al.

Notice is hereby given that the following ocean freight forwarder licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No.	Name/address	Date reissued
1547-R	J.B. Fong and Co., Inc., dba J.B. Fong and Co., 838 Grand Ave., San Francisco, CA 94108.	Dec. 12, 1984
1310	Neptune World-Wide Moving, Inc., P.O. Box 180, New Rochelle, NY, 10802-0180.	Jan. 22, 1984

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 85-3499 Filed 2-11-85; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Revocations; Sea-Trans International Corp. et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 2282
Name: Sea-Trans International Corporation
Address: Lafayette Bldg., #1016, Philadelphia, PA 19106
Date Revoked: November 21, 1984
Reason: Failed to maintain a valid surety bond

License Number: 1766
Name: T.C. International Freight Forwarders, Inc.
Address: 14339 SW 119th Ave., Miami, FL 33166
Date Revoked: January 30, 1985
Reason: Failed to maintain a valid surety bond

License Number: 1066
Name: Chatham Service Corporation
Address: 310 East Bay Street, Savannah, GA 31402
Date Revoked: February 2, 1985
Reason: Failed to maintain a valid surety bond

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 85-3498 Filed 2-11-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

FAM Financial, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing 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 interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by 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 the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 4, 1985.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *FAM Financial, Inc.*, Macksville, Kansas; a bank holding company with less than $50 million in assets, to acquire Johnson Insurance Agency, St. John, Kansas, thereby engaging in general insurance activities pursuant to section 4(c)(8)(F) of the Bank Holding Company Act. These activities would serve Stafford, Pawnee, Edwards, and Pratt Counties in Kansas.

Board of Governors of the Federal Reserve System, February 6, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-3459 Filed 2-11-85; 8:45 am]

BILLING CODE 6210-01-M

Marshall & Ilsley Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing 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 interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by 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 the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 1, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Marshall & Ilsley Corporation*, Milwaukee, Wisconsin; to engage *de novo* through its subsidiary, Richter-Schroeder Co., Inc., Milwaukee, Wisconsin, in originating, acquiring, selling, and servicing residential and commercial mortgage loans as well as making construction and development mortgage loans and performing such other incidental activities necessary to conduct a mortgage banking business. This application is to expand the geographic scope to include all 50 states.

Board of Governors of the Federal Reserve System, February 6, 1985.

James McAfee,

Assistant Secretary of the Board.

[FR Doc. 85-3460 Filed 2-11-85; 8:45 am]

BILLING CODE 6210-01-M

National Penn Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14 to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 4, 1985.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *National Penn Bancshares, Inc.*, Boyertown, Pennsylvania; to acquire 24.9 percent of the voting shares or assets of Chestnut Hill National Bank, Philadelphia, Pennsylvania.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Barnett Banks of Florida, Inc.*, Jacksonville, Florida; to acquire 100 percent of the voting shares or assets of Cawthon State Bank, Defuniak Springs, Florida.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *State Bond and Mortgage Company*, New Ulm, Minnesota; to acquire 100 percent of the voting shares or assets of National Bank of Commerce in Mankato, Mankato, Minnesota.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Alliance Bancshares, Inc.*, Oklahoma City, Oklahoma; to become a bank holding company by acquiring at least 80 percent of the voting shares of Alliance Bank, N.A., Oklahoma City, Oklahoma.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Security Bancorp, Inc.*, San Antonio, Texas; to acquire 100 percent of the voting shares or assets of Security Bank East, N.A., San Antonio, Texas, a *de novo* bank.

Board of Governors of the Federal Reserve System, February 6, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-3461 Filed 2-11-85; 8:45 am]

BILLING CODE 6210-01-M

First American Bank Corp.; Formation of; Acquisition by; or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than March 7, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First American Bank Corporation*, Elk Grove Village, Illinois; to acquire 67 percent of the voting shares of Riverside National Bank, Riverside, Illinois.

Board of Governors of the Federal Reserve System, February 7, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-3536 Filed 2-11-85; 8:45 am]

BILLING CODE 6210-01-M

Northern Trust Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23 (a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to

engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing 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 interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by 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 the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 6, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Northern Trust Corporation*, Chicago, Illinois; to engage *de novo* through its subsidiary, Northern Trust Agricultural Services, Inc., Oakbrook Terrace, Illinois, in acting as intermediary in directing individuals and organizations seeking assistance in obtaining debt financing for production agriculture and agribusiness, to traditional mortgage lenders such as insurance companies.

Board of Governors of the Federal Reserve System, February 7, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-3537 Filed 2-11-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Health Care Industries—Low Back—Epidemiologic Study; Microorganisms in Heating, Ventilation, and Air Conditioning Systems; Dose Response Relationships for Cotton Dust "Non-Reactors"; Gas and Vapor Measurement Techniques Analytical Methods for Asbestos Fibers; Epidemiologic Studies Based on the NIOSH Dioxin Registry; Open Meetings

The following meetings will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Health Care Industries—Low Back—Epidemiologic Study

Date: February 20, 1985.

Time: 9:00 a.m. to 12:00 noon.

Place: Appalachian Laboratory for Occupational Safety and Health, Room S-120, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

Purpose: To discuss objectives and general methodologies for a new NIOSH project concerning low back injuries among employees of the health care industry.

Additional information may be obtained from: Roger Jensen, Division of Safety Research, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505. Telephones: FTS: 923-4809, Commercial: 304/291-4809.

Microorganisms in Heating, Ventilation, and Air Conditioning (HVAC) Systems

Date: February 26, 1985.

Time: 9:00 a.m. to 12:00 noon.

Place: Appalachian Laboratory for Occupational Safety and Health, Room 203, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

Purpose: To discuss the research protocol of a project involving the development of microbial sampling techniques for use in determining if operational parameters of HVAC systems affect levels of microorganisms found in the office environment.

Additional information may be obtained from: Frank Hearl, Division of Respiratory Disease Studies, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505. Telephones: FTS: 923-4423, Commercial: 304/291-4423.

Dose Response Relationships for Cotton Dust "Non-Reactors"

Date: February 26, 1985.

Time: 1:00 p.m. to 4:00 p.m.

Place: Appalachian Laboratory for Occupational Safety and Health, Room 203, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

Purpose: To discuss the research protocol of a proposed study of dose response relationships for cotton dust "non-reactors."

Additional information may be obtained from: Robert M. Castellan, M.D., Division of Respiratory Disease Studies, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505. Telephones: FTS: 923-4223, Commercial: 304/291-4223.

Gas and Vapor Measurement Techniques

Date: March 4, 1985.

Time: 9:00 a.m.-11:30 a.m.

Place: Conference Room B, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Purpose: To review a project which will investigate gas and vapor measurement by both local and remote means and which will result in a standard gas/vapor/aerosol generation system.

Additional information may be obtained from: David L. Bartley, Ph.D., Division of Physical Sciences and Engineering, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226. Telephones: FTS: 684-4421 Commercial: 513/684-4421.

Analytical Methods for Asbestos Fibers

Date: March 14, 1985.

Time: 9:00 a.m. to 11:30 a.m.

Place: Auditorium, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Purpose: To review a project which will lead to new and improved methods for sampling and analysis of airborne asbestos fibers.

Additional information may be obtained from: Paul A. Baron, Ph.D., Division of Physical Sciences and Engineering, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226. Telephones: FTS: 684-4381, Commercial: 513/684-4381.

Epidemiologic Studies Based on the NIOSH Dioxin Registry

Dates: March 14-15, 1985.

Time: 9:00 a.m.-4:00 p.m.

Place: Conference Room C, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Purpose: To discuss methodologic issues in two proposed studies based on the NIOSH Dioxin Registry.

Additional information may be obtained from: Lynne Moody, M.D., or Marilyn Fingerhut, Ph.D., Division of Surveillance, Hazard Evaluations, and Field Studies, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226. Telephones: FTS: 684-4411, Commercial: 513/684-4411.

Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Dated: February 7, 1985.

Robert L. Foster,

Acting Associate Director for Policy Coordination, Centers for Disease Control

[FR Doc. 85-3578 Filed 2-11-85; 8:45 am

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 76N-0231, NADA Nos. 12-738 and 65-059]

Norwich-Eaton Pharmaceuticals; Furaltadone; Withdrawal of Approval of Certain NADA's

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of certain new animal drug applications (NADA's) for furaltadone. Norwich-Eaton Pharmaceuticals (formerly Norwich Pharmacal Co. and Eaton Laboratories), Division of Morton-Norwich Products, Inc. (Norwich), has requested that its applications be withdrawn and has waived the firm's opportunity for hearing.

EFFECTIVE DATE: February 22, 1985.

FOR FURTHER INFORMATION CONTACT: Philip J. Frappaolo, Center for Veterinary Medicine (HFV-240), Food and Drug Administration, 5600 Fisheries Lane, Rockville, MD 20857, 301-443-4940.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration is withdrawing approval of NADA's 12-738 and 65-059 for use of furaltadone in animals used for human consumption. In a notice of opportunity for hearing published in the **Federal Register** of August 17, 1976 (41 FR 34891), the agency proposed to withdraw approval of the NADA's for furaltadone on the grounds that new evidence not contained in such applications or not available to the Secretary until after such applications were approved, or tests by new methods, or tests by methods not deemed reasonably applicable when such applications were approved, evaluated together with the evidence available to the Secretary when the applications were approved, shows that such drug is not shown to be safe for use under the conditions of use upon the basis of which the applications were approved (21 U.S.C. 360b(e)(1)(B)).

Norwich-Eaton Pharamceuticals, Inc., P.O. Box 191, Norwich, NY 13815, the sponsor, filed a request for hearing in response to the notice of opportunity for hearing. In the **Federal Register** of September 4, 1984 (49 FR 34967), the agency published a notice of hearing as required by § 12.35 *Notice of hearing; stay of action.* In response to the notice of hearing, by letters of October 2, 1984, Norwich requested that approval of the applications be withdrawn and waived the firm's opportunity for hearing.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84) and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA's 12-738 and 65-059 and all supplements for furaltadone is hereby withdrawn, effective February 22, 1985.

Published elsewhere in this issue of the **Federal Register** is a final rule that removes the regulations reflecting approval of the NADA's.

Dated: February 4, 1985.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 85-3448 Filed 2-11-85; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Institute on Aging; Meeting of Aging Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Aging Review Committee, National Institute on Aging; on March 20, 21, and 22, 1985, in Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland.

The meeting will be open to the public from 9:00 a.m. to 9:30 a.m. on March 20 for introductory remarks. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 20 from 9:30 a.m. to adjournment on March 22 for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, NIA, Building 31, Room 2C05, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496-5898, will provide summaries of meetings and rosters of Committee members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: February 5, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-3484 Filed 2-11-85; 8:45 am]

BILLING CODE 4140-01-M

National Library of Medicine; Meetings of the Biomedical Library Review Committee and the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Biomedical Library Review Committee on March 13-14, 1985, convening each day at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland, to adjournment on March 14, and the meeting of the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications on March 12 from 2:00 p.m. to 5:00 p.m. in the 5th Floor Conference Room of the Lister Hill Center Building.

The meeting on March 13 will be open to the public from 8:30 to 11:00 for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, United States Code, and section 10(d) of Pub. L. 92-463, the regular meeting and the subcommittee meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications as follows: The regular meeting on March 13 from 11:00 a.m. to 5:00 p.m., and on March 14, from 8:30 a.m. to adjournment; and the subcommittee meeting on March 12 from 2:00 p.m. to 5:00 p.m. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Executive Secretary of the Committee, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20209, telephone number: 301-496-4191, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health)

Dated: February 5, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-3482 Filed 2-11-85; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Aging; Meeting of Geriatrics Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the geriatrics Review Committee, National Institute on Aging, on March 17, 18, and 19, 1985, in Building 31, Conference Room 8, National Institutes of Health, Bethesda, Maryland.

The meeting will be open to the public from 7:30 p.m. to 8:00 p.m. on March 17 for introductory remarks. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 17 from 8:00 p.m. to recess and March 18 from 8:30 a.m. to adjournment on March 19 for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, NIA, Building 31, Room 2C05, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496-5898, will provide summaries of meetings and rosters of Committee members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: February 5, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-3483 Filed 2-11-85; 8:45 am]

BILLING CODE 4140-01-M

Meeting of Heart, Lung, and Blood Research Review Committee A

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee A, National Heart, Lung, and Blood Institute, National Institutes of Health, on March 28-29, 1985, in Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20205.

This meeting will be open to the public on March 28, 1985 from 8:30 a.m. to approximately 9:30 a.m. to discuss administrative deails and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code, and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 28, from approximately 9:30 a.m. until recess, and from 8:30 a.m. to adjournment on March 29, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Public Inquiry Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20205, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Peter M. Spooner, Executive Secretary, Heart, Lung, and Blood Research Review Committee A, Westwood Building, Room 554, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496-7265, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research, National Institutes of Health)

Dated: February 5, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-3486 Filed 2-11-85; 8:45 am]

BILLING CODE 4140-01-M

Meeting of Heart, Lung, and Blood Research Review Committee B

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee B, National Heart, Lung, and Blood Institute, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205, on March 28, 1985, in Building 31, Conference Room 9.

This meeting will be open to the public on March 28, 1985, from 8:30 a.m. to approximately 10:00 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, United States Code, and section 10(d) Pub. L. 92-463, the meeting will be closed to the public on March 28, 1985, from approximately 10:00 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Public Inquiry Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20205, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Louis M. Ouellette, Executive Secretary, NHLBI, Westwood Building, Room 554, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496-7915, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: February 5, 1985.

Betty J. Beveridge,

NIH Committee Management Office.

[FR Doc. 85-3485 Filed 2-11-85; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Cancer Resources and Repositories Contracts Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Resources and Repositories Contracts Review Committee, National Cancer Institute, National Institutes of Health, February 22, 1985, Westwood Building, Conference Room 740, Bethesda, Maryland 20205. This meeting will be open to the public on February 22, from 9:00 a.m. to 9:30 a.m., to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code and section 10(d) of Pub. L. 92-463, the

meeting will be closed to the public on February 22 from approximately 10:00 a.m. until adjournment, for the review, discussion and evaluation of contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Courtney Michael Kerwin, Executive Secretary, Cancer Resources and Repositories Contracts Review Committee, National Cancer Institute, Westwood Building, Room 805, National Institutes of Health, Bethesda, Maryland 20205 (301/496–7421) with furnish substantive program information.

Dated: February 5, 1985.

Betty J. Beveridge,

Committee Management Office, NIH.

[FR Doc. 85–3479 Filed 2–11–85; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meetings for the Review of Contract Proposals and Grant Applications

Pursuant to Pub. L. 92–463, notice is hereby given for meetings of two committees of the National Cancer Institute.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5, United States Code and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual contract proposals and grant applications. These proposals and applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals and applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will furnish summaries of meetings and rosters of committee members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: Clinical Trials Committee
Date: March 4, 1985
Place: National Institutes of Health, Building 31C, Conference Room 9, 9000 Rockville Pike, Bethesda, Maryland 20205
Time:
Open: March 4, 8:30 a.m.–9:00 a.m.
Agenda: A review of administrative details
Closed: March 4, 9:00 a.m.–5:00 p.m.
Closure Reason: To review contract proposals
Executive Secretary: Dr. Kendall G. Powers, Westwood Building, Room 805, National Institutes of Health, Bethesda, Maryland 20205
Phone: 301/496–7575

Name of Committee: Clinical Cancer Program Project Review Committee
Dates: March 28–29, 1985
Place: Holiday Inn of Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814
Times:
Open: March 28, 8:30 a.m.–10:00 a.m.
Agenda: A review of administrative details
Closed:
March 28, 10:00 a.m.–recess
March 29, 8:00 a.m.–adjournment
Closure Reason: To review grant applications
Executive Secretary: Dr. M. Wayne Hurst, Westwood Building, Room 848, National Institutes of Health, Bethesda, Maryland 20205
Phone: 301/496–7924

Dated: February 5, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–3480 Filed 2–11–85; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of committees of the National Institute of Allergy and Infectious Diseases for February and March, 1985.

These meetings will be open to the public to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. Portions of these meetings will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, United States Code, and section 10(d) of Pub. L. 92–463, for the review, discussion, and evaluation of individual grant applications and contract proposals. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A–32, National Institutes of Health, Bethesda, Maryland 20205, telephone (301) 496–5717, will provide summaries of the meetings and rosters of the committee members.

Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each committee.

Name of Committee: Microbiology and Infectious Research Committee
Executive Secretary: Dr. M.S. Quraishi, Room 706, Westwood Building, National Institutes of Health, Bethesda, MD 20205. Telephone: (301) 496–7465
Dates of Meeting: February 20, 21, 22, 1985
Place of Meeting: Building 31A, Conference Room 4, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20205
Open: February 21, 1985, 8:30 a.m.–10:30 a.m.
Agenda: Welcome by Director of the Institute, and reports from Director and Deputy Director, Extramural Activities Program, on Committee concerns followed by Program concept clearances
Closed:
February 20, 1985, 8:30 a.m.–recess
February 21, 1985, 10:45 a.m.–recess
February 22, 1985, 8:30 a.m.–adjournment
Closure Reason: To review grant applications and contract proposals
Name of Committee: Allergy and Clinical Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee
Executive Secretary: Dr. Nirmal Das, Room 706, Westwood Building,

National Institutes of Health, Bethesda, MD 20205. Telephone: (301) 496–7966

Date of Meeting: February 28–March 1, 2, 1985

Place of Meeting: Building 31C, Conference Room 8, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20205

Open:

February 28, 1985, 8:30 a.m.–9:15 a.m.
March 1, 1985, 8:30 a.m.–8:40 a.m.

Agenda: Welcome by Director of the Institute and Reports by Director and Deputy Director, Immunology, Allergic, and Immunologic Diseases Program; and Director and Deputy Director, Extramural Activities Program on Committee concerns

Closed:

February 28, 1985, 9:30 a.m.–recess
March 1, 1985, 8:40 a.m.–recess
March 2, 1985, 8:30 a.m.–adjournment

Closure Reason: To review grant applications and contract proposals

Name of Committee: Transplantation Biology and Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee

Executive Secretary: Dr. Nirmal Das, Room 706, Westwood Building, National Institutes of Health, Bethesda, MD 20205. Telephone: (301) 496–7966

Date of Meeting: March 7–8, 1985

Place of Meeting: Building 31C, Conference Room 8, National Institutes of Health, Bethesda, MD 20205

Open: March 8, 1985, 8:30 a.m.–10:00 a.m.

Agenda: Welcome from Director of the Institute and Reports from Director and Deputy Director, Immunology, Allergic, and Immunologic Diseases Program; and Director and Deputy Director, Extramural Activities Program on Committee concerns followed by Program concept clearances

Closed:

March 7, 1985, 8:30 a.m.–recess
March 8, 1985, 10:15 a.m.–adjournment

Closure Reason: To review grant applications and contract proposals

(Catalog of Federal Domestic Assistance Programs Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: February 5, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–3478 Filed 2–11–85; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Resources; Meeting of Subcommittee on Animal Resources of the Animal Resources Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Subcommittee on Animal Resources, Animal Resources Review Committee, Division of Research Resources, on March 6–7, 1985, National Institutes of Health, Building 31, Conference Room 9, 9000 Rockville Pike, Bethesda, Maryland 20205.

The meeting will be open to the public on March 6, from 8:30 a.m. to approximately 5:00 p.m. for discussions on diagnostic procedures for viral and mycoplasmal infections in laboratory rodents. It will also be open from approximately 1:30 p.m. to 4:30 p.m. on March 7 for a brief staff presentation on the current status of the Animal Resources Program and the selection of future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on March 7, from 8:30 a.m. to approximately 1:30 p.m. and then from 4:30 p.m. to adjournment for the review, discussion, and evaluation of individual grant applications submitted to the Laboratory Animal Sciences Program. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, National Institutes of Health, Building 31, Room 5B13, Bethesda, Maryland 20205, (301) 496–5545, will provide summaries of the meeting and rosters of the committee members. Dr. Carl E. Miller, Executive Secretary of the Animal Resources Review Committee, Division of Research Resources, National Institutes of Health, Building 31, Room 5B55, Bethesda, Maryland 20205, (301) 496–5175, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Programs No. 13.306, Laboratory Animal Sciences, National Institutes of Health)

Dated: February 5, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85–3481 Filed 2–11–85; 8:45 am]

BILLING CODE 4140–01–M

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974; Report of New System of Records

AGENCY: Social Security Administration (SSA), Department of Health and Human Serivces (HHS).

ACTION: New System of Records.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4)), we are issuing public notice of our intent to establish a new system of records. The proposed system of records in entitled the "Representative Disqualification/Suspension Information System, HHS/SSA/ORSI, 09–60–0219." The proposed system will maintain information collected for use in connection with investigations of representatives alleged to have violated provisions of the Social Security Act and SSA's regulations regarding claimant representation. We also are proposing routine uses of information which will be maintained in the system in accordance with 5 U.S.C. 552a(e)(11). We invite public comments on the proposed system and the routine users.

DATES: We filed a report of the proposed system with the President of the Senate, the Speaker of the House of Representatives, and the Director, Office of Managment and Budget on January 29, 1985. The proposed system, including the proposed routine uses, will become effective on March 30, 1985, unless we receive comments on or before that date which would result in a contrary determination.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, 3–F–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Mort Landes, Director, Division of Payment and Adjudicative Policy, Office of Retirement and Survivors Insurance, Social Security Administration, 3–A–25 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594–8400.

SUPPLEMENTARY INFORMATION:

I. Purpose of the Proposed System

Sections 206(a) and 1631(d)(2) of the Social Security Act provide that the Secretary, HHS may prescribe rules and regulations to recognize agents and other persons (attorneys and nonattorneys) to serve as

representatives for claimants/beneficiaries in matters before the Secretary (SSA). Such rules and regulations are promulgated at 20 CFR Part 404, Subpart R and 20 CFR Part 416, Subpart O.

The representative may, on behalf of the claimant/beneficiary, obtain information from SSA about a claim, submit evidence, make statements about facts and law and make any request or give any notice about the proceedings before SSA. Social Security regulations (20 CFR 404.1745 and 20 CFR 416.1545) provide that SSA may begin proceedings to suspend or disqualify a representative if it appears that he or she violated any of SSA's rules and regulations relating to representatives. In instances in which a violation is alleged, an investigation will be conducted. The proposed system will maintain information collected for the purpose of determining whether or not a representative should be disqualified/suspended and information concerning disqualification/suspensions once such actions have been taken.

Representatives suspected of wrongful activity will be afforded all due process rights before any action is taken to disqualify/suspend them. All such representatives will be granted a hearing before an Administrative Law Judge (ALJ) of the SSA Office of Hearings and Appeals (OHA) to determine if such action is warranted. The decision of the ALJ is final and binding unless reversed or modified by the Appeals Council of OHA upon request by either SSA or the representative.

II. Collection and Maintenance of Data in the Proposed System

The proposed system will maintain information about representatives alleged to have violated the claimant representation provisions of the Social Security Act and regulations, those found to have committed such violations and who are disqualified/suspended, and those who are investigated but not disqualified/suspended. The last category would include cases in which we find that a violation has not occurred or that a violation has occurred but we are able to resolve the matter without taking action to disqualify/suspend the representative.

Information will be collected from existing records maintained in the claim folders of individuals who have been or are currently represented by a representative under investigation. Other potential sources include OHA files, correspondence with the claimant/beneficiary or representative and court records. Specific information maintained will include the representative's name and address; each claimant's/beneficiary's name, address and Social Security number; copies of all documents in the claimant's/beneficiary's file relating to representation; all documentation obtained as a result of the investigation; documentation resulting from ALJ hearings on charges of noncompliance; and copies of notifications of disqualification/suspension. The information will be retrieved from the system alphabetically by the name of the representative.

III. Proposed Routine Uses of Information in the System

We are proposing to establish routine uses of information which will be maintained in the system as discussed below.

A. *Disclosure to a claimant/beneficiary that his/her representative has been disqualified/suspended from further representation before SSA.*

The purpose of this disclosure is to make the claimant or beneficiary aware that his/her representative can no longer practice before SSA. Only information concerning the fact of disqualification/suspension will be disclosed.

B. *Disclosure to a claimant/beneficiary who may want to hire a disqualified/suspended individual as his/her representative that the individual has been disqualified/suspended from further representation before SSA.*

The purpose of this disclosure is to make the claimant or beneficiary aware that his/her potential representative cannot practice before SSA. Only information concerning the fact of disqualification/suspension will be disclosed.

C. *Disclosure to a State bar disciplinary authority in the State(s) in which a disqualified/suspended attorney is admitted to practice that SSA has disqualified/suspended the attorney from further representation before SSA and, upon request, further information concerning the disqualification/suspension.*

The purpose of this disclosure is to protect SSA and Social Security claimants/beneficiaries from acts of professional misconduct. In addition, such disclosure would provide a potentially more effective sanction against attorneys who do not frequently practice before SSA and, thereby, would be relatively unaffected by disqualification/suspension; disclosure may deter acts of professional misconduct because of the potential effect on the attorney's license to practice.

D. *In the event of litigation where the defendant is:*

(1) *HHS, any component of HHS or any employee of HHS in his or her official capacity;*

(2) *the United States where HHS determines that the claim, if successful, is likely to directly affect the operations of HHS or any of its components; or*

(3) *any HHS employee in his/her individual capacity where the Department of Justice (DOJ) has agreed to represent such employee;*

HHS may disclose such records as it deems desirable or necessary to DOJ to enable that department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

Disclosure will be made under this proposal, as necessary, so that DOJ can effectively defend components or employees of HHS in litigation matters involving the proposed system.

E. *Disclosure to a congressional office in response to an inquiry from that office made at the request of the subject of the record.*

We contemplate disclosing information under this routine use only in situations in which an individual may ask his/her congressional representative to intercede in an SSA matter on his/her behalf. Information would be disclosed when the congressional representative makes an inquiry and presents evidence that he/she is acting on behalf of the individual whose record is requested.

IV. Compatibility of Proposed Routine Uses

The Privacy Act (5 U.S.C. 552a(b)(3)) and our disclosure regulation (20 CFR Part 401) permit us to disclose information under a published routine use for a purpose which is compatible with the purpose for which we collect the information. Section 401.310 of the regulation permits us to disclose information under a routine use, as necessary to assist in administering our programs. The proposed routine uses will provide a service to Social Security claimants/beneficiaries and assist in administering provisions of the Social Security Act dealing with representation; thus, they are consistent with provisions of the Privacy Act and the criteria in the regulation.

V. Records Storage Medium and Safeguards

We will maintain information in the system manually in locked filing cabinets or in otherwise secure storage areas. Only authorized SSA personnel who have a need for the information in

the performance of their official duties will be permitted access to the information. Also, all employees working with records in the system will be notified of the criminal penalties of the Privacy Act dealing with unauthorized access to, or disclosure of, information in a system of records.

VI. Effect of the System on Individuals

The proposed system will maintain information which could lead to disqualification/suspension of certain individuals from acting as representatives before SSA as well as a record of disqualifications/suspensions once such actions have been taken. Additionally, in the case of attorneys, these individuals could be subject to further action by State bar disciplinary authorities for acts of professional misconduct. These actions, however, would only occur after a representative was found to have violated the claimant representation provisions of the Social Security Act and regulations prescribed thereunder and either a decision to disqualify/suspend the representative was unheld on appeal or the time for bringing an appeal lapsed without an appeal being filed. Thus, we do not anticipate that the system would have any unwarranted adverse effect on individuals.

Dated: January 29, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

09-60-0219

SYSTEM NAME:

Representative Disqualification/Suspension Information System, HHS/SSA/ORSI.

SYSTEM LOCATION:

Social Security Administration, Office of Retirement and Survivors Insurance, Division of Payment and Adjudicative Policy, Adjudicative Policy and Appeals Branch, 6401 Security Boulevard, Baltimore, Maryland 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals alleged to have violated the provisions of the Social Security Act and regulations relating to representation of claimant/beneficiaries before the Secretary, Health and Human Services (HHS), Social Security Administration (SSA), those found to have committed such violations and who are disqualified/suspended, and those who are investigated but not disqualified/suspended. The last category would include cases in which we find that a violation has not occurred or that a violation has occurred but we are able to resolve the matter without taking action to disqualify/suspend the representative.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system will consist of information such as the representative's name and address; each claimant's/beneficiary's name, address and Social Security number; copies of all documents in the claimant's/beneficiary's file relating to representation; all documentation received as a result of SSA's investigation of alleged violations of the Social Security Act and regulations relating to representation; documentation resulting from an ALJ hearing on charges of noncompliance; and copies of the notification of disqualification/suspension.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 206(a) and 1631(d)(2) of the Social Security Act.

PURPOSE(S):

Information in the system will be used to determine if a violation of the provisions of the Social Security Act and regulations relating to claimant representation has occurred and to provide timely and detailed information on cases in which disciplinary action is taken against a representative who has committed a violation. The system also will be used to assist SSA components in investigating alleged violations or enforcing disciplinary actions against a representative.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

Information may be disclosed as indicated below.

1. SSA may disclose information to a claimant/beneficiary that his/her representative has been disqualified/suspended from further representation before SSA.

2. SSA may disclose information to a claimant/beneficiary who may want to hire a disqualified/suspended individual as his/her representative that the individual has been disqualified/suspended from further representation before SSA.

3. SSA may disclose information to a State bar disciplinary authority in the State(s) in which a disqualified/suspended attorney is admitted to practice that SSA has disqualified/suspended the attorney from further representation before SSA and, upon request, further information concerning the disqualification/suspension.

4. In the event of litigation where the defendant is:

(1) HHS, any component of HHS or any employee of HHS in his/her official capacity;

(2) The United States where HHS determines that the claim, if successful, is likely to directly affect the operations of the HHS or any of its components; or

(3) Any HHS employee in his/her individual capacity where the Department of Justice (DOJ) has agreed to represent such employee;

SSA may disclose such records as it deems desirable or necessary to DOJ to enable that department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

5. SSA may disclose information to a congressional office in response to an inquiry from that office made at the request of the subject of the record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records will be stored in paper form.

RETRIEVABILITY:

Records will be retrieved from the system by the name of the representative.

SAFEGUARDS (ACCESS CONTROL):

Records will be maintained in locked file cabinets or in otherwise secure storage areas. Access will be restricted to SSA employees who have a need for the records in the performance of their official duties. Also, all employees having access to the records periodically are briefed on Privacy Act requirements and SSA confidentiality rules and will be notified of the criminal sanctions against unauthorized access to, or disclosure of, information in a system of records.

RETENTION AND DISPOSAL:

Records of investigations which did not result in disqualifications/suspensions will be retained for a period of 5 years and then destroyed by shredding. Records on disqualifications/suspensions and investigations leading to such actions will be retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Payment and Adjudicative Policy, Office of Retirement and Survivors Insurance, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record about him/her by writing to the system manager at the address above and providing his/her name and address.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Also, individuals requesting access should reasonably identify the record and specify the information they are attempting to obtain. These procedures are in accordance with HHS regulations 45 CFR Part 5.

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Also, individuals contesting a record in the system should identify the record, specify the information they are contesting, state the corrective action sought and the reasons for the corrections with supporting justification showing how the record is incomplete, untimely, inaccurate or irrelevant. These procedures are in accordance with HHS Regulations 45 CFR Part 5.

RECORD SOURCE CATEGORIES:

Records in this system will be derived from existing systems of records maintained by SSA (e.g., the Claims Folder system, 09–60–0089) which contain information relating to representation; documentation received as a result of investigations of alleged violations of the representation provisions of the Social Security Act and regulations; documentation resulting from ALJs' hearings on charges of noncompliance; and documentation resulting from notifications of disciplinary actions.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 85–3502 Filed 2–11–85; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Exchange of Public Lands in Madison County, MT; Extension of Comment Period

AGENCY: Bureau of Land Management, Butte District Office, Interior.

ACTION: Extension of comment period for the Notice of Realty Action for M57789, Exchange of Public Land in Madison County.

SUMMARY: Notice is hereby given that the comment period for the Notice of Realty Action for M57789 published on August 30, 1984 (49 FR 34415) is hereby extended to February 22, 1985.

Dated: January 31, 1985.

Jack A. McIntosh,

District Manager.

[FR Doc. 85–3492 Filed 2–11–85; 8:45 am]

BILLING CODE 4310–DN–M

[CA 11982; CA 16847]

Realty Action; Sale of Public Land in Calaveras County, CA

The following described land has been examined, and through the development of land use planning decisions based on public input, resource considerations, regulations and Bureau policies, it has been determined that the proposed sale is consistent with the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, (90 Stat. 2750; 43 U.S.C. 1713). The sale will not be offered for at least 60 days after the publication of the notice in the **Federal Register.**

Mount Diablo Meridian, California

T. 6 N., R. 13 E.,
Sec. 30, Lot B (CA 11982).
Containing 1.31 acres more or less.

T. 3 N., R. 13 E.,
Sec. 29, Lot 13 (CA 16847).
Containing 1.93 acres more or less.

Both parcels will be offered for sale at no less than the appraised fair market value which will be available within 30 days at the above address.

Both parcels will be offered for sale using modified competitive sealed bid procedures. In sale parcel CA 11982, Mr. Malcolm Huston will be given the opportunity to meet any high bid. The subject parcel was applied for under color-of-title application CA 1719 by Malcolm C. and Helena M. Huston. The application was rejected by the California State Office and the subsequent appeal was affirmed by IBLA decision 82–1076.

Sale parcel CA 16847 will be offered to those private landowners that adjoin the parcel. Notices will be sent notifying them of the appraised value and the date at which sealed bids will be accepted.

Sale terms and conditions are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States (43 U.S.C. 945).

2. All bidders must be United States Citizens; corporations must be authorized to own real property in the State of California; political subdivisions of the State and State instrumentalities must be authorized to hold property. Proof of meeting these requirements shall accompany bids.

3. Rights-of-way S 4409 and CA 10676 for 50-foot road easement and 5-foot buried water line respectively will be reserved in the sale parcel CA 11982.

In the event that two or more envelopes contain valid high bids of the same amount, the determination of which is to be considered the highest bid shall be by supplemental oral bid. The oral bidding, if needed, will be conducted by the authorized officer immediately following the opening of the sealed bids.

The successful bidder, whether such bid is a sealed or oral bid, shall submit payment of 10 percent immediately following the close of the sale. The remainder of the full purchase price shall be submitted within 180 days of the sale date. Failure to submit the balance of the full bid within the above specified time limit shall result in cancellation of the sale and the deposit shall be forfeited. The next high bid will then be honored. All payments are to be certified check, postal money order, bank draft or cashier's check made payable to the Department of the Interior—BLM.

It has been determined that the lands are without known mineral values and a successful bid will constitute a simultaneous request for conveyance of the reserved mineral estate. As such, the successful high bidder will be required to deposit a $50.00 nonreturnable filing fee for conveyance of the mineral estate.

Upon publication of this notice in the **Federal Register** as provided in 43 CFR 2711.1–2(d) (amended) the above lands will be segregated from appropriation under the mining laws excepting the mineral leasing laws for a period of not to exceed 270 days, or until the lands are sold, whichever occurs first. The segregation effect may otherwise be terminated by the Authorized Officer by publication of a termination notice in the **Federal Register** prior to the expiration of the 270 day period.

Detailed information concerning the sale, including the land report and environmental assessment report, is available for review at the Folsom Resource Area Office, 63 Natoma Street, Folsom, California 95630. For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the District Manager, Bakersfield District, Bureau of Land Management, 800 Truxton Avenue, Room 311, Bakersfield, California 93301; (805) 861–4191. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final

determination. In the absence of any action by the District Manager, this realty action will become a final determination.

D.K. Swickard,

Area Manager.

[FR Doc. 85-3457 Filed 2-11-85; 8:45 am]

BILLING CODE 4310-40-M

Fish and Wildlife Service

Report to Congress on Artificially Propagated Fish for National Fishery Programs

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of Report.

SUMMARY: This notice is to inform interested parties that the U.S. Fish and Wildlife Service is undertaking a study mandated by Congress in the Department of the Interior and Related Agencies Appropriations Act, 1985 (Pub. L. 98-473).

DATE: A draft report will be available for public comment in April 1985. The comment period will commence with the publishing of an appropriate notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph H. Kutkuhn, Associate Director—Fishery Resources, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, (202/343-6394).

SUPPLEMENTARY INFORMATION: The Congress directed the U.S. Fish and Wildlife Service to " . . . prepare a report on additional fish rearing plans and include in that report a comparative analysis of the costs of Service production to private or commercial production. In addition, the report should provide a list of potential new hatchery sites including an evaluation of the Nisqually Tribe hatchery, plans for the future production outputs from the Makah NFH [National Fish Hatchery], and an analysis of the effect of the *Boldt* case decisions, and the Salmon and Steelhead Enhancement Act on those hatcheries. In addition, the study should address other fishery issues including Atlantic salmon and striped bass recovery including the appropriate Federal role. That report should reflect public comment and be provided to the Committees in time for the fiscal year 1986 appropriations hearings."

Displayed below is the outline for the report.

Artificially Propagated Fish for National Fishery Programs—an Analysis of Source, Cost, Purpose, and Need

1. Introduction
2. Survey of Propagation Capability
—The National Fish Hatchery System (NFHS)
—State and Tribal Hatcheries
—Private-Sector or Commercial Operations
3. Comparison of Production Costs
—Federal/Service *vs.* State/Tribal
—Federal/Service *vs.* Private Sector/Commercial
4. Review of Product Use
—Fulfillment of Public-Sector Obligations
—Settlement of User Conflict
—Restoration of Depleted Resources
—Mitigation of Resource Impairment
5. Evaluation of Product Demand
—Projected Need for Hatchery-Produced Fish
—Production and Enhancement Plans
6. Summary of Findings
7. Synthesis of Public Comment
8. References, Appendices

Robert A. Jantzen,

Director, Fish and Wildlife Service.

[FR Doc. 3513 Filed 2-11-85; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Intention To Extend Concession Permit

Pursuant to the provisions of section 5 of the Act of October 9, 1965, (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that thirty (30) days after the date of publication of this notice, the Department of the Interior, through the Regional Director of the National Park Service, proposes to extend a concession permit with Alger G. Willis Fishing Camps, Inc., authorizing it to continue to provide overnight fish camp on Core Banks, auto/passenger service between Davis, North Carolina, and the Shingle Point area of Core Banks for the public within Cape Lookout National Seashore for a period of one year from January 1, 1985, through December 31, 1985. A determination was made that a thirty (30) day response period was sufficient time since the National Park Service is currently in the process of developing a Statement of Requirements (Prospectus) for a long-term concessions authorization to provide these services. The current permit provisions deny a preferential right to the existing concessioner.

This permit extension has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the thirtieth (30th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Southeast Region, Atlanta, Georgia, for information as to the requirements of the proposed permit.

Robert Baker,

Regional Director, Southeast Region.

[FR Doc. 85-3508 Filed 2-11-85; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 2, 1985. 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 February 27, 1985.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

Fresno County

Reedley, *Reedley National Bank*, 1100 G. St.

Humboldt County

Bayside, *Old Jacoby Creek School*, 2212 Jacoby Creek Rd.
Loleta, *Bank of Loleta*, 358 Main St.

Los Angeles County

Hollywood, *Hollywood Masonic Temple*, 6840 Hollywood Blvd.
West Hollywood, *Ronda*, 1400-1414 Havenhurst Dr.

Modoc County

Alturas, *NCO Railway Depot*, East and 3rd Sts.

Sacramento County

Sacramento, *Lais, Charles, House*, 1301 H St.

Santa Clara County

Santa Clara, *Santa Clara Depot*, 1 Railroad Ave.

CONNECTICUT

Fairfield County

Bridgeport, *Railroad Avenue Industrial District*, Roughly bounded by State and Cherry Sts., Fairfield and Wordin Aves.

FLORIDA

Flagler County

Marineland vicinity, *Marine Studios*, Rt. 1, Box 122

Suwannee County

Live Oak, *Blackwell, Bishop B., House*, 110 Parshley St.

ILLINOIS

Kane County

Aurora, *Healy Chapel*, 332 W. Downer Pl.

McLean County

Bloomington, *Bloomington Central Business District*, Roughly bounded by Main, Center and Front Sts.

INDIANA

Wayne County

Richmond, *Leland Hotel*, 900 S. A St.

NEW MEXICO

Bernalillo County

Albuquerque, *Building at 701 Roma NW*, 701 Roma, NW

San Miguel County

Las Vegas, *Elks Lodge Building*, 819 Douglas Ave.

NORTH CAROLINA

Cabarrus County

Concord, *Barber-Scotia College*, 145 Cabarrus Ave. West

Caswell County

Yanceyville Township vicinity, *Melrose/ Williamson House*, Off NC 62

Catawba County

Hickory, *Elliott-Carnegie Library (Hickory MRA)*, 415–1st Ave. NW
Hickory, *First Presbyterian Church (Hickory MRA)*, 2nd St. and 3rd Ave. NW
Hickory, *Geitner, Clement, House (Hickory MRA)*, 436 Main Ave. NW
Hickory, *Houck's Chapel (Hickory MRA)*, 9th Ave. and 17th St. NW
Hickory, *Lentz, John A., House (Hickory MRA)*, 321 9th St. NW
Hickory, *Moretz, Joseph Alfred, House (Hickory MRA)*, 1437–6th St. Circle NW
Hickory, *Piedmont Wagon Company (Hickory MRA)*, Main Ave. NW

Cumberland County

Stedman vicinity, *Maxwell, House*, Off NC 24

OHIO

Crawford County

Bucyrus, *Bucyrus Commercial Historic District*, Sandusky Ave. and Mansfield St.

Hancock County

Findlay, *Findlay Downtown Historic District*, Roughly along Main, W. Sandusky and W. Main Cross Sts.

Knox County

Gambier, *Kokosing House*, 221 Kokosing Dr.

OKLAHOMA

Cherokee County

Tahlequah, *French-Parks House*, 209 W. Keetoowah St.

Comanche County

Lawton, *First Christian Church*, 701 D. Ave.
Lawton, *Methodist Episcopal Church South*, 702 D Ave.

OREGON

Jackson County

Ashland, *Citizen's Banking & Trust Co. Building*, 232–242 E. Main St.
Ashland, *Silsby, Colonel William H., House*, 111–3rd St.

Morrow County

Heppner, *Morrow County Courthouse*, 100 Court St.

Multnomah County

Corbett, *View Point Inn*, 40301 NE Larch Mountain Rd.
Portland, *Markle-Pittock House*, 1816 SW Hawthorne Terr.
Portland, *Multnomah Hotel*, 319 SW Pine
Portland, *Seward Hotel, 611 SW 10th Ave.*

Polk County

Independence, *Davidson, Dr. John E. and Mary D., House*, 887 Monmouth St.

Union County

La Grande, *Anthony-Buckley House*, 1602 6th St.

Wallowa County

Wallowa, *Hunter-Morelock House*, 104 Holmes St.

TEXAS

Bell County

Belton, *Carnegie Public Library*, 201 N. Main St.

WASHINGTON

Yakima County

Yakima, *LaFramboise Farmstead*, 5204 Mieras Rd.

WISCONSIN

Burnett County

Webster vicinity, *Yellow River Swamp Site 47–Bt–36*,

St. Croix County

Hudson, *Third Street-Vine Street Historic District (Hudson and North Hudson MRA)*, 3rd and Vine Sts.

[FR Doc. 85–3509 Filed 2–11–85; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan to the Republic of Costa Rica (Borrower) as part of A.I.D.'s overall development assistance program. The proceeds of this loan will be used to finance shelter projects for low income families residing in the country of the Borrower. The following is the address of the Borrower and the loan amount for projects that will soon be ready to receive financing and for which the Borrower will be requesting proposals from U.S. lenders or investment bankers:

Costa Rica

Project: 515–HG–007 (2nd tranche)—$10,000,000
Central Bank of Costa Rica
Department of Finance, San Jose, Costa Rica
Attn: Carlos Murillo or Robert Avendano
Telephone: 33–6045, 33–4233
Telex:
2163 BANCENT CR
2672 BANCNT CR
3457 RECRED CR

By this notice of investment opportunity, the Borrower is soliciting expressions of interest from U.S. lenders or investment bankers and counsel on market conditions, loan timing and structure and other features appropriate for the loans or underwritings. Interested investment bankers or lenders should contact the Borrower indicated above. The Borrower intends to conduct an auction in late February 1985. Approximately one week prior to the auction, the Borrower will contact lenders who have expressed their interest in response to this notice to discuss details. Thereafter, Borrower will conduct an overnight bidding auction with such lenders based upon such terms as are expressed in a notice to be made. The new notice will specify the details of the overnight auction. Persons interested in participating in the auction are requested to advise the Borrower promptly by telex with a copy of their expression of interest to be provided to A.I.D., addressed to Mr. Michael Kitay c/o PRE/H, AID, Washington, D.C. 20523, Telex No. 892703.

Selection of investment bankers and/or lenders and the terms of the loans are initially subject to the individual

discretion of the Borrower and thereafter subject to approval by A.I.D. The lenders and A.I.D. shall enter into a Contract of Guaranty, covering the loan. Disbursements under the loan will be subject to a certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loan will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in Section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from:

Director, Office of Housing and Urban Programs, Agency for International Development, Room 625, SA/12, Washington, D.C. 20523, Telephone: (202) 632-3544

Dated: February 5, 1985.

John T. Howley,

Office of Housing and urban programs.

[FR Doc. 85-3547 Filed 2-11-85; 8:45 am]

BILLING CODE 4710-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30591]

Consolidated Rail Corp.; Exemption From 49 U.S.C. 11343

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the requirement of prior approval under 49 U.S.C. 11343 the purchase by Consolidated Rail Corporation of: (1) 18 miles of track of The Baltimore and Ohio Railroad Company (B&O) between Charleston and Reamer, WV, in Kanawha County, excepting and reserving to B&O 21.71 acres; and (2) a 0.38-mile portion of the freight terminal branch of The Chesapeake and Ohio Railway Company in Charleston, WV, subject to labor protection.

DATES: This exemption is effective on March 14, 1985. Petitions for reconsideration must be filed by March 4, 1985. Petitions for stay must be filed by February 22, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30591 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and

(2) Petitioner's representative: Becky J. Bucari, 1138 Six Penn Center, Philadelphia, PA 19103

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Interstate Commerce Commission, Room 2227, Washington, DC 20423, or call toll free (800) 424-5403, or 289-4357 (DC Metropolitan area).

Decided: February 1, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-3471 Filed 2-11-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30549]

ICAST & Western Railroad Company; Construction and Operation in Pueblo County, CO [1]

AGENCY: Interstate Commerce Commission.

ACTION: Application accepted for consideration.

SUMMARY: The Interstate Commerce Commission is accepting for consideration the application of the ICAST & Western Railroad Company (IW) to construct and operate a line of railroad in Pueblo County, CO. The line will originate at a connection with the Denver and Rio Grande Western Railroad Company (DRGW) and/or The Atchison, Topeka & Santa Fe Railway Company (SF) and will extend approximately 6.5 miles east to the site of the hazardous waste treatment and incineration plant to be constructed on land owned by IW's parent company.

DATE: Written comments must be filed no later than (35 days from date of publication). Replies must be filed no later than (40 days from date of publication).

ADDRESSES: An original and five copies of all comments referring to Finance Docket No. 30549 should be sent to:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

William K. Viekman, 245 North Pine Street, Colorado Springs, CO 80905

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245, or Richard M. Krock (202) 275-7710

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Interstate Commerce Commission, Room 2227, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: January 28, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-3472 Filed 2-11-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30549]

ICAST & Western Railroad Co.; Construction and Operation of a Railroad Line in Pueblo County, CO

AGENCY: Interstate Commerce Commission.

ACTION: Notice of intent to prepare an environmental assessment and invitation to comment.

SUMMARY: In the above-entitled proceeding, applicant proposes to construct and operate a line of railroad to serve a hazardous waste disposal facility which has yet to be permitted by state authorities. The purpose of this notice is to announce a coordinated approach to the preparation of necessary environmental documentation and to invite comment.

Comments: Interested persons are invited to submit written comments on the proposed approach to NEPA compliance and on any other pertinent environmental matters. Written comments should be addressed to: Section of Energy and Environment, Interstate Commerce Commission, Room

[1] Previously titled ICAST & Western Railroad Company—Petition for Waiver of 49 CFR 1105.9(b).

4143, 12th St. and Constitution Ave., N.W., Washington, DC 20423.

DATES: Written comments should be submitted to the above address on or before March 14, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Mushovic or Elaine Kaiser at (202) 275–0800.

SUPPLEMENTARY INFORMATION: An application from the ICAST & Western Railroad Company (I&W) seeking authorization to construct and operate a 6.5-mile rail line in Pueblo County, Colorado has been filed with the Interstate Commerce Commission. The proposed rail line will be constructed to provide service to an industrial facility which will be located on a portion of a 190-square mile property, now essentially uninhabited, which is owned by I&W's parent company, International Center for Aerospace Sciences and Technology (ICAST). Specifically, the line will serve a hazardous waste treatment plant which will be built in conjunction with a tank car cleaning, repair, and storage facility. I&W's application states that in addition to initially serving the hazardous waste plant and car facility, the line will also be used as a basic tool for the industrial development of ICAST's property.

Initial operations will involve the transportation of hazardous waste materials inbound and chemicals outbound. I&W is seeking to interchange this traffic with the Denver & Rio Grande Western Railroad and/or the Atchison, Topeka & Santa Fe. Construction of the proposed line will not involve the crossing of any other rail lines unless a direct connection is made with Santa Fe, in which case, a flyover or crossing of the Denver & Rio Grande will be necessary. Construction of a bridge or tressle will be required to cross Fountain Creek which is located near the boundary of Pueblo and El Paso Counties.

Under the Commission's environmental rules (49 CFR Part 1105), rail line construction projects normally require preparation of an environmental impact statement. In this case, however, based on our initial review of the application and a preliminary investigation, including a site inspection, we have identified no potentially significant or unmitigable environmental effects associated with construction and operation of the proposed rail line. Accordingly, we intend, at least initially, to evaluate the environmental ramifications of applicant's proposal in an assessment.

The primary purpose of applicant's proposed rail line is to serve a hazardous waste disposal facility which has yet to be permitted. It is our understanding that, under the provisions of 40 CFR Part 271, Colorado has been authorized to administer and enforce its hazardous waste program in lieu of the Federal program. Among other items, Colorado's program must contain requirements for transporters of hazardous waste and for hazardous waste management facilities. Although we are not familiar with the specifics of Colorado's program, we believe that, under the circumstances, our assessment should be prepared in consultation with the state official responsible for administering Colorado's hazardous waste program. This approach comports with the Resource Conservation and Recovery Act rules (40 CFR 271.18) and with the Council on Environmental Quality rules (40 CFR 1500.5) which are designed to reduce delay in NEPA and related processes.

After reviewing Colorado's hazardous waste program and consulting with responsible officials there, we will be in a better position to determine more precisely the scope of necessary environmental documentation and to provide guidance to applicant with respect to required input for that documentation. In this way, duplication of effort and needless expense will be avoided.

Interested persons are invited to comment on the proposed approach to NEPA compliance as well as any specific environmental issues which may be relevant to this undertaking.

Dated: January 28, 1985.

James H. Bayne,

Secretary.

[FR Doc. 3470 Filed 2–11–85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–55 (Sub-139X)]

Seaboard System Railroad, Inc.; Abandonment Exemption in Liberty and McIntosh Counties, Ga.; Exemption

Applicant has filed a notice of exemption under 49 CFR 1152, Subpart F—*Exempt Abandonments* to abandon its 18.72-mile line of railroad between milepost S–531.00 near Riceboro, GA and milepost S–549.72 near Cox, GA.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective March 13, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by February 21, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by March 4, 1985 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water St., Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: February 6, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85–3585 Filed 2–11–85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Controlled Substances; Proposed Aggregate Production Quotas for Controlled Substances in Schedules I and II; Alltech Associates, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of Proposed 1985 Aggregate Production Quotas.

SUMMARY: This notice proposes 1985 Aggregate Production Quotas for Controlled Substances in Schedules I and II which will be used as analytical standards.

DATE: Comments and objections should be received on or before March 14, 1985.

ADDRESS: Send comments or objections in quintuplicate to the Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, D.C. 20537.

Attn: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for all controlled substances listed in Schedules I and II. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations.

The Drug Enforcement Administration received applications from Alltech Associates, Inc., Applied Science Labs of State College, Pennsylvania to manufacture in 1985 a number of Schedule I and II controlled substances. These chemicals will be used in the preparation of analytical standards.

The Administrator of the Drug Enforcement Administration, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) and delegated to the Administrator by § 0.100 of Title 28 of the Code of Federal Regulations, hereby proposes 1985 aggregate production quotas for the following controlled substances, expressed in grams of anhydrous base:

Basic class	Proposed 1985 aggregate production quotas
Schedule I:	
Lysergic acid diethylamide	4
Lysergic acid methylpropylamide	2.5
Schedule II:	
Benzoylecgonine	50
Phencyclidine	100

All interested persons are invited to submit their comments and objections in writing regarding this proposal. Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative, and must be received by March 14, 1985. If a person believes that one or more issues raised by him warrant a hearing, he should so state and summarize the reasons for his belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by a notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

Pursuant to sections (3)(c)(3) and 3(e)(2)(B) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international commitments of the United States.

Such quotas impact predominantly upon the major manufacturers of the affected controlled substances.

Dated: January 29, 1985.

Francis M. Mullen, Jr.,

Administrator, Drug Enforcement Administration.

[FR Doc. 85-3476 Filed 2-11-85; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 84-7]

Leo M. Mullen, M.D.; Revocation of Registration; Denial of Applications

On April 4, 1984, the Deputy Assistant Administrator of the Drug Enforcement Administration (DEA), Office of Diversion Control, issued to Leo M. Mullen, M.D. (Respondent), two Orders to Show Cause. The first of the two orders was addressed to Respondent at 4443 Paseo Boulevard, Kansas City, Missouri 64110, and proposed to revoke DEA Certificate of Registration AM3607419, issued to Respondent at that address, and to deny Respondent's renewal application for such registration, for the reason that Respondent was not currently authorized to dispense, prescribed or otherwise handle controlled substances under the laws of the State of Missouri. The second Order to Show Cause was directed to Respondent at 1900 W. 68th Street, Shawnee Mission, Kansas 66208, and proposed to deny Respondent's application for registration as a practitioner at that location for the reason that Respondent, although possessing a valid Kansas medical license, was prohibited from providing medical care in that state and, consequently, was not authorized by state law to utilize controlled substances in a medical practice in Kansas.

On April 26, 1984, Respondent submitted a response in which he requested a hearing and acknowledged the fact that he then lacked a state controlled substances license in Missouri. This matter was placed on the docket of Administrative Law Judge Francis L. Young. Subsequently, Government counsel filed a motion asking for a summary disposition of the case without a hearing. Dr. Mullen responded to the Motion, but did not contravene any of the facts upon which the motion was based. The Administrative Law Judge carefully considered all of the papers filed by both sides and, on October 30, 1984, issued his Opinion and Recommendations. On November 9, 1984, the Administrative Law Judge received from the Respondent a document entitled Motion For Reconsideration Or Motion To Set Aside Opinion and Recommendations of Administrative Law Judge Francis L. Young. This motion will be treated as exceptions filed pursuant to 21 CFR 1316.66. Accordingly, on December 3, 1984, Judge Young transmitted the record of these proceedings including Respondent's exceptions to the Administrator. The Administrator has considered this record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

The Controlled Substances Act provides that: "Practitioners shall be registered to dispense or conduct research with controlled substances . . . if they are authorized to dispense or conduct research under the law of the state in which they practice." 21 U.S.C. 823(f). Concomitantly, the Act provides that a registration issued pursuant to section 823 may be revoked by the Attorney General upon a finding that the registrant "has had his state license or registration suspended, revoked or denied by competent state authority and is no longer authorized by state law to engage in the manufacturing, distribution or dispensing of controlled substances." 21 U.S.C. 824(a)(3).

Missouri law, specifically RSMo sections 195.030, provides in subsection 2: *"No person shall* manufacture, compound, mix, cultivate, grow, or by any other process produce or prepare, distribute, *dispense, or prescribe any controlled substance* and no person as a wholesaler shall supply the same, *without having first obtained annually a registration issued by the division of health . . . ."* (Emphasis added) By affidavit dated May 10, 1984, the

Director of the Missouri Bureau of Narcotics and Dangerous Drugs, certified that, as of January 5, 1984, "Leo M. Mullen, M.D., of 4443 Paseo Blvd., Kansas City, Missouri, does not possess from the State of Missouri any authority to conduct any activities with Controlled Substances."

Thus, it appears that Respondent is without authority to handle controlled substances under the laws of the State of Missouri. DEA has consistently held that when a registrant or applicant is without authority to handle controlled substances under the laws of the state in which he practices or intends to practice, the Drug Enforcement Administration is without lawful authority to issue or maintain such registration. See, for example, *Michael C. Barry, M.D.*, [no docket no.], 48 FR 33777 (1983); *Floyd A. Santner, M.D.*, Docket No. 79–23, 47 FR 51831 (1982); *Marshall S. Tuck, M.D.*, Docket No. 80–28, 45 FR 85845 (1980); and *David Sachs, M.D.*, Docket No. 77–2, 42 FR 29112 (1977). Therefore, Respondent's registration AM3807419, issued to him at 4443 Paseo Boulevard, Kansas City, Missouri, must be revoked, and his application for renewal of that registration must be denied. *Serling Drug Company*, Docket No. 74–12, 40 FR 11981 (1975); *Norman Bridge Drug Co., Inc.*, Docket No. 74–22, 41 FR 3108 (1976); and *Aaron A. Moss, D.D.S.*, Docket No. 80–2, 45 FR 72850 (1980).

Respondent's application to be registered with DEA as a practitioner in the State of Kansas must also be denied. Kansas does not require separate controlled substances registration of practitioners. Indeed, Kansas Statutes Annotated (KSA) section 65–4116(c)(5) provides that any person licensed by the state board of healing arts need not register and may lawfully possess controlled substances under the Kansas Uniform Controlled Substances Act. There is at the present time no contention that Respondent is not licensed by the Kansas Board of Healing Arts.

However, Kansas law imposes an additional requirement upon physicians who desire to practice medicine in the State of Kansas. The provisions of KSA sections 40–3401—40–3419 require that if a medical practice licensee is rendering professional services in Kansas, he or she is required to maintain professional liability insurance of specified minimum limits. Although a licensee may have a Kansas license which may be active and current, he cannot provide medical care in the State of Kansas without maintaining such professional liability insurance. Judge Young found that Respondent has not maintained such liability insurance since December 3, 1982. Accordingly, Dr. Mullen may not lawfully practice medicine in the State of Kansas.

Section 102(20) of the Controlled Substances Act of 1970 (21 U.S.C. 802(20)), defines a "practitioner" as "a physician, . . . licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . ., to distribute, dispense, . . ., administer, . . . a controlled substance *in the course of professional practice* . . . " (Emphasis added) section 303(f) of the Act, (21 U.S.C. 823(f)), provides that practitioners shall be registered with DEA "if they are authorized to dispense or conduct research under the law of the State in which they practice." Since Respondent cannot at this time practice medicine in Kansas, he has no practice in which to dispense, administer or prescribe controlled substances and therefore Respondent is not a practitioner within the meaning and intent of the Controlled Substances Act of 1970.

It is settled law that when no fact question is involved, or the facts are agreed, a plenary, adversary administrative proceeding, involving evidence and the cross-examination of witnesses is not obligatory—even though the pertinent statute prescribes a hearing. In such situations, the rationale is that Congress does not intend for administrative agencies to perform useless and meaningless tasks. See, *United States* v. *Consolidated Mines & Smelting Co., Ltd.*, 455 F.2d 432, 453 (9th Cir. 1971); *NLRB* v. *International Ass'n. of Bridge, Structural and Ornamental Ironworkers, AFL–CIO*, 549 F.2d 634 (9th Cir. 1977). See also, *Philip E. Kirk, M.D.*, Docket No. 82–36, 48 FR 32887 (1983).

Judge Young concluded that the documentary evidence submitted by the Government establishes that Respondent is not registered to handle controlled substances in the State of Missouri and that he is prohibited from practicing medicine in the State of Kansas. Dr. Mullen is, therefore, not authorized to administer, dispense, prescribe or otherwise handle controlled substances under the laws of either state. Respondent has not raised any factual issue nor has he rebutted the argument of Government counsel. Therefore, the Administrative Law Judge has recommended that Respondent's Missouri DEA registration should be revoked, that his application for renewal of that registration should be denied, and that his application for registration in Kansas also should be denied. The Administrator adopts the recommendations of the Administrative Law Judge in their entirety.

Having concluded that there is a lawful basis for the revocation of Respondent's Missouri registration and for the denial of Respondent's pending applications for registration in both Missouri and Kansas, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AM3807419 previously issued to Leo M. Mullen, M.D. be, and it hereby is, revoked. The Administrator further orders that the applications of Leo M. Mullen, M.D., for registration under the Controlled Substances Act in both Missouri and Kansas, be, and they hereby are denied.

Dated: February 5, 1985.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 85–3477 Filed 2–11–85; 8:45 am]

BILLING CODE 4410–09–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: New.

2. The title of the information collection: Survey of Nuclear Power Reactor Licensees and State Public Utility Commissions Regarding Power Reactor Performance Incentives.

3. The form number, if applicable: Not applicable.

4. How often the collection is required: Semiannually.

5. Who will be required or asked to report: Investor-owned electric utilities and State Public Utility Commissions.

6. An estimate of the number of responses: 170.

7. An estimate of the total number of hours needed to complete the requirement: 128.

8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: NRC will conduct a survey of its reactor licensees and the cognizant Public Utility Commissions (PUC) to obtain information on the performance incentives applied by the PUCs to determine whether or not such incentives have any impact on the protection of public health and safety.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395-7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 6th day of February 1985.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 85-3515 Filed 2-11-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. STN 50-454]

Commonwealth Edison Co., Byron Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the grant of an exemption from a portion of the requirements of Appendix E to Commonwealth Edison Company (the licensee) for Byron Station, Unit 1, located at the licensee's site in Rockvale Township, Ogle County, Illinois.

Environmental Assessment

Identification of Proposed Action: The Exemption from Section IV.F of Appendix E would delay the conduct of a full participation offsite emergency planning exercise. Section IV.F of Appendix E requires that this exercise be conducted within one year before issuance of the first operating license at the site for full power and prior to operation above 5% of rated power. The first full participation emergency preparedness exercise for Byron was conducted on November 15, 1983.

Need for Proposed Action: The proposed Exemption is required because Section IV.F of Appendix E would require that a full participation offsite emergency planning exercise be conducted within one year prior to exceeding five percent power. A license authorizing operation of Byron Unit 1 up to five percent of rated power was issued on October 31, 1984, but the licensee has not yet been issued a license authorizing operation above five percent of rated power. In its letter dated October 15, 1984 the licensee provided justification for delaying this exercise beyond the date of authorization of operation above five percent of rated power. The NRC staff has reviewed and accepted the licensee's request for exemption based upon the following factors:

(1) Favorable findings by the Federal Emergency Management Agency (FEMA) on the November 1983 exercise;

(2) The conduct of various drills which tested elements of the Byron Emergency Plan during 1984;

(3) The successful participation by the State of Illinois in a 1984 emergency exercise at another nuclear reactor operated by the licensee (LaSalle); and

(4) The scheduling of a Byron exercise for June 1985 which will include partial State participation and full local participation.

Accordingly, the NRC staff agrees that an exemption from Appendix E is appropriate.

Environmental Impacts of Proposed Action: The proposed Exemption would not affect the environmental impact of the facility because the level of emergency preparedness is not being degraded. The probability of an accident has not been increased and the post-accident radiological releases will not be greater than previously determined due to the proposed Exemption, nor does the proposed Exemption otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise the proposed Exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with this proposed Exemption.

Alternative to the Proposed Action: Because we have concluded that there is no measurable environmental impact associated with the proposed Exemption, any alternatives to the relief will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested Exemption. Such action would not reduce environmental impacts of Byron Station, Unit 1 operations and would result in an unwarranted burden to the licensee and the State and local governments.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Byron Station, Units 1 and 2," dated April 1982.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request that supports the proposed Exemption. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed Exemption.

For further details with respect to this action, see the licensee's request for the Exemption dated October 15, 1984 which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Rockford Public Library, Rockford, Illinois.

Dated at Bethesda, Maryland, this 15th day of February 1985.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Assistant Director for Licensing, Division of Licensing.

[FR Doc. 85-3516 Filed 2-11-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-458]

Gulf States Utilities Co., Cajun Electric Power Cooperative; Availability of the Final Environmental Statement for River Bend Station

Notice is hereby given that the Final Environmental Statement (NUREG-1073) has been prepared by the Commission Ofice of Nuclear Reactor Regulation related to the proposed operation of the River Bend Station located on the Mississippi River in West Feliciana Parish, Lousiana.

Copies of NUREG-1073 are available for inspeciton by the public in the Commission's Public Document Room at 1717 H Street, N.W., Washington, DC 20555, and at the Lousiana State University, Government Document Department, Baton Rouge, Louisiana 70803. The document is also being made available at the State Clearinghouse, Department of Urban & Community Affairs, 5790 Florida Boulevard, Baton Rouge, Louisiana 70806. The Notice of availability of the Draft Environmental Statement for the River Bend Station and request for comments were published in the Federal Register on August 17, 1984 (49 FR 32919). The

comments received from Federal, State and local agencies and from interested members of the public have been included in the appendices to the Final Environmental Statement.

Copies of the Final Environmental Statement (NUREG–1073) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and from the U.S. Nuclear Regulatory Commission, Sales Office, Washingon, D.C. 20555.

Dated at Bethesda, Maryland this 4th day February 1985.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief Licensing Branch No. 2, Division of Licensing.

[FR Doc. 3517–2 Filed 2–11–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–416]

Mississippi Power & Light Co. et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the schedular requirements of 10 CFR 50.71(e)(3)(i) to the Mississippi Power & Light Company, Middle South Energy, Inc., and South Mississippi Electric Power Association (the licensee) for the Grand Gulf Nuclear Station, Unit 1, located at the licensee's site in Claiborne County, Mississippi.

Environmental Assessment

Identification of Proposed Action: The proposed action would grant an exemption from the requirement of 10 CFR 50.71(e) to submit an updated Final Safety Analysis Report (UFSAR) for Unit 1 of the Grand Gulf Nuclear Station (GGNS) within 24 months of the issuance of the operating license. An operating license was issued for Grand Gulf Unit 1 on June 16, 1982. By letter dated February 6, 1984, licensee requested an exemption to 10 CFR 50.71(e) which would have deferred submittal of the UFSAR until 12 months after Unit 2 was licensed on the basis that the FSAR is written for both Unit 1 and Unit 2 of GGNS. By letter dated June 26, 1984, the NRC staff denied that request because Unit 2 is scheduled to be completed after 1990 and staff requested licensee to provide a modified exemption request. By letter dated December 31, 1984, licensee requested an exemption to defer submittal of the UFSAR for Unit 1 of GGNS until December 1, 1985. The deferral of the UFSAR submittal until December 1, 1985, is the proposed action being considered by the staff.

The Need for the Proposed Action: The operating license issued on June 16, 1982 (NPF–13) authorized fuel loading and low power operation. The authorization for operation above 5% power was issued on August 31, 1984. The licensee is now engaged in startup testing and expects to complete such testing in March 1985. The time interval between issuance of the low power license and authorization of full power operation (about 26 months) is considerably longer for GGNS Unit 1 than the time interval between the low power license issuance and the full power license issuance for most other recent plants.

For most plants, ample time is available after completion of startup testing for updating the FSAR within the 24 month interval allowed in 10 CFR 50.71(e). However, for Grand Gulf, power ascension testing did not start within the required 24 month interval. It is desirable to complete low power and power ascension testing and to place the plant in commercial operation before updating the FSAR so that design modifications found necessary by tesing can be incorporated and so that licensee's engineering personnel who are heavily involved in the support of startup testing and resultant plant modifications can be used in preparing and reviewing the updated FSAR. Thus, for Grand Gulf Unit 1, there is a need to extend the date for submittal of the updated Final Safety Analysis Report. The requested extension to December 1, 1985 (8 months after startup testing is scheduled to be completed), will allow the licensee's exgineering personnel necessary and sufficient time to concentrate on startup testing and resultant design changes before concentrating on the engineering review associated with the preparation of the UFSAR.

Environmental Impact of the Proposed Action: The proposed exemption affects only the required date for updating the FSAR and does not affect the risk of facility accidents. Thus, post-accident radiological releases will not differ from those determined previously, and the proposed exemption does not otherwise affect facility radiological effluents, or any significant occupational exposures. With regard to potential non-radiological impacts, the proposed exemption does not affect plant non-radiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measureable radiological or nonradiological environmental impacts associated with the proposed exemption.

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives either will have no environmental impact or will have a greater environmental impact. The principal alternative to the exemption would be to require an earlier date for submittal of the UFSAR. Such an action would not enhance the protection of the environment and would result in unnecessary diversion of utility engineering resources from safety related work.

Alternative Use of Resources: This action does not involve the use of resources not considered previously in the Final Environmental Statement for the Grand Gulf Nuclear Station.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letters dated February 6, and December 31, 1984, and the NRC staff's letter dated June 26, 1984. These letters are available for public inspection at the Commission's Public Document Room, 1717 H Street NW, Washington, D.C., and at the Hinds Jr. College, George M. McLendon Library, Raymond, Mississippi 39154.

Dated at Bethesda, Maryland, this 6th day of February 1985.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Assistant Director for Licensing, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85–3518 Filed 2–11–85; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-21712; File No. SR-Amex-84-40]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to Index Option Escrow Receipts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 28, 1984, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("AMEX" or "Exchange") proposes to expand its policy regarding the use of index option escrow receipts so such receipts may be used to cover positions on narrow-based index options. Exchange Rule 462 provides that no margin will be required if a customer delivers an escrow receipt according to the terms of the Rule. The Rule is currently drafted broadly enough to include this policy change, so no rule amendments are necessary.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, Exchange Rule 462 provides that an investor is permitted to use an index option escrow receipt in lieu of margin to cover a short index option position. Under the rule, the bank or trust company issuing the escrow receipt certifies that it holds for the customer at least ten qualified equity securities, each issued by a different entity, with a fixed aggregate dollar value at trade date and that it agrees to meet the customer's settlement obligation upon assignment. In addition, the rule requires that no single qualified security may represent more than 15 percent of the total collateral. At the time the Exchange requested Commission approval to introduce index option escrow receipts, attention was focused on broad-based index options. Consequently, as a policy matter the use of escrow receipts has been confined to broad-based index options only.

Recently, however, a number of investors have expressed a desire to use escrow receipts to cover positions in industry index options. Thus, the Exchange proposes that index option escrow receipts be used as collateral for short positions in industry index options. This rule change will be particularly important for those institutional ivnestors who would like to carry short positions in the Exchange's computer Technology, Oil, and Transportation Index options, but are not permitted to do so because they are bound by state laws that require their call writing to be covered or their securities transactions to be limited to cash accounts.

The Exchange has discussed the proposed rule change with staff of the Board of Governors of the Federal Reserve System. The staff has determined that the escrow receipts currently used to cover broad-based index option positions may also be used to cover industry index options positions.[1]

The proposed change is consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange by providing the same advantage to those investors who carry short positions in industry index options as has been provided to investors who carry short positions in equity options and broad-based index options. Therefore, the proposed rule change is consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

[1] Letter, dated November 15, 1984, from Laura Homer, Securities Credit Officer, Board of Governors of the Federal Reserve System to Richard Chase, Associate Director, Division of Market Regulation, Securities and Exchange Commission.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Federal Reserve Board has determined that escrow receipts currently used to cover broad-based index option positions may also be used to cover positions on narrow-based index options. (See letter from Laura Homer, Securities Credit Officer, Board of Governors of the Federal Reserve System.) In addition, the Options Committee, a committee of the AMEX Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at

the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 5, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 4, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-3527 Filed 2-11-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21711; File No. SR-CBOE-84-35]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Electronic Trading Systems

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 27, 1984 the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

The Exchange intends to install on the floor terminals for electronic trading systems which offer automated order handling and automatic execution capability (hereinafter "electronic trading systems") for members to buy and sell stock to hedge or cover options positions. The Exchange intends to commence with one such system, the Instinet system.[1]

The Exchange will place Instient terminals at trading posts on the Exchange floor for display of price and quotation information only. Instinet and other electronic trading systems terminals with order entry capability will be placed in member firm booths. Members wishing to use any such system for order entry will have to communicate, as currently is the case, either personally or via telephone or messengers, to stock execution personnel at member firm booths.

[1] Instinet is a vendor of trade and quotation data and an automated order routing system. Customers with Instinet terminals may enter bids and offers into the system, "accept" bids and offers in the system, and negotiate with each other.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Items IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of this rules filing is to discribe the intended use of automatic execution systems with terminals on the Exchange floor. Automatic execution systems placed on the Exchange floor are intended to facilitate entry of stock orders for market-makers to hedge or cover options positions. An educational memorandum to members,[2] will make clear that all existing anti-manipulative rules will apply to stock transactions effected through automatic execution systems and that the making of two-sided markets in stocks from the Exchange floor through such systems is prohibited. The memorandum also notes the continued applicability of credit and reporting rules to stock transactions effected through an automatic execution system. The principles stated in the memorandum are applicable to Instinet or to any other electronic trading system which may have terminals placed on the Exchange floor.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe this proposal will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments have been solicited or received on this rule filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[2] A copy of this memorandum is available from the Commission or CBOE pursuant to Section IV, below.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 5, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 4, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-3529 Filed 2-11-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21719; File No. SR-MCC-85-1]

Self-Regulatory Organization; Proposed Rule Change of Midwest Clearing Corp.; Filing and Immediate Effectiveness

February 5, 1985.

On January 7, 1985, Midwest Clearing Corporation ("MCC") filed a proposed rule change with the Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The Commission is publishing notice of MCC's proposed rule change to solicit public comment.

MCC's proposal increases certain service and trade recording charges.[1] It also decreases the fees for member-to-member securities loans. MCC states that the proposed fee changes are consistent with Section 17A of the Act because they more equitably allocate the increased cost for certain services among MCC participants.

The rule change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You can submit written comment within 21 days after this notice published in the **Federal Register**. Please refer to File No. SR-MCC-85-1, and file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

Copies of the submission and other material relating to the rule change, except for material that may be withheld from the public under 5 U.S.C. 552, is available at the Commission's Public Reference Room and at the principal office of MCC.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-3530 Filed 2-11-85; 8:45 am]

BILLING CODE 8010-01-M

[1] Under MCC's proposal, which MCC is applying retroactively to December 31, 1984, the following fees will be changed:

Service Charges—

Participant Account Maintenance Fee: Local & Out of Town Account, $150.00 to $160.00/mo; Specialist & Trading Account, $150.00 (No Change).

Secondary Specialist, Trading or Market Maker Account, $110.00 to $117.00/mo.

Trade Recording

P&L Accounting Service (Used by Specialist & Trading Accounts Exclusively): 1-1000 Trades/Mo., $0.47 to $0.49/Side; 1001-2000 Trades/Mo., $0.37 to $0.39/Side; 2001-4000 Trades/Mo., $0.27 to $0.29/Side; 4001-8000 Trades/Mo., $0.18 to $0.20/Side; Over 8000 Trades/Mo., $0.10 to $0.12/Side.

Special Services

Member to Member Securities Loan Delivery (Loan or Return of Loan), $2.60 to $1.30/Item; Receipt, $2.60 to $1.30/Item.

[Release No. 21723; File No. SR-MCC-84-8]

Self-Regulatory Organization; Order Approving Proposed Rule Change by Midwest Clearing Corp.

February 5, 1985.

On October 9, 1984, Midwest Clearing Corporation ("MCC") filed a proposed rule change (SR-MCC-84-8) with the Securities and Exchange Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1). The proposed rule change supplements a previous proposal establishing MCC's Municipal Bond Comparison ("MBC") System.[1] That System is linked to National Securities Clearing Corporation's ("NSCC") Municipal Bond Processing System.[2] Notice of the proposal was published in Securities Exchange Act Release No. 21550 (December 7, 1984), 49 FR 49008 (December 17, 1984). No comments were received.

MCC's proposal, among other things, would conform MCC's municipal securities "buy-in" procedures in its continuous net settlement system ("CNS") to corresponding NSCC CNS buy-in procedures.[3] The proposal will enable MCC to offer its participants CNS processing for municipal securities transactions.[4] Under the proposal, MCC may exit from CNS a participant's short-valued CNS position when the participant fails to deliver to MCC corresponding municipal securities within the time-frames stated in MCC's CNS buy-in procedures. MCC, or NSCC, if appropriate, then would issue, receive and deliver orders to be settled outside of the clearing agencies in accordance with the rules of the Municipal Securities Rulemaking Board ("MSRB"). MCC would not guarantee settlement of such transactions. Similarly, MCC proposes to exit from CNS, consistent with NSCC's procedures, any municipal securities issue declared ineligible for book-entry delivery at DTC. Finally, MCC's proposal would amend MCC's rules to make bearer securities eligible for deposit and clearance at MCC.

[1] *See* Securities Exchange Act Release No. 21120 (July 6, 1984) 49 FR 28490 (July 12, 1984).

[2] Stock Clearing Corporation of Philadelphia, Pacific Clearing Corporation, and Depository Trust Company ("DTC") also are linked to NSCC's System.

[3] Notice of immediate effectiveness of almost identical NSCC procedures was published in Securities Exchange Act Release No. 21248 (August 16, 1984), 49 FR 33389 (August 22, 1984).

[4] While the Commission previously approved municipal securities CNS processing at MCC in Securities Exchange Act Release No. 21120, MCC has been unable to provide that service to participants because of non-conforming MCC and NSCC procedures.

MCC believes that the proposed rule change is consistent with the requirements of the Act and the rules thereunder, in that the proposal promotes the prompt and accurate clearance and settlement of securities transactions. Moreover, because the proposed change also will allow MCC Participants to compare and settle more efficiently municipal trades effected with NSCC members, MCC believes that the proposal will facilitate the establishment of a national system for municipal securities clearance and settlement.

Discussion

The Commission agrees with MCC that the proposal is consistent with the Act and therefore is approving the proposal. First, by conforming its municipal securities CNS eligibility criteria and close-out rules with NSCC's rules, which rely on MSRB close-out procedures, MCC's proposal should avoid possible disruption and confusion in municipal securities industry practice.[5] Second, the proposal will enable MCC to offer its municipal securities participants CNS processing. Therefore, those participants can begin enjoying the benefits of CNS processing. Finally, MCC's technical revision of MCC Rule 2 to make bearer securities eligible for deposit and for clearance through MCC's CNS and trade-by-trade systems will provide participants with full clearing agency processing services.

Accordingly, the Commission believes that the proposal is consistent with section 17A of the Act in that the proposal should increase the efficiency of MCC's clearance and settlement systems and facilitate establishment of

[5] MSRB Rule G-12 allows at least eleven days for delivery after notice of intention to buy-in, while MCC only allows two days for delivery. The MSRB allows a longer period for delivery because municipal securities markets historically have lacked depth and easy availability of securities certificates, which are needed for physical delivery under MSRB Rule G-12. For that reason, the Commission believes it appropriate that MCC, similar to NSCC, exit from CNS a short valued CNS position when delivery is not made under MCC's CNS buy-in rules and issue corresponding receive and delivery orders. For the same reason, the Commission further believes it appropriate that MCC will not guarantee those receive and deliver orders. The proposal, like NSCC's current rule, is intended to be an interim measure only. On February 1, 1985, amendments to MSRB Rule G-15 will require most municipal securities transactions to be settled by book-entry at registered securities depositories. *See* Securities Exchange Act Release No. 20365 (November 14, 1983), 48 FR 52531 (November 18, 1983). The Commission anticipates that a deeper and more organized municipal securities market may result from this development. If this occurs, the Commission expects MCC and NSCC to reevaluate the need for this procedure.

a national clearance and settlement system for municipal securities.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that MCC's proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirely F. Hollis,

Assistant Secretary.

[FR Doc. 85-3531 Filed 2-11-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21720; Filed No. SR-MSTC-85-1]

Self-Regulatory Organization; Proposed Rule Change of Midwest Securities Trust Co.; Filing and Immediate Effectiveness

February 5, 1985.

On January 7, 1985, Midwest Securities Trust Company ("MSTC") filed a proposed rule change with the Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The Commission is publishing notice of MSTC's proposed rule change to solicit public comment.

MSTC's proposal increases certain account maintenance, settlement service, and depository service charges.[1] MSTC is also revising its legal deposit fee structure to conform the fees charged in Chicago and New York, generally resulting in a Chicago fee decrease and a New York fee increase. The new legal deposit fee structure also decreases per item charges as volume increases. The proposal also establishes charges for additional copies of the *MSTC Directory of Eligible Registered and Bearer Securities*. One copy will be provided each month, but MSTC will assess a charge based on production cost for each additional copy. MSTC states that the revised charges are consistent with Section 17A of the Act because they will allocate the increased costs for certain services equitably among MSTC participants.

The rule change has become effective, pursuant to section 19(b)(3)(A) of the act and subparagraph (e) of Securities Exchange Act Rule 19b-4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necesasry or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You can submit written comment within 21 days after publication of this notice in the **Federal Register**. Please refer to File No. SR-MSTC-85-1, and file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission and other material relating to the rule change, except for material that may be withheld from the public under 5 U.S.C. 552, is available at the Commission's Public Reference Room and at the principal office of MSTC.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-3532 Filed 2-11-85; 8:45 am]

BILLING CODE 8010-01-M

[1] Under MSTC's proposal, which MSTC is applying retroactively to December 31, 1984, the following fees will be changed:

Service Charges—

Participant Account Maintenance Fee: Basic Service Fee, $220 to $150/mo.; Corp. Equity/Debt Issues Service Fee, 0 to $100/mo.; Municipal Issues Service Fee, 0 to $100/mo.; "B" System Participant (Bearer Muncipal Bonds), $150 to 0/mo.

Settlement Services

CNS Inter-Activity Movements, $0.85 to $0.90.

Depository Services

Certificate Deposits [To Clearing Free, Loan Free or Dep. Free]: 7:30 A.M.—11:00 A.M., $0.90 to $0.94/item; 11:00 A.M.—11:30 A.M., $7.55 to $7.59/item; 11:00 A.M.—4:00 P.M., $0.75 to $0.79/item.

Legal Deposits

Chicago: 1-500 items/Mo., $7.50 to $6.50/item; 501-2000 items/Mo., $7.50 to $5.50/item; 2001-4000 items/Mo., $7.50 to $4.50/item; 4001 & Over items/Mo., $7.50 to $3.50/item.

New York: 1-500 items/Mo., $5.00 to $6.50/item; 501-2000 items/Mo., $5.00 to $5.50/item; 2001-4000 items/Mo., $4.00 to $4.50/item; 4001 & Over items/Mo., $3.00 to $3.50/item.

Safekeeping

Corporate Equity/Bonds, $0.54 to $0.57/position/mo.

Registered Municipals, $0.54 to $0.57/position/mo.

Transfer Withdrawals, $2.05 to $2.10/Request.

Withdrawal—Reg. Street, $4.70 to $5.00/Request.

[Release No. 34-21704; File No. SR-NYSE-85-1]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange Relating to Percentage Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 24, 1985, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends the Exchange's rules relating to percentage orders, Rules 13 and 123A.30, to permit "conversions" of percentage orders into regular limit orders upon the occurrence of two events not available under the present scheme of the rules:

(A) On "destabilizing" ticks where

(1) The transaction is for at least 10,000 shares, and

(2) The price is not more than ¼ point away from the last sale; and

(B) When conversion would "better the market" by narrowing the quotation spread for adding size to the existing quotation.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* The proposed rule change adds two new circumstances in which the specialist can introduce percentage orders into the auction, permitting him for the first time to convert percentage orders along with the trend of the market against new interest as it enters the market. The Exchange is proposing that these new conversion opportunities be subject to certain limitations and conditions designed to prevent conversions of percentage orders from unduly influencing the market. The proposed rule change will contribute to the efficiency of the Exchange's market by giving the specialist additional flexibility to handle and service large-size orders, thereby enhancing the overall quality of the Exchange's auction market system.

(a) *Present Scheme.* To explain the proposed amendments, one must first

describe the purpose and workings of the present provisions of the percentage order rules.

The Exchange developed the percentage order to free a Floor broker from having to remain in the crowd to assure proper execution of a large order. The broker specifies in advance the total number of shares and a limit price (as well as the stock and "buy" or "sell"). The percentage order is actually a potential order on record with the specialist that becomes an actual limit order on the specialist's "book" only under certain circumstances. The percentage order rules provide procedures by which the specialist mechanically introduces the order into the auction process without unduly influencing the market price.

(i) *Transaction Elections.* The basic provisions from which the percentage order takes its name provides that trades occurring in the market "elect" portions of a percentage order to become regular limit orders. The time of execution and the number of shares executed at any given time are determined by the mechanics of the market. The specialist merely supervises and logs the orderly progression of the execution.

A portion of the percentage order is "elected" into a limit order in the following manner:

—As a certain number of shares of the stock, that is the subject of the percentage order is traded on the Exchange at the order's limit price or at a better price,

—An equal number of shares is entered on the specialist's book as a regular limit order at the price specified on the order, and

—The percentage order is reduced by that number of shares.

The portion "elected" is always equal in size to that of the transaction that triggered it to become a limit order. Thus, the elected portion constitutes 50 percent of the combined volume traded as a result of its execution and the electing transaction. The triggered portion will be treated as a new limit order and take its place behind other limit orders at the same price on the book.

When such an elected-portion/limit order is executed, it does not trigger other portions of the same or other percentage orders. Percentage orders have no influence on percentage orders. There is no compounding or "snowballing" effect.

At his option, the Floor broker placing the percentage order (the "entering broker") may give the specialist written permission to be on *parity* with the order, thereby allowing the specialist to trade along with the order. At no time, however, may the specialist participate in an amount greater than that of any "elected" portion(s), and in no event may the specialist trade ahead of or with other orders on the book.

(ii) *Stabilizing Tick Conversions.* Prior to 1977 (when amendments to Rules 13 and 123A.30 brought them to their current form), a frequent complaint was that those rules did not provide for the participation by percentage orders in large contra-side interest entering the market. That is, since percentage orders were not eligible for an execution until after a triggering sale had taken place, specialists were unable to participate in large-size trades on behalf of such orders. Instead, all or part of a large percentage order was "elected" for execution in a large-size trade's "after-market", where execution of the elected portion could disrupt price continuity. For example, if the sale of a block of stock results in a price decline, the subsequent execution of a large percentage buy order elected by the block would drive the price up again.

The 1977 amendments permitted a specialist, under specified conditions, to convert an unelected percentage order into a limit order without waiting for all or part of the order to be elected. This permits the order to trade directly with contra-side interest as that interest enters the market. Any portion of the temporarily-converted order that does not participate in the trade reverts back to the percentage order. Percentage orders accompanied by conversion instructions are commonly referred to on the Floor as "CAP" orders, an acronym for "convert and parity".[1] Under the current rules, however, a specialist can execute an unelected portion of a CAP order only if the transaction is stabilizing: on "minus" or "zero minus" ticks in the case of a buy order, and on "plus" or "zero plus" ticks in the case of a sell order.[2]

As an example, assume that the market in XYZ is 29¾–30 with a last sale at 30. Assume further that the specialist then accepts a CAP order to buy 10,000 shares of XYZ stock with a top limit of 30 and that, thereafter, substantial selling interest enters the market to sell at 29⅞. The specialist can convert the unelected CAP order and execute it against that contra-side interest at 29⅞ since the execution will be a minus tick.

The proposed rule change is concerned only with the conversion aspect of the percentage order rules; the election aspect is not proposed to be changed.

(b) *Proposed Amendments.* As noted above, the proposed rule change adds to the present conversion events two additional conversion events: conversions on destabilizing ticks and conversions to better the market. The Exchange is proposing to accompany the two new conversion events with provisions that will assure that the increased opportunities for conversions do not come at the cost of disadvantaging other orders in the market or of unduly influencing overall market trends.

(i) *Destabilizing Tick Conversions.* The 1977 amendments to the percentage order rules, in first permitting conversions on stabilizing ticks, recognized that allowing the specialist to convert and execute percentage orders in stabilizing transactions was entirely in keeping with his market-making obligations. The 1977 amendments included the stabilizing tick restriction to assure that the specialist, in converting percentage orders, would not unduly influence market prices or market trends. The Exchange is now proposing to permit conversions on destabilizing ticks, subject to limitations designed to provide the same assurance.

(A) *10,000 Share—¼ Point Limitations*—The proposed rule change, in modifying the stabilizing tick restriction, contains three significant safeguards. First, the specialist may convert percentage orders on destabilizing ticks only for participation in trades of 10,000 shares or more. Second, he may so convert percentage orders for participation in trades only at a price that is no more than ¼ of a point away from the last sale.[3] Third, he

[1] The "parity" instruction on a CAP order permits the specialist to be on "parity" (able to trade along) with a percentage order. If the specialist holds more than one percentage order in the same stock, he may not be on parity with them unless each of the entering brokers has permitted the specialist to be on parity with his order.

[2] That is, the buy (sell) transaction must be stabilizing: either the transaction must be lower (higher) than the last sale or it can equal the last sale if the last transaction at a changed price was at a price lower (higher) than the last sale preceding it. Note that a converted percentage order must go behind any limit orders in the specialist's possession at the same or better price.

[3] With the approval of a Floor Official, the entering broker can waive the ¼ point limitation. (Proposed Rule 123A.30, fourth paragraph.)

cannot convert percentage orders for consecutive trades on destabilizing ticks, or for a series of contemporaneous trades on destabilizing ticks even if not consecutive, without the approval of a Floor Governor.

The modest scope of the proposed modification is apparent when viewed from the perspective of the areas where the destabilizing tick restriction will remain. The first two limitations have the effect of continuing to preclude conversions on destabilizing ticks to:

—Buy (sell) stock in trades of less than block size at *any* price, and
—Buy (sell) stock in trades of *any* size at a price that is more (less) than ¼ of a point above (below) the last sale.[4]

The modification recognizes that block-size trades can ordinarily be anticipated to move the market as much as ¼ of a point, and that such a price movement would not be considered unusual or improper given the size of the trade. Thus, the proposed rule change would permit the specialist, for the first time, to service entering brokers in the way they and their customers desire: by executing percentage orders along with the trend of the market.

The third limitation, by prohibiting a series of trades on destabilizing ticks, prevents the specialist from "splitting" his conversions and executions among a series of trades. This precludes the specialist from creating a series of consecutive or contemporaneous trades that, although each individually meets the ¼ point limitation, create a market trend.

When taken together with the precentage order's price limit and the interest of the customer in achieving executions of buy (sell) percentage orders at the most appropriate prices possible, the Exchange believes that the limitations governing conversions on destabilizing ticks will permit the specialist to service the auction market more efficiently while still maintaining restrictions designed to prevent converted percentage orders from unduly influencing market prices or trends.

(B) *Block Crosses*—The specialist's ability to convert percentage orders on destabilizing ticks substantially increases the potential for large orders left with the specialist to displace other large orders brought to the Floor for execution in cross transactions. The proposed rule change addresses this potential problem by precluding the specialist from converting percentage orders on a destabilizing tick when a member wants to cross stock unless the specialist can provide a better price to one side or the other of the cross at or within the ¼ point price parameter. Thus, the specialist cannot interfere with the proposed cross unless he is playing a positive market role by providing a more advantageous price to either the buyer or the seller on the cross. The specialist would be prohibited from circumventing this limitation by effecting a proprietary trade that would create a new last sale price extending the ¼ point price parameter so that the specialist could then interfere with the proposed cross.

(ii) *Bettering the Market.* The proposed provisions for "quote conversions" are straightforward: The specialist can convert, in such size as he deems appropriate, (A) to narrow the spread, (B) to add depth to the prevailing bid or offer, or (C) to make a bid or offer immediately following a transaction where such transaction has cleared the Floor of bids or offers.

The Exchange believes that quote conversions permit the specialist to convert all or a portion of a percentage order in a situation where there can be no debate as to whether the market as a whole stands to benefit from the conversion. Quote conversions will have the ancillary benefit of causing the quotations disseminated by the Exchange to better reflect the trading interest in the market. For the first time, the specialist will be able to show unelected portions of percentage orders in the quote. This may draw contra-side interest into the market that otherwise might not develop, thereby strengthening the Exchange's auction market system.

(iii) *Ancillary Provisions.* The proposed rule change contains three provisions designed to clarify the application of several other Exchange rules to the specialist's conversion of percentage orders. The three provisions make clear that the specialist:

—May be the contra party to a converted percentage order, but must strictly comply with Rule 91.10's "double yellow" procedure for procuring the entering broker's post-trade confirmation of the trade.
—Remains fully subject to Exchange rules as to purchases for his own account on destabilizing ticks.
—Must give priority to conventional limit orders already on his book when converting percentage orders.

The proposed rule change also makes clear that the prohibition in the present percentage order rules on a specialist participating for his own account for an amount larger than that received by each percentage order does not prevent his participation from exceeding that of a percentage order whose size is exhausted in the transaction.

(2) *Statutory Basis.* The proposed rule change is consistent with the requirements of the 1934 Act and the rules and regulations thereunder applicable to the Exchange and, in particular, section 6(b)(5) in that it will promote the quality, depth and liquidity of the Exchange's stock market. By permitting the specialist to add to depth and liquidity through his representation of percentage orders in situations where he may not currently do so, the proposed rule change will have the effect of "facilitating transactions in securities" and will help to "perfect the mechanism of a free and open market" as called for in section 6(b)(5). By creating opportunities for participation of percentage orders in the Exchange's auctions where none exists today, it will remove impediments to, and otherwise facilitate, a free and open market for stock transactions.

In addition, the proposed rule change will enable the Exchange to offer additional assistance in handling large orders, thereby promoting intermarket competition for large orders. This will remove a burden on competition not necessary or appropriate in furtherance of the purposes of the 1934 Act as called for in section 6(b)(8), and will promote fair competition among brokers and dealers as called for in Section 11A(a)(1(C)(ii).

The proposed rule change also furthers the Congressional findings enunciated in section 11A(a)(1) in that better market conversions will help assure dissemination to brokers, dealers and investors of quotation information that better reflects the interest on the Floor.

(B) Self-Regulatory Organization's Statement on Burden on Competition

As noted above, the Exchange believes that affording specialists additional opportunities to convert percentage orders not only imposes no burden on competition, but in fact removes an unjustified competitive burden. By providing methods that both achieve the purposes of the present constraints on coverting percentage orders, yet pose less of a barrier to the specialist in competing for large orders, the proposed rule change demonstrates the availability of a less anticompetitive means for achieving the same regulatory goals.

[4] Subject to waiver as described in note 3, *supra*.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, written comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriated and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 5, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 1, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-3528 Filed 2-11-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21725; SR-PCC-85-1 and SR-PSDTC-85-01]

Self-Regulatory Organizations; Pacific Clearing Corporation and Pacific Securities Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)1), notice is hereby given that on January 21, 1985, the Pacific Clearing Corporation ("PCC") and the Pacific Securities Depository Trust Company ("PSDTC") (the "Clearing Agencies") filed with the Securities and Exchange Commission the rule changes described below. The Commission is publishing this notice to solicit comments on the rule changes.

First, the proposed rule changes would amend Article I, section 1.1 of each Clearing Agency's Bylaws: (1) To change the date and location of the annual meeting of stockholders from the thrid Thursday in January to the fourth Thursday in January; and (2) to provide that the meeting will be held in their San Francisco office.[1] Second, the proposals would amend Article II, section 2.10 of PCC's Bylaws to require a majority of PCC directors to be present at a meeting to constitute a quorum. The Bylaw previously required six directors for a quorum. PCC has amended Article II to conform it to PSDTC's Bylaws. Third, the proposals would expand classes of persons eligible to be Clearing Agency Directors. The proposals would amend Bylaw Article II, Section 2.2(b), which currently provides that, to be eligible for a directorship, a person must be an officer, director or a general partner of a Clearing Agency participant or a Pacific Stock Exchange ("PSE") member organization or a member of PSE's Board of Governors. The proposals would enable a Clearing Agency officer to serve on either Board. The Clearing Agencies represent in their filings that a Clearing Agency officer would be nonminated and elected in accordance with existing procedures that are intended to assure fair representation of Clearing Agency participants in the selection of directors. Finally, PCC's proposal would amend Article III of PCC's Restated Articles of Incorporation and Article X, section 10.1 of its Bylaws to change the location of PCC's principal officers from Los Angeles to San Francisco, California.

[1] In 1984, the Pacific Stock Exchange Incorporated ("PSE"), PCC/PSDTC's parent corporation, changed the date of its annual meeting to the fourth Thursday in January.

The Clearing Agencies believe that the proposed rule changes are consistent with section 17A of the Act in that the changes will not adversely affect safeguarding securities and funds in their custody or control or for which they are responsible. The Clearing Agencies further believe that the proposals are consistent with section 17A in that they will continue to assure fair representation of participants in the administration of Clearing Agency affairs.

The rule change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You can submit written comment within 21 days after publication of this notice in the **Federal Register**. Please refer to File Nos. SR-PCC-85-01 and SR-PSDTC-85-01, and file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission and other material relating to the rule change, except for material that may be withheld from the public under 5 U.S.C. 552, is available at the Commission's Public Reference Room and at the principal offices of PCC/PSDTC.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: February 6, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-3525 Filed 2-11-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21713; File No. SR-PSE-84-13]

Self-Regulatory Organization; Proposed Rule Change by Pacific Stock Exchange, Inc.; Filing and Immediate Effectiveness

February 4, 1985.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on June 7, 1984, the Pacific Stock Exchange, Inc. ("PSE") filed with the Securities and Exchange Commission the proposed rule

change as described herein.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change will amend Commentary .01 of PSE Rule VI, section 62 to clarify that floor brokers' use of due diligence in executing an order includes ascertaining, before executing an order, whether a better price than is displayed by either the order book official or the crowd is available from another floor broker or market maker. On December 21, 1984, the PSE submitted Amendment No. 1 to SR-PSE-84-13 to amend further Rule VI, Section 62, Commentary .01 by adding to it language currently included in PSE Options Floor Procedure Advice A-8 that will require floor brokers to announce solicitations of the best price or prices available and allow adequate time, depending on market conditions, for other members to respond. The PSE also proposed to withdraw Advice A-8 as thereby amended, because, the PSE states, the Advice would repeat the requirements of Commentary .01. According to the PSE, the proposed rule change will be consistent with the requirements of section 6(b)(5) of the Act in facilitating transactions in securities and protecting investors and the public interest.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act. At any time within sixty days of the filing of Amendment No. 1 to such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Reference should be made to File No. SR-PSE-84-13.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available at the principal office of the PSE.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-3524 Filed 2-11-85; 8:45 am]

BILLING CODE 8010-01-M

[1] Because of specific amendments requested by the Commission staff and agreed to by the PSE, notice of the June 7, 1984 filing was not published. The PSE has agreed that the date of effectiveness of the proposed rule change is December 21, 1984, the date of filing of Amendment No. 1. Telephone conversation between Donald Nisonoff, Branch of Exchange Regulation, SEC, and Steven Wolf, Compliance Department, PSE, January 18, 1984.

[Release No. 34-21709; File No. SR-PHLX 85-1]

Self-Regulatory Organizations; Proposed Rule Change by Philadelphia Stock Exchange, Inc. Relating to Procedures for the Delivery and Pricing of Orders in Securities Which Compose an Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 24, 1985, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change which is described below, consists of procedures regarding the delivery and pricing of orders in Philadelphia Stock Exchange ("PHLX") traded securities which compose an index. Such procedures are proposed to be implemented on a one year pilot basis.

(a) Definitions:

(i) PRL means a combined round-lot and odd-lot order; and

(ii) Eligible securities means those securities designated by the specialist.

(b) The PHLX proposes, on a trial basis, to utilize existing computer facilities to enable member organizations to electronically transmit, directly to the specialist post, market orders in eligible securities after the opening of trading in such securities. Such orders will be executed in accordance with the applicable rules of the PHLX as follows:

(A) Market orders (odd-lots, round lots and PRL's up to 599 shares) will be executed at the best bid/offer quote among the American, Boston Cincinnati, Midwest, New York, Pacific or Philadelphia Stock Exchanges or ITS/CAES.

(B) Market orders (round-lots and PRL's over 599 shares) will be executed in accordance with arrangements agreed upon by the specialist and the member organization transmitting the order.

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) *Purpose.* The purpose of the proposed rule change is to extend for a period of one (1) year the nine (9) month pilot program for the PHLX's Designated Underlying Index Transaction ("DUIT").

The Designated Underlying Index Transaction program, which is described more fully in SR-PHLX 83-26 as approved by the Securities and Exchange Commission on May 4, 1984 (see Order Approving Proposed Rule Change, Release No. 20928) is intended to provide member organizations with an easy, efficient method of order entry and execution with timely reports for transactions in equity securities which hedge index related transactions, e.g., in index options, index futures and options on index futures.

The PHLX's existing computer facilities will enable PHLX member organizations to transmit such orders electronically directly to the specialist. This will be accomplished by means of the PACE system, PHLX's order delivery and execution system.

Because of certain enhancements which are being made to the PACE system, the Designated Underlying

Index Transaction program has not been implemented. It is for this reason that the extension of the original nine (9) month pilot period is requested.

(b) *Statutory basis for proposed rule change.* Implementation of the proposed rule change will be consistent with those provisions of the Securities Exchange Act of 1934 ("Act") which encourages the use of new data processing and communications techniques which create the opportunity for more efficient and effective market operations. See Sections 6(b)(5) and 11A(a)(1) of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that any burdens will be placed on competition as a result of such change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments on this proposed rule change have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PHLX requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the efficiencies resulting from the effectiveness of the proposed rule change will directly benefit the public, member organizations and members on the floor as soon as it has been approved. Therefore the PHLX requests accelerated effectiveness in order to make these benefits available as soon as possible.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the original nine month DUIT program was set to expire on February 4, 1985. The Commission believes that a one year extension of the pilot program is appropriate to permit the PHLX to implement certain systems enhancements required to make the pilot fully operational.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 5, 1985.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 4, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-3526 Filed 2-11-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23594; 70-70787]

EnergyNorth, Inc.; Proposed Acquisition of Utility Securities

February 6, 1985.

EnergyNorth, Inc. ("ENI"), 1260 Elm Street, P.O. Box 329, Manchester, New Hampshire 03105, a New Hampshire corporation and an exempt holding company under section 3(a)(1) of the Public Utility Holding Company Act of 1935 ("Act"), has filed an application with this Commission pursuant to section 9(a)(2) and 10 of the Act.

ENI holds all of the outstanding common stock of Manchester Gas Company ("MGC") and Gas Service, Inc. ("GSI"), both New Hampshire corporations regulated as public utilities and engaged in the distribution of gas to residential, commercial, and industrial users in the Manchester, New Hampshire and the Nashua and Laconia, New Hampshire areas, respectively. Each is a "gas utility company" within the meaning of section 2(a)(4) of the Act. MGC provides service to approximately 16,000 customers. It also distributes propane through truck delivery of cylinders or bulk supply, and is engaged in equipment rental and appliance sales, all entirely within the state of New Hampshire.

GSI provides service to approximately 21,000 customers. It also distributes propane through bulk delivery by truck, and is engaged in equipment rental and in appliance and jobbing sales, all entirely within the state of New Hampshire. GSI has one wholly-owned subsidiary, Energy Resources Corporation, which was formed to participate with other companies in gas exploration and development; it is currently inactive.

ENI also owns the outstanding common stock of two other subsidiaries. The first, Rent-A-Space of New England, Inc., which had been actively engaged in the self-service storage business, sold its self-service storage assets November 30, 1984. The second nonutility subsidiary, EnergyNorth Realty, Inc. ("Realty"), was created to buy, sell and lease real estate. Presently, Realty's only activity is the ownership and leasing of the real estate in Manchester, New Hampshire in which ENI and all of its subsidiaries maintain offices.

ENI is proposing the acquisition of all of the outstanding shares of common and preferred stock of Concord Natural Gas Corporation ("CNGC"), a New Hampshire corporation. It is engaged in the distribution of gas and as of September 30, 1984, it had 6,216 residential, commercial, and industrial customers in the Concord, New Hampshire area and is a "gas utility company" under section 2(a)(4) of the Act. The franchise areas of CNGC, GSI and MGC are contiguous. In addition to its regulated gas utility operations, CNGC, through its wholly-owned subsidiary, Concord Gas Service Corporation, distributes liquid propane, primarily to residential and commercial customers.

ENI proposes to acquire, pursuant to an Agreement and Plan of Exchange dated as of January 18, 1985, between ENI and CNGC ("Agreement"), all of the outstanding shares of common and preferred stock of CNGC, except those shares held by persons who dissent from the Reorganization and perfect their right to be paid fair value for their shares, pursuant to the provisions of New Hampshire law. This Reorganization will be accomplished by means of a statutory share exchange pursuant to which each share of CNGC common stock, $5.00 par value ("CNGC Common Stock"), outstanding at the time of consummation of the Reorganization ("Effective Date") will automatically, by operation of law, be exchanged for 8.2 shares of ENI common

stock, $1.00 par value ("ENI Common Stock"), and each share of CNGC 5½% cumulative preferred stock, $100.00 par value ("CNGC Preferred Stock"), outstanding at the Effective Date will automatically, by operation of law, be exchanged for 6.3 shares of ENI Common Stock. It is stated in the application that in arriving at the exchange ratios of ENI Common Stock for CNGC Preferred and Common Stock, the parties considered the historical and recent values of their stocks and the earnings, cash flow, dividened records, net worth, borrowing capacities, growth potential and management expertise of the two companies. As a result of the statutory share exchange, ENI will become the owner of all of the then outstanding CNGC Common and Preferred Stock. ENI and CNGC intend that CNGC will continue separate operation of its business following the Reorganization. The general policies and decisions of ENI will affect the operation and business of CNGC.

The Board of Directors of ENI, which presently consists of twelve directors, will be increased by three members who have been nominated by CNGC. In addition, pursuant to the Agreement, three directors of ENI will become directors of CNGC. The Boards of Directors of both ENI and CNGC have approved the Reorganization and the execution of the Agreement.

The obligations of ENI and CNGC to effect the Reorganization are subject to the satisfaction of a number of conditions, among which are adoption and approval of the Agreement by CNGC stockholders, performance by ENI and CNGC of their respective covenants contained in the Agreement, and the obtaining of all required authorizations, consents, approvals, orders, rulings and exemptions of all federal, state and local governmental agencies.

The Agreement provides that, whether or not the Reorganization is consummated, all expenses incurred in connection with the Agreement and the transactions contemplated thereby, will be paid by the party incurring such expenses, except that expenses (including without limitation, legal and accounting fees) directly related to the Reorganization such as expenses incurred in connection with the preparation and printing of this Proxy Statement-Prospectus, the preparation of the Agreement and related documents, and the obtaining of various rulings and approvals on which the Agreement is conditioned, will be borne 80% by ENI and 20% by CNGC.

The Application states the Reorganization will give the holders of CNGC Common and Preferred Stock (who do not exercise their right to dissent) an interest in a substantially larger enterprise and ownership of a more actively traded, more marketable, security. The Boards of Directors of ENI and CNGC believe that the Reorganization will give CNGC greater financial capabilities and administrative flexibility through affiliation with ENI. The affiliation with ENI should provide potential for long-term growth and economies and will enhance the ability of CNGC to attract equity capital and both long- and short-term financing. Affiliation with ENI will enhance the ability of CNGC to compete with sellers of other fuels in its franchise areas. In the area of gas supply, affiliation will provide CNGC with time and expense savings in developing new sources of supply without increased competition. Gas cost savings should be realized through the better utilization of existing contracts and possibly through negotiation of new contracts. It is also expected that the following services, without limitation, will be furnished by ENI or shared by ENI and its present subsidiaries and CNGC with attendant cost savings: tax and accounting services, insurance, employee benefits and other related financial matters; more efficient use of administrative staff; and the purchase of supplies and equipment.

The application and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 4, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact and/or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as filed or as it may be amended, may be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-3523 Filed 2-11-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 04/04-5217]

Central Georgia Capital Funding, Inc.; License Surrender

Notice is hereby given that Central Georgia Capital Funding, Inc., P.O. Box 218, Ellenwood, Georgia 30049, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended, (the Act). Central Georgia Capital Funding, Inc., was licensed by the Small Business Administration on May 9, 1983.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender was accepted on January 30, 1985, and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011. Small Business Investment Companies)

Dated: February 6, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-3506 Filed 2-11-85; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 04/04-0235

Hickory Venture Capital Corp.; Application for a License as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the SBA Regulations (13 CFR 107.102 (1984) by Hickory Venture Capital Corporation, Suite 1213, 165 Madison Avenue, Memphis, Tennessee 38103 for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*). The applicant intends to relocate in Huntsville, Alabama.

The proposed officers, directors and sole shareholder are:

Name and address	Title and relationship	Percent of ownership
J. Thomas Noojin, 2235 Southwood Road, Jackson, Miss. 39211.	President (General Manager) and Director.	
George P. Lewis, 917 Summer Shade Lane, Memphis, Tenn. 381167.	Vice President and Director.	
Janet L. Medlin, 3691 Evergreen Drive, Olive Branch, Miss. 38354.	Secretary-Treasurer	

Name and address	Title and relationship	Percent of ownership
First Tennessee Bank National Association, 165 Madison Avenue, Suite 1213, Memphis, Tenn. 38103.	Parent Company.....	100

First Tennessee Bank National Association is a wholly-owned subsidiary of First Tennessee National Corporation, a Tennessee corporation organized under The Bank Holding Company Act of 1956, as amended. There are no owners of 10 percent or more of the voting securities of First Tennessee National Corporation. First Tennessee National Corporation's securities are publically owned and traded on the over the counter market. The value of the securities of Hickory Venture Capital Corporation owned by First Tennessee Bank National Association will not exceed 5 percent of the latter's capital and surplus.

The Applicant will begin operations with a capitalization of $4.0 million and will be a source of equity capital and long term funds for qualified small business concerns whose needs might not be met by traditional funding sources.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed management, and the probability of successful operations of the new company under their management, including adequate profitability and financial soundness, in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street NW., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in Memphis, Tennessee and Huntsville, Alabama.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 4, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-3505 Filed 2-11-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: February 7, 1985.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545-0666
Form Number: IRS Form FOD-673
Type of Review: Reinstatement
Title: Statement of Claiming Benefits Provided by Section 911 of the Internal Revenue Code

OMB Number: IRS Form 843
Form Number: 1545-0024
Type of Review: Revision
Title: Claim
Clearance Officer: Garrick Shear (202) 566-6254, Room 5571, 1111 Constitution Avenue, NW., Washington, D.C. 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0038
Form Number: ATF F 5030.6
Type of Review: Revision
Title: Authorization to Furnish Financial Information and Certificate of Compliance (Right to Financial Privacy Act of 1978)

OMB Number: 1512-0115
Form Number: ATF F 2140 (5220.4)
Type of Review: Extension
Title: Monthly Report—Export Warehouse Proprietor
Clearance Officer: Howard Hood (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 2228, Federal Building, 1200 Pennsylvania Avenue NW., Washington, D.C. 20226.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building Washington, D.C. 20503.

Joseph F. Maty,

Departmental Reports Management Office.

[FR Doc. 85-3534 Filed 2-11-85; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Department Circular Public Debt Series—No. 2-85]

Treasury Notes of February 15, 1988; Series R-1988

January 30, 1985.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $7,250,000,000 of United States securities, designated Treasury Notes of February 15, 1988, Series R-1988 (CUSIP No. 912827 RV 6), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Noties and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated February 15, 1985, and will accrue interest from that date, payable on a semiannual basis on August 15, 1985, and each subsequent 6 months on February 15, and August 15 through the date that the principal becomes payable. They will mature February 15, 1988, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Notes in registered definitive form will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,0000. Notes in book-entry form will be issued in multiples of those amounts. Notes will not be issued in bearer form.

2.5. Denominational exchanges of registered definitive Notes, exchanges of Notes between registered definitive and book-entry forms, and transfers will be permitted.

2.6. The Department of the Treasury's general regulations governing United States securities apply to the Notes offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Standard time, Tuesday, February 5, 1985. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, February 4, 1985, and received no later than Friday, February 15, 1985.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5 Tenders for their own account will be received without deposits from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.250. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1 Settlement for the Notes allotted must be made at the Federal Reserve Band or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Friday, February 15, 1985. Payment in full must accompany tenders submitted by all other investors. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, February 13, 1985. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Friday, February 15, 1985. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2 In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3 Registratered definitive securities tendered in payment for the Notes

allotted are not required to be assigned if the new Notes are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Notes are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (Notes offered by this circular) in the name of (name and taxpayer identifying number)". Specific instructions for the issuance and deliver of the new Notes, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4 Registered definitive Notes will not be issued if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Notes in registered definitive form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Notes have been inscribed.

6. General Provisions

6.1 As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the Notes on full-paid allotments, and to maintain, service, and make payment on the Notes.

6.2 The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3 The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

George Murphy,

Acting Fiscal Assistant Secretary.

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[Department Circular Public Debt Series—No. 3-85]

Treasury Notes of February 15, 1995; Series A-1995

January 30, 1985.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $6,000,000,000 of United States securities, designated Treasury Notes of February 15, 1995, Series A-1995 (CUSIP No. 912827 RW 4), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government Accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1 The Notes will be dated February 15, 1985, and will accrue interest from that date, payable on a semiannual basis on August 15, 1985, and each subsequent 6 months on February 15 and August 15 through the date that the principal becomes payable. They will mature February 15, 1995, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2 The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Notes in registered definitive form will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Notes in book-entry form will be issued in multiples of those amounts. Notes will not be issued in bearer form.

2.5. Denominational exchanges of registered definitive Notes, exchanges of Notes between registered definitive and book-entry forms, and transfers will be permitted.

2.6. A book-entry Note may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, and transfer of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.5. of this section are descriptive of Notes in their fully constituted form; the description of the separate Principal and Interest Components is set forth in Section 6 of this circular.

2.7. The Department of the Treasury's general regulations governing United States securities apply to the Notes offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, February 6, 1985. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, February 5, 1985, and received no later than Friday, February 15, 1985.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as

dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 97.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Friday, February 15, 1985. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, February 13, 1985. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Friday, February 15, 1985. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted are not required to be assigned if the new Notes are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Notes are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (Notes offered by this circular) in the name of (name and taxpayer identifying number)". Specific instructions for the issuance and delivery of the new Notes, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4. Registered definitive Notes will not be issued if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. Delivery of the Notes in registered definitive form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Notes have been inscribed.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS program (Separate Trading of Registered Interest and Principal of Securities), a book-entry Note may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The components of a Note are: each future semiannual interest payment (hereafter referred to as an Interest Component); and the principal payment (hereafter referred to as the Principal Component). Each Interest Component and Principal Component shall have its own CUSIP number and designation, which are set forth in Attachment A hereto.

6.2. In order for a book-entry Note to be separated into the components described in Section 6.1., the par amount of the Note must be in an amount which, based on the stated interest rate of the Note, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. The minimum and multiple par amount required to obtain the separate components for this offering will be

provided in the public announcement of the amount and yield range of accepted bids for the Notes. The chart in Attachment B hereto provides the minimum and multiple par amounts required to separate a security into components at various stated interest rates.

6.3. Only Notes in book-entry form may be separated into their components. Such separation may be effected at any time from the issue date until maturity. A request to obtain the separate components must be made to the Federal Reserve Bank maintaining the account for the book-entry Notes. Normally, any such request shall be executed by the Federal Reserve Bank within 3 business days after it is received.

6.4. The Principal Component will be payable on February 15, 1995.

6.5. Each Interest Component will be payable on its particular due date designated in Attachment A hereto.

6.6. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

6.7. Once a book-entry Note has been separated into its components, each Interest Component and the Principal Component may be maintained and transferred in multiples of $1,000, regardless of the par amount initially required for separation or the resulting amount of each Interest Component.

6.8. Interest Components and Principal Components may be held only in book-entry form.

6.9. Once there is a disposition of any amount of an Interest Component or of a Principal Component, the holder of the Note will be considered for tax purposes to have stripped the amount of principal allocable to the amount of the components disposed of as of the date such first disposition occurs. Both the retained amount allocable to the stripped principal and the amount disposed of are thereafter treated as discount obligations, and the holders of such are subject to periodic income inclusion and other provisions of the Internal Revenue Code of 1954.

6.10. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies at such time and such value as will be determined by the Secretary of the Treasury. They will not be acceptable in payment of Federal taxes.

6.11. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Notes separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the Notes on full-paid allotments, and to maintain, service, and make payment on the Notes.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

7.3. The Notes issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

7.4. Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

Attachment A.—CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Notes of February 15, 1995, Series A–1995, CUSIP No. 912827 RW 4

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) Series A–1995 due February 15, 1995, CUSIP No. 912820 AA 5.

INTEREST COMPONENTS

Designation	CUSIP No. 912833
Treasury Interest (TINT) A–1995 Due	
Aug. 15, 1985	AA 8
Feb. 15, 1986	AB 6
Aug. 15, 1986	AC 4
Feb. 15, 1987	AD 2
Aug. 15, 1987	AE 0
Feb. 15, 1988	AF 7
Aug. 15, 1988	AG 5
Feb. 15, 1989	AH 3
Aug. 15, 1989	AJ 9
Feb. 15, 1990	AK 6
Aug. 15, 1990	AL 4
Feb. 15, 1991	AM 2
Aug. 15, 1991	AN 0
Feb. 15, 1992	AP 5
Aug. 15, 1992	AQ 3
Feb. 15, 1993	AR 1
Aug. 15, 1993	AS 9
Feb. 15, 1994	AT 7
Aug. 15, 1994	AU 4
Feb. 15, 1995	AV 2

ATTACHMENT B.—MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000

Coupon percent	Minimum face (dollars)	Interest payment (dollars)
5.000	40,000	1,000
5.125	1,600,000	41,000
5.250	800,000	21,000
5.375	1,600,000	43,000
5.500	400,000	11,000
5.625	320,000	9,000
5.750	800,000	23,000
5.875	1,600,000	47,000
6.000	100,000	3,000
6.125	1,600,000	49,000
6.250	32,000	1,000
6.375	1,600,000	51,000
6.500	400,000	13,000
6.625	1,600,000	53,000
6.750	800,000	27,000
6.875	320,000	11,000
7.000	200,000	7,000
7.125	1,600,000	57,000
7.250	800,000	29,000
7.375	1,600,000	59,000
7.500	80,000	3,000
7.625	1,600,000	61,000
7.750	800,000	31,000
7.875	1,600,000	63,000
8.000	25,000	1,000
8.125	320,000	13,000
8.250	800,000	33,000
8.375	1,600,000	67,000
8.500	400,000	17,000
8.625	1,600,000	69,000
8.750	160,000	7,000
8.875	1,600,000	71,000
9.000	200,000	9,000
9.125	1,600,000	73,000
9.250	800,000	37,000
9.375	64,000	3,000
9.500	400,000	19,000
9.625	1,600,000	77,000
9.750	800,000	39,000
9.875	1,600,000	79,000
10.000	20,000	1,000
10.125	1,600,000	81,000
10.250	800,000	41,000
10.375	1,600,000	83,000
10.500	400,000	21,000
10.625	320,000	17,000
10.750	800,000	43,000
10.875	1,600,000	87,000
11.000	200,000	11,000
11.125	1,600,000	89,000
11.250	160,000	9,000
11.375	1,600,000	91,000
11.500	400,000	23,000
11.625	1,600,000	93,000
11.750	800,000	47,000
11.875	320,000	19,000
12.000	50,000	3,000
12.125	1,600,000	97,000
12.250	800,000	49,000
12.375	1,600,000	99,000
12.500	16,000	1,000
12.625	1,600,000	101,000
12.750	800,000	51,000
12.875	1,600,000	103,000
13.000	200,000	13,000
13.125	320,000	21,000
13.250	800,000	53,000
13.375	1,600,000	107,000
13.500	400,000	27,000
13.625	1,600,000	109,000
13.750	160,000	11,000
13.875	1,600,000	111,000
14.000	100,000	7,000
14.125	1,600,000	113,000
14.250	800,000	57,000
14.375	320,000	23,000
14.500	400,000	29,000
14.625	1,600,000	117,000
14.750	800,000	59,000
14.875	1,600,000	119,000
15.000	40,000	3,000
15.125	1,600,000	121,000
15.250	800,000	61,000
15.375	1,600,000	123,000
15.500	400,000	31,000
15.625	64,000	5,000

ATTACHMENT B.—MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000—Continued

Coupon percent	Minimum face (dollars)	Interest payment (dollars)
15.750	800,000	63,000
15.875	1,600,000	127,000
16.000	25,000	2,000
16.125	1,600,000	129,000
16.250	160,000	13,000
16.375	1,600,000	131,000
16.500	400,000	33,000
16.625	1,600,000	133,000
16.750	800,000	67,000
16.875	320,000	27,000
17.000	200,000	17,000
17.125	1,600,000	137,000
17.250	800,000	69,000
17.375	1,600,000	139,000
17.500	80,000	7,000
17.625	1,600,000	141,000
17.750	800,000	71,000
17.875	1,600,000	143,000
18.000	100,000	9,000
18.125	320,000	29,000
18.250	800,000	73,000
18.375	1,600,000	147,000
18.500	400,000	37,000
18.625	1,600,000	149,000
18.750	32,000	3,000
18.875	1,600,000	151,000
19.000	200,000	19,000
19.125	1,600,000	153,000
19.250	800,000	77,000
19.375	320,000	31,000
19.500	400,000	39,000
19.625	1,600,000	157,000
19.750	800,000	79,000
19.875	1,600,000	159,000
20.000	10,000	1,000
20.125	1,600,000	161,000
20.250	800,000	81,000

[FR Doc. 85-3495 Filed 2-8-85; 11:58 am]
BILLING CODE 4810-40-M

[Department Circular, Public Debt Series—No. 4-85]

Treasury Bonds of 2015

January 30, 1985.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $5,750,000,000 of United States securities, designated Treasury Bonds of 2015 (CUSIP No. 912810 DP 0), hereafter referred to as Bonds. The Bonds will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Bonds and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Bonds may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Bonds may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Bonds will be dated February 15, 1985, and will accrue interest from that date, payable on a semiannual basis on August 15, 1985, and each subsequent 6 months on February 15 and August 15 through the date that the principal becomes payable. They will mature February 15, 2015, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Bonds are subject to all taxes imposed under the Internal Revenue Code of 1954. The Bonds are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Bonds will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Bonds in registered definitive form will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Bonds in book-entry form will be issued in multiples of those amounts. Bonds will not be issued in bearer form.

2.5. Denominational exchanges of registered definitive Bonds, exchanges of Bonds between registered definitive and book-entry forms, and transfers will be permitted.

2.6. A book-entry Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, and transfer of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.5. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and Interest Components is set forth in Section 6 of this circular.

2.7. The Department of the Treasury's general regulations governing United States securities apply to the Bonds offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Standard time, Thursday, February 7, 1985. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, February 6, 1985, and received no later than Friday, February 15, 1985.

3.2. The par amount of Bonds bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Bonds applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 92.500. That stated rate of interest will be paid on all the Bonds. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Bonds specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Bonds allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Bonds allotted to institutional investors and to other whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Friday, February 15, 1985. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, February 13, 1985. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Bonds allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Friday, February 15, 1985. When payment has been submitted with the tender and the purchase price of the Bonds allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Bonds allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Bonds allotted are not required to be assigned if the new Bonds are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Bonds are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (Bonds offered by this circular) in the name of (name and taxpayer identifying number)". Specific instructions for the issuance and delivery of the new Bonds, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4. Registered definitive Bonds will not be issued if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. Delivery of the Bonds in registered definitive form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Bonds have been inscribed.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS program (Separate Trading of Registered Interest and Principal of Securities), a book-entry Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The components of a Bond are: Each future semiannual interest payment (hereafter referred to as an Interest Component); and the principal payment (hereafter referred to as the Principal Component). Each Interest Component and Principal Component shall have its own CUSIP number and designation, which are set forth in Attachment A hereto.

6.2. In order for a book-entry Bond to be separated into the components described in Section 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. The minimum and multiple par amount required to obtain the separate components for this offering will be provided in the public announcement of the amount and yield range of accepted bids for the Bonds. The chart in Attachment B hereto provides the minimum and multiple par amounts required to separate a security into components at various stated interest rates.

6.3. Only Bonds in book-entry form may be separated into their components. Such separation may be affected at any time from the issue date until maturity. A request to obtain the separate components must be made to the Federal Reserve Bank maintaining the account for the book-entry Bonds. Normally, any such request shall be executed by the Federal Reserve Bank within 3 business days after it is received.

6.4. The Principal Component will be payable on February 15, 2015.

6.5. Each Interest Component will be payable on its particular due date designated in Attachment A hereto.

6.6. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable

(without additional interest) on the next-succeeding business day.

6.7. Once a book-entry Bond has been separated into its components, each Interest Component and the Principal Component may be maintained and transferred in multiples of $1,000, regardless of the par amount initially required for separation or the resulting amount of each Interest Component.

6.8. Interest Components and Principal Components may be held only in book-entry form.

6.9. Once there is a disposition of any amount of an Interest Component or of a Principal Component, the holder of the Bond will be considered for tax purposes to have stripped the amount of principal allocable to the amount of the components disposed of as of the date such first disposition occurs. Both the retained amount allocable to the stripped principal and the amount disposed of are thereafter treated as discount obligations, and the holders of such are subject to periodic income inclusion and other provisions of the Internal Revenue Code of 1954.

6.10. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies at such time and such value as will be determined by the Secretary of the Treasury. They will not be acceptable in payment of Federal taxes.

6.11. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Bonds separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the Bonds on full-paid allotments, and to maintain, service, and make payment on the Bonds.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Bonds. Public announcement of such changes will be promptly provided.

7.3. The Bonds issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Bonds.

7.4. Attachments A and B are incorporated as part of this offering circular.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

Attachment A.—CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Bonds of February 15, 2015, CUSIP No. 912810 DP0

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) 2015 due February 15, 2015, CUSIP No. 912803 AA 1.

INTEREST COMPONENTS

Designation	CUSIP No. 912833
Treasury Interest (TINT) 2015 Due	
Aug. 15, 1985	AW 0
Feb. 15, 1986	AX 8
Aug. 15, 1986	AY 6
Feb. 15, 1987	AZ 3
Aug. 15, 1987	BA 7
Feb. 15, 1988	BB 5
Aug. 15, 1988	BC 3
Feb. 15, 1989	BD 1
Aug. 15, 1989	BE 9
Feb. 15, 1990	BF 6
Aug. 15, 1990	BG 4
Feb. 15, 1991	BH 2
Aug. 15, 1991	BJ 8
Feb. 15, 1992	BK 5
Aug. 15, 1992	BL 3
Feb. 15, 1993	BM 1
Aug. 15, 1993	BN 9
Feb. 15, 1994	BP 4
Aug. 15, 1994	BQ 2
Feb. 15, 1995	BR 0
Aug. 15, 1995	BS 8
Feb. 15, 1996	BT 6
Aug. 15, 1996	BU 3
Feb. 15, 1997	BV 1
Aug. 15, 1997	BW 9
Feb. 15, 1998	BX 7
Aug. 15, 1998	BY 5
Feb. 15, 1999	BZ 2
Aug. 15, 1999	CA 6
Feb. 15, 2000	CB 4
Aug. 15, 2000	CC 2
Feb. 15, 2001	CD 0
Aug. 15, 2001	CE 8
Feb. 15, 2002	CF 5
Aug. 15, 2002	CG 3
Feb. 15, 2003	CH 1
Aug. 15, 2003	CJ 7
Feb. 15, 2004	CK 4
Aug. 15, 2004	CL 2
Feb. 15, 2005	CM 0
Aug. 15, 2005	CN 8
Feb. 15, 2006	CP 3
Aug. 15, 2006	CQ 1
Feb. 15, 2007	CR 9
Aug. 15, 2007	CS 7
Feb. 15, 2008	CT 5
Aug. 15, 2008	CU 2
Feb. 15, 2009	CV 0
Aug. 15, 2009	CW 8
Feb. 15, 2010	CX 6
Aug. 15, 2010	CY 4
Feb. 15, 2011	CZ 1
Aug. 15, 2011	DA 5
Feb. 15, 2012	DB 3
Aug. 15, 2012	DC 1
Feb. 15, 2013	DD 9
Aug. 15, 2013	DE 7
Feb. 15, 2014	DF 4
Aug. 15, 2014	DG 2
Feb. 15, 2015	DH 0

ATTACHMENT B.—MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000

Coupon (percent)	Minimum face (dollars)	Interest payment (dollars)
5.000	40,000	1,000
5.125	1,600,000	41,000
5.250	800,000	21,000
5.375	1,600,000	43,000
5.500	40,000	11,000
5.625	320,000	9,000
5.750	800,000	23,000
5.875	1,600,000	47,000
6.000	100,000	3,000
6.125	1,600,000	49,000
6.250	32,000	1,000
6.375	1,600,000	51,000
6.500	400,000	13,000
6.625	1,600,000	53,000
6.750	800,000	27,000
6.875	320,000	11,000
7.000	200,000	7,000
7.125	1,600,000	57,000
7.250	800,000	29,000
7.375	1,600,000	59,000
7.500	80,000	3,000
7.625	1,600,000	61,000
7.750	800,000	31,000
7.875	1,600,000	63,000
8.000	25,000	1,000
8.125	320,000	12,000
8.250	800,000	33,000
8.375	1,600,000	67,000
8.500	400,000	17,000
8.625	1600,000	69,000
8.750	160,000	7,000
8.875	1600,000	71,000
9.000	200,000	9,000
9.125	1,600,000	73,000
9.250	800,000	37,000
9.375	64,000	3,000
9.500	400,000	19,000
9.625	1,600,000	77,000
9.750	800,000	39,000
9.875	1,600,000	79,000
10.000	20,000	1,000
10.125	1,600,000	81,000
10.250	800,000	41,000
10.375	1600,000	83,000
10.500	400,000	21,000
10.625	320,000	17,000
10.750	800,000	43,000
10.875	1,600,000	87,000
11.000	200,000	11,000
11.125	1,600,000	89,000
11.250	160,000	9,000
11.375	1,600,000	91,000
11.500	400,000	23,000
11.625	1,600,000	93,000
11.750	800,000	47,000
11.875	320,000	19,000
12.000	50,000	3,000
12.125	1,600,000	97,000
12.250	800,000	49,000
12.375	1,600,000	99,000
12.500	16,000	1,000
12.625	1,600,000	101,000
12.750	800,000	51,000
12.875	1,600,000	103,000
13.000	200,000	13,000
13.125	320,000	21,000
13.250	800,000	53,000
13.375	1,600,000	107,000
13.500	400,000	27,000
13.625	1,600,000	109,000
13.750	160,000	11,000
13.875	1,600,000	111,000
14.000	100,000	7,000
14.125	1,600,000	113,000
14.250	800,000	57,000
14.375	320,000	23,000
14.500	400,000	29,000
14.625	1,600,000	117,000
14.750	800,000	59,000
14.875	1,600,000	119,000
15.000	40,000	3,000
15.125	1,600,000	121,000
15.250	800,000	61,000
15.375	1,600,000	123,000
15.500	400,000	31,000
15.625	64,000	5,000

ATTACHMENT B.—MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000—Continued

Coupon (percent)	Minimum face (dollars)	Interest payment (dollars)
15.750	800,000	63,000
15.875	1,600,000	127,000
16.000	25,000	2,000
16.125	1,600,000	129,000
16.250	160,000	13,000
16.375	1,600,000	131,000
16.500	400,000	33,000
16.625	1,600,000	133,000
16.750	800,000	67,000
16.875	320,000	27,000
17.000	200,000	17,000
17.125	160,000	137,000
17.250	800,000	69,000
17.375	1,600,000	139,000
17.500	80,000	7,000
17.625	1,600,000	141,000
17.750	800,000	71,000
17.875	1,600,000	143,000
18.000	100,000	9,000
18.125	320,000	29,000
18.250	800,000	73,000
18.375	1,600,000	147,000
18.500	400,000	37,000
18.625	1,600,000	149,000
18.750	32,000	3,000
18.875	1,600,000	151,000
19.000	200,000	19,000
19.125	1,6000,000	153,000
19.250	800,000	77,000
19.375	320,000	31,000
19.500	400,000	39,000
19.625	1,600,000	157,000
19.750	800,000	79,000
19.875	1,600,000	159,000
20.000	10,000	1,000
20.125	1,600,000	161,000
20.250	800,000	81,000

[FR Doc. 85-3494 Filed 2-8-85; 11:58 am]

BILLING CODE 4810-40-M

Internal Revenue Service

[Delegation Order No. 210]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: Delegation Order No. 210 is added to grant to District Directors and to the Assistant Commissioner (Examination), in certain situations, the authority to make determinations with respect to abusive tax shelter partnerships. The text of the delegation order appears below.

EFFECTIVE DATE: January 25, 1985.

FOR FURTHER INFORMATION CONTACT: Robert E. Ackerman, Chief, Examination Programs Section (OP:EX:D:E), 1111 Constitution Avenue NW., Room 2009, Washington, D.C. 20224, (202) 566-4370 (Not a Toll-Free telephone number)

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury directive appearing in the **Federal Register** for Wednesday, November 8, 1978.

William C. Roth,

Director, Office of District Examination Programs.

[Order No. 210]

Effective Date: 1-25-85.

Certain Determinations With Respect to Abusive Tax Shelter Partnerships

The authority to make the determination under 26 CFR 301.6231(c)-1 T and 26 CFR 301.6231(c)-2 T that it is highly likely that a person described in section 6700(a)(1) made, with respect to a partnership—(1) A gross valuation overstatement, or (2) A false or fraudulent statement with respect to the tax benefits to be secured by reason of holding an interest in the partnership, that would be subject to a penalty under section 6700 (relating to penalty for promoting abusive tax shelters, etc.), is hereby delegated to the following officials:

a. District Directors in connection with the issuance of pre-filing notification letters;

b. Assistant Commissioner (Examination) when pre-filing notification letters have not been issued.

The authority to make such determinations may not be redelegated.

Dated: January 25, 1985.

Approved:

James I. Owens,

Deputy Commissioner

[FR Doc. 85-3504 Filed 2-11-85; 8:45 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

Agency Forms Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: The Veterans Administration has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains extensions and lists the following information: (1) The Department or Staff Office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 350(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: February 6, 1985.

By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Extensions

1. Department of Veterans Benefits.
2. Notice of Defaults.
3. VA Form 26-6850.
4. On occasion.
5. Businesses or other for-profit.
6. 145,590 responses.
7. 24,265 hours.
8. Not applicable.

1. Department of Veterans Benefits.
2. Application and Enrollment Certification for Individualized Tutorial Assistance (Chapter 34 or 35, Title 38, U.S.C.).
3. VA from 22-1990t.
4. On occasion.
5. Business or other for-profit and non-profit institutions.
6. 10,710 responses.
7. 5,355 hours.
8. Not applicable.

[FR Doc. 85-3449 Filed 2-11-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 29
Tuesday, February 12, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL 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 4:47 p.m. on Thursday, February 7, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) Receive bids for the purchase of certain assets of an the assumption of the liability to pay deposits made in The Farmers National Bank of Erick, Erick, Oklahoma, which was closed by the Senior Deputy Comptroller for Bank Supervision, Office of the Comptroller of the Currency, on Thursday, February 7, 1985; (2) accept the bid for the transaction submitted by First American Bank, Erick, Oklahoma, an insured State nonmember bank; (3) approve the application of First American Bank, Erick, Oklahoma, for consent to purchase certain assets of and assume the liability to pay deposits made in The Farmers National Bank of Erick, Erick, Oklahoma, and to establish the sole office of The Farmers National Bank of Erick as a branch of First American Bank; and (4) provide such financial assistance, pursuant to section 13(c) (2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction;

(B) (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in The First National Bank of Woodbine, Woodbine, Iowa, which was closed by the Senior Deputy Comptroller for Bank Supervision, Office of the Comptroller of the Currency, on Thursday, February 7, 1985; (2) accept the bid for the transaction submitted by Iowa Savings Bank, Woodbine, Iowa, a newly-chartered State nonmember bank; (3) approve the applications of Iowa Savings Bank, Woodbine, Iowa, for Federal deposit insurance and for consent to purchase certain assets of and assume the liability to pay deposits made in The First National Bank of Woodbine, Woodbine, Iowa; and (4) provide such financial assistance, pursuant to section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and

(C) consider recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings involving certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of 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)).

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director C.T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsecitons (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 553b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: February 8, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-3617 Filed 2-8-85; 3:31 pm]

BILLING CODE 6714-01-M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Friday, February 15, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchase of computers within the Federal Reserve System. (This item was originally announced for a meeting on February 14, 1985.)

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 7, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-3473 Filed 2-7-85; 4:58 pm]

BILLING CODE 6210-01-M

3

INTERNATIONAL TRADE COMMISSION

[USITC SE-85-10]

TIME AND DATE: 2:00 p.m., Wednesday, February 20, 1985.

PLACE: Room 117, 701 E Street, N.W., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints. (a) Certain ceramic drainage foils (Docket No. 1148).
5. Investigation 731-TA-183 [Final] (Large diameter pipes and tubes from Brazil)—briefing and vote.
6. Investigation 731-TA-238 [Preliminary] (12-volt motorcycle batteries from Taiwan)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-3631 Filed 2-8-85; 8:45 am]

BILLING CODE 7020-02-M

4

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museums Services Board. This

notice also describes the functions of the Board. Notice of this meeting is required under the Government in the Sunshine Act (Pub. L. No. 94–409) and regulations of the Institute of Museum Services, 45 CFR 1180.84.

DATE: March 15, 1985.

ADDRESS: The Ridgeway Center of the Missouri Botanical Garden, 4344 Shaw Blvd., St. Louis, MO.

FOR FURTHER INFORMATION CONTACT: Mr. Robin N. Rapp, Executive Assistant to the National Museum Service Board, 1100 Pennsylvania Avenue, NW., Suite 510, Washington, D.C. 20506, (202) 786–0536.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act which is Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Pub. L. 94–462. The Board has the responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under this Title. Grants are awarded by the Institute of Museum Services after review by the Board.

The agenda for the meeting will be as follows:

I. Approval of the Minutes of November 9, 1985
II. Director's Report
III Conservation Survey Report
IV. Regulations Update
V. Single Audit
VI. Program Report
VII. Committee Assignments
VIII. Further Questions From Government Operations Subcommittee
IX Other Business

Dated: February 8, 1985.

Susan E. Phillips,

Director.

[FR Doc. 85–3629 Filed 2–8–85; 3:46 pm]

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NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 11, 18, 25, and March 4, 1985.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

Week of February 11:

Monday, February 11
2:00 p.m.: Discussion of Material False Statements—Policy Options (Public Meeting)
Tuesday, February 12
9:30 a.m.: Discussion/Possible Vote (Public Meeting):
a. Shoreham Order (postponed from February 7)
b. San Onofre Order (postponed from February 7)
2:00 p.m.: Discussion/Possible Vote on Full Power Operating License for Byron–1 (Public Meeting)
Wednesday, February 13
10:30 a.m.: Affirmation on Hearings Warranted and Discussion of Impact of Hearings on Possible Restart of TMI–1 (Public Meeting)
Thursday, February 14
2:00 p.m.: Affirmation/Discussion and Vote (Public Meeting):
a. Motion for Stay of Low-Power Authorization and Suspension of Low-Power License (Limerick)

Week of February 18—Tentative:

Thursday, February 21
9:30 a.m.: American Physical Society Report on Source Term (Public Meeting)
2:00 p.m.: Affirmation Meeting (Public Meeting) (if needed)
3:00 p.m.: Discussion of Management-Organization and Internal Personnel Matters (Closed—Exemptions 2 and 6)

Week of February 25—Tentative:

Tuesday, February 26
10:00 a.m.: Discussion of Pending Investigations (Closed—Exemptions 5 and 7)
2:00 p.m.: Discussion/Possible Vote on Full Power Operating License for Waterford-3 (Public Meeting)
Thursday, February 28
2:00 p.m.: Affirmation Meeting (Public Meeting) (if needed)

Week of March 4—Tentative:

Wednesday, March 6
2:00 p.m.: Briefing on EEO Program (Public Meeting)
Thursday, March 7
11:00 a.m.: Meeting with Advisory Panel on TMI–2 Cleanup (Public Meeting)
2:00 p.m.: Affirmation Meeting (Public Meeting) (if needed)

Additional Information: Oral Presentations by Parties on Shoreham (Public Meeting) held on February 8.

To verify the status of meetings call (recording)—(202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634–1410.

Andrew L. Bates,

Office of the Secretary.

[FR Doc. 85–3624 Filed 2–8–85; 3:38 pm]

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federal register

Tuesday
February 12, 1985

Part II

Environmental Protection Agency

40 CFR Part 300
National Oil and Hazardous Substances Pollution Contingency Plan; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[SWH-FRL 2671-8]

National Oil and Hazardous Substances Pollution Contingency Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and Executive Order 12316, the Environmental Protection Agency (EPA) is proposing revisions to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This revision of the NCP reflects experience gained over the past two years since the NCP was last revised. The purpose of the revisions is to streamline the response mechanisms; to ensure prompt, cost-effective response; to respond to issues raised in the litigation pertaining to the current NCP; and to clarify responsibilities and authorities contained in the NCP. CERCLA provides that actions taken in response to releases of hazardous substances shall be in accordance with the NCP. Section 311 of the Clean Water Act (CWA) provides that actions taken to remove oil discharges shall, to the greatest extent possible, be in accordance with the NCP. The revised NCP, proposed today, shall be applicable to response actions taken pursuant to CERCLA and section 311 of the CWA.

In addition, the EPA is proposing a policy concerning the extent to which response actions taken pursuant to CERCLA will be consistent with other pertinent Federal and State environmental and public health standards.

DATES: Comments on § 300.66(b)(4) only may be submitted on or before March 14, 1985. Comments on the remainder of the revisions to the NCP may be submitted on or before April 15, 1985.

ADDRESSES: The public docket for the NCP is located in Room S398, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Douglas Cohen, Office of Emergency and Remedial Response (WH-548D), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (800) 424-9346, or in the Washington, D.C. area (202) 382-3000.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction

Pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510 ("CERCLA" or "the Act") and Executive Order 12316, the Environmental Protection Agency ("EPA" or "the Agency") is proposing revisions to the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP" or "the Plan"). Revisions to the NCP were last promulgated on July 16, 1982 (47 FR 31180). In today's revision, the Agency has reprinted Subparts A-G and Appendix A of the NCP in their entirety for the reader's convenience. However, comment is only requested on new or changed parts of the Plan as indicated. The Agency has not reprinted Subpart H. Changes in Subpart H are so indicated. In addition, the Agency is not reprinting Appendix B which is the National Priorities List. The Agency is also proposing a policy which addresses in detail the extent to which response actions taken pursuant to CERCLA should be consistent with pertinent Federal or State environmental or public health standards. This policy can be found as a appendix to this Preamble and is entitled "Draft Policy on CERCLA Compliance With the Requirements of Other Environmental Laws". Finally, EPA is providing a shortened comment period only for § 300.66(b)4). The comment period for this section only will be 30 days.

In developing the revisions proposed today, the Agency reviewed and evaluated program operations under the current NCP to identify areas requiring clarification, modification or streamlining based on the early years of program experience. Many of the changes to subpart F, pertaining to CERCLA response operations are a result of this evaluation. In addition, most of the proposed revisions to the other subparts were recommended by the National Response Team (NRT). The 12 member Federal agencies of the NRT undertook and comprehensive review of the national response mechanism and its operations (included in Subparts B, C and D of the Plan) as well as oil and hazardous substances response operations under Subparts E and F and made many recommendations to clarify and streamline the Plan. Finally, some of the revisions reflect agreements reached in settlement of a lawsuit brought by the Environmental Defense Fund (EDE) and the State of New Jersey (*EDF* v. *US EPA*, No. 82-2234, D.C. Cir., Febraury 1, 1984; *State of New Jersey* v. U.S. EPA No. 82-2238, D.C. Cir., Feb. 1, 1984.) The Agency agreed to the following in the settlement.

- EPA will propose amendments to the NCP to require that (1) relevant quantitative health and environmental standards and criteria developed by EPA under other programs be used in determining the extent of remedy, and (2) if such standard or criteria are substantially adjusted (e.g., for risk level or exposure factors), then the lead agency must explain the basis for this adjustment.
- EPA will propose amendments to the NCP to allow facilities presently owned by the United States or its agencies to be included in future revisions to the National Priorities List (NPL).
- EPA will propose amendments to the NCP to (a) require development of Community Relations plans for all Fund-financed response actions, (b) require public review of feasibility studies for all Fund-financed response measures and (c) provide comparable public participation for private-party response measures taken pursuant to enforcement actions.
- EPA will promulgate a rule addressing the issue of whether response activities must comply with other Federal, State or local environmental laws.

The proposed NCP revision address all of the settlement agreement provisions.

Section II of this preamble discusses the major proposed revisions to the NCP. All of the major revisions to this Plan are in Subpart F. These revisions pertain to hazardous substance response activities under CERCLA. Section III of the preamble discusses other modifications made to each subpart of the Plan, including Subpart F. In developing the revisions to the Plan, the Agency did not believe it was necessary to modify the basic formulation of the Plan or the national response structure. EPA has left the response structure intact so that the proven national and regional response mechanisms may continue to be used for

response operations under CERCLA and the CWA. The Plan continues to be structured as follows:

Subpart A—definitions
Subparts B, C, D—Assignment of responsibilities under the NCP, national response organization and response planning
Subpart E—Oil Removal
Subpart F—Hazardous Substance Response
Subpart G—National Resource Trustees
Subpart H—Use of Dispersants

II. Major Revisions

The major revisions to the Plan are all in subpart F. The first revision restructures the criteria for undertaking removal action under CERCLA. The second streamlines the remedial response process and more specifically identifies the level of clean up to be achieved during CERCLA cleanups. The third modifies and expands the rules pertaining to listing and deleting of releases on the National Priorities List (NPL). The fourth emphasizes the use of alternative and innovative technology, and recycling or reuse as alternatives to conventional technology and practices. The last clarifies and elaborates on roles and responsibilities of non-lead agency parties, including responsible parties, under CERCLA.

CERCLA authorizes two general types of response to hazardous substance releases: Removal and remedial action. Removal actions generally are actions to clean up or remove hazardous substances or pollutants or contaminants from the environment. Remedial action includes measures consistent with permanent remedy taken alone or in addition to removal action to prevent or minimize the release of hazardous substances or pollutants or contaminants.

A. Removal Action

Discussion

Section 104 of CERCLA authorizes the performance of removal activities, as defined in section 101(23) of the Act, whenever there is a release or substantial threat of release of a hazardous substance, or of any pollutant or contaminant which may present an imminent and substantial danger to public health or welfare. The term "removal" is broadly defined in section 101(23) to include a wide variety of activities. The major statutory limitation on removal activities is set forth in section 104(c)(1), which provides that removal activities [other than activities described in section 104(b)] shall not continue after $1,000,000 has been obligated or 6 months has elapsed from date of initial response, unless certain findings are made. The effect of this statutory provision is to limit removal activities to short-term, relatively inexpensive activities unless there is an emergency situation which presents an immediate risk to public health, welfare, or the environment.

For purposes of the current Plan, EPA established two categories of situations in which removal activities were authorized. First, the lead agency is authorized under § 300.65 to conduct "immediate removal" activities when it determines that action is necessary to prevent or mitigate an immediate and significant risk of harm to human life or health or to the environment. Several examples of situations which would pose such risks are included in this section. The authority to undertake immediate removal activities is not dependent on whether the release is included on the NPL. Second, under § 300.67, the lead agency is authorized to undertake "planned removal" actions when it determines either that continuation of an immediate removal will result in a substantial cost savings, or, that the public or environment will be at risk from exposure to hazardous substances, if response is delayed at a release not on the NPL. Again, as with § 300.65, the Plan cites examples of factors the Agency will use in determining whether a planned removal is warranted. Approval of planned removal activities is conditioned upon, among other things, assurances that the affected State would share the costs of the activity; no such State cost-share is required for immediate removal activities.

The Agency had believed that the distinction between immediate and planned removal would result in better management of the Fund. In addition, the Agency believed that under the existing removal provisions, the lead agency would have the flexibility to ensure that Fund money would be used effectively to protect public health and the environment.

Based on its experience with the removal program over the past two years, EPA believes that the existing removal provisions tend to complicate and interfere with expeditious responses to situations which present threats to public health or the environment, and do not provide significant Fund-management benefits.

First, the distinction between sites that are eligible for immediate removal action and those situations which are eligible only for planned removal treatment is often difficult to define in practice. Although some situations are obviously within the immediate removal category, for others the question is more difficult. Time spent in properly classifying actions, and documenting the "immediacy" and "significance" of the risk to health or the environment in immediate removals can delay necessary response and consume significant amounts of staff and decisionmakers' energies. This not only may delay necessary response, but can also result in an unproductive expenditure of Fund resources.

Second, the present removal provisions in many cases have not provided an effective mechanism for addressing threats which are not "immediate and significant," especially at sites which are neither listed nor eligible for listing on the NPL. Although the Agency had anticipated that the planned removal mechanism would provide an effective means of dealing with such situations, this has often not been the case. While some planned removal actions have been taken expeditiously, the administrative requirements imposed on planned removals, especially the requirement that the affected State provide a cost-share, have delayed some responses, and have the potential for creating such delay in the future. Perhaps more significantly, until recently, few planned removal activities have been undertaken at all, perhaps in part because of the same administrative and funding complications. The failure to undertake removal action, or the undue delay in undertaking such action at sites can result in an increase in the problem posed by a site, which, in turn, can result in an increase in the cost of response actions which may be required at a later date.

Third, the existing removal provisions do not provide the Fund management benefits EPA had expected. To the extent that necessary removal efforts are delayed and site conditions deteriorate, the present provisions may lead to a long-term increase in expenditures from the Fund.

Because of these concerns with the removal authorities in the current Plan, EPA is proposing to eliminate the distinction between immediate and planned removals and to establish a single standard which must be satisfied before removal activity can be authorized under the Plan. The standard would apply to all releases and threatened releases without regard to whether the site was included on the NPL. The proposed revisions are described below.

Proposed § 300.65(b)(1) would authorize the lead agency to undertake removal action where there was a release or threat of release of (1) a hazardous substance; or, (2) of a

pollutant or contaminant (which is defined for purposes of Subpart F so as to incorporate the criteria of 104(a) concerning imminent and substantial danger), where there was a threat to public health, welfare, or the environment, whether or not the release had been included on the NPL. Section 300.65(b)(2) includes a list of the type of factors which would be considered in determining that a threat to public health, welfare or the environment exists.

This single, simplified standard would replace the various distinct standards which now must be applied by the lead agency in determining whether a short-term, relatively low cost action should be undertaken as an "immediate removal", a "planned removal" or an "initial remedial measure (IRM)." The standard is intended to be broad enough to authorize removal action in any of the circumstances which can now be addressed under any of these authorities in the existing Plan.

Under the proposed removal provisions, no removal activities, except removals at sites owned by the State at the time of disposal (50 percent cost-sharing sites), would be subject to administrative restrictions (including State cost-sharing requirements) currently imposed upon planned removals and IRMs. Elimination of these requirements is not inconsistent with the statute. Although the Agency has the discretion to require cost-sharing for removal actions, section 104(c)(3) generally *requires* such cost-sharing only with respect to *remedial* actions. In addition, with respect to activities now addressed under the IRM authority, there is nothing in CERCLA which limits the taking of removal activities at sites where further remedial activity is contemplated. In fact, the definition of "remedy" in section 101(24) of CERCLA indicates that remedial activities may be taken in addition to removal actions in the event of a release.

EPA does not expect that the revision of the removal authority will result in any significant increase in the type of activities which are now being routinely implemented under the removal authority.

Agency experience has indicated that certain types of response actions are, as a general rule, appropriately conducted as part of a removal action. Based on this experience, EPA proposes to specify, in § 300.65(c), particular types of actions that are appropriate removal responses to commonly encountered situations. Specification of situations commonly encountered at removal sites and appropriate responses to such situations, is not intended to limit the lead agency from addressing other types of situations under its removal authority, or from implementing different responses to any of the listed situations, or from deferring response action to other appropriate Federal or State enforcement or response authorities. However, EPA believes that specification of appropriate response activities will streamline the process of selecting and implementing removal activities by among other things, helping to limit evaluations to determine the appropriate response. EPA also believes that specification of appropriate responses will assist OSC's in recommending actions (or selecting actions to the extent they have been delegated authority) and the reviewing official in selecting appropriate responses. Finally, listing of such general responses will also help focus discussion between the Agency and potentially responsible parties who may have some ability or interest in implementing response measures.

As mandated by section 104(c)(1) of CERCLA, § 300.65(b)(3) of the proposed revision provides that all removal action will be terminated after 6 months have elapsed from the date of initial response at the site, or $1 million has been obligated, unless there is an immediate risk at the site, continued response actions are immediately required to address an emergency, and such assistance will not otherwise be provided in a timely manner. Section 300.65(b)(4) provides that the lead agency shall make the 6 month or $1 million determination at the earliest possible time. This limitation on removal actions was also imposed on both immediate and planned removals in the existing NCP.

The above discussed removal provisions in proposed 300.65 apply only to removals undertaken pursuant to section 104(a) of CERCLA. Activities authorized by 104(b) of CERCLA, while included within the statutory definition of removals, are subject to different requirements. Section 104(b) activities include investigations, monitoring, surveys, testing, and planning, legal, fiscal, economic, engineering, architectural or other studies. In particular, 104(b) actions may be taken whenever the criteria of 104(b) are met. In addition, 104(b) activities are not subject to the limitations of 104(c)(1).

Finally, § 300.65 (f) and (g) address the issue of CERCLA removal actions compliance with the requirements of other public health and environmental laws.

Section 300.65(f) provides that removal actions shall, to the greatest extent practicable considering the exigencies of the circumstances, attain or exceed applicable or relevant Federal, public health or environmental standards. Federal criteria guidance and advisories and State standards also should be considered in formulating the removal action. This requires the OSC to attempt to *use* those requirements where appropriate. However, because removal actions often involve situations requiring expeditious action to protect public health, welfare, and the environment, it may not always be feasible to fully meet these standards and criteria, guidance or advisories. In those circumstances where it is necessary to deviate from applicable or relevant standards or criteria, guidance or advisories, the decision documents, OSC report, or subsequent documents should specify the reasons for these deviations.

Section 300.65(g) requires permits or authorization for the off-site storage treatment or disposal of hazardous substances. In addition, disposal of the hazardous substances must be in compliance with all applicable and relevant Federal public health and environmental standards.

B. Remedial Response

Section 300.68 of the current NCP provides methods and criteria for determining the appropriate extent of remedial action. These provisions are organized to reflect the normal sequence for taking remedial action at a site, including discussion of how to plan remedial actions, how to array alternatives, and how to select the cost-effective alternative from among these alternatives.

EPA's experience with the remedial progam has shown that the basic remedial response structure of the current Plan works. This proposal, therefore, retains that basic structure, but makes a number of changes within it. In general, these changes include amendments designed to streamline the process, and changes reflecting current Agency practices and policies.

The most significant changes are discussed in the following section, "Overview of Changes." A discussion of "Specific Changes" follows which details how these significant changes fit within the remedial response structure, and explains the additional proposed amendments.

Overview of Changes

Section 300.68 of the NCP currently authorizes phased remedial actions. Specifically, the existing Plan provides for IRMs to stabilize conditions at the site and to mitigate the immediate public

health or environmental threat. Subsequent remedial actions are then classified as either "source control" or "off-site" remedial action. Each of these classifications contains different criteria for triggering and carrying out remedial actions.

These classifications are largely eliminated in this proposal, in favor of a more straightforward approach. First, the proposal eliminates IRMs as a distinct category. As discussed earlier, EPA is proposing amendments designed to eliminate certain restrictions for taking removal actions. With that added flexibility, IRMs should no longer be necessary; that is, removal actions will be able to address actions that normally should begin prior to initiating longer-term remedial responses. A possible exception are removal actions that cannot be completed within 6 months or $1 million dollars, as required by section 104(c)(3) of the statute. To the extent an immediate threat remains, those removal actions could be continued under the statutory exception allowing waiver of these limitations. If no immediate threat remained, continued response would appropriately be addressed by a remedial action.

Similarly, the proposal eliminates the formal distinctions between "source control" and "off-site" actions since the appropriate response to either type of problem is often the same. The Plan will still refer to source control measures and "management of migration" actions, but will not attempt to categorize the response actions that are appropriate to respond to each classification.

The proposed changes introduce the concept of "operable units." An operable unit is a discrete response measure that is consistent with a permanent remedy, but is not the permanent remedy in and of itself. This change codifies the practice of phasing remedial action at sites that present complex cleanup problems. For example, it is often appropriate first to conduct a surface cleanup of a site, and then, after additional analysis of more complex hydrogeological factors, to select and implement remedial measures addressing ground water contamination. Some of the more extensive actions now addressed under the current IRM authority may be addressed as preliminary "operable units."

As discussed earlier in this preamble, the Agency agreed to address in this proposed rulemaking the extent to which response actions are required to comply with other Federal, State and local laws. Several changes in section 300.68 reflect the draft policy EPA has developed to address this issue. The proposed rule is discussed in greater detail in an appendix to this document, entitled "Draft Policy on CERCLA Compliance With the Requirements of Other Environmental Laws."

As part of the development of a policy on compliance with other environmental laws, the Agency recognized that some potential CERCLA actions may more appropriately be taken under other environmental laws. Therefore, changes in the scoping and analysis sections allow the consideratiuon of the extent to which response or enforcement mechanisms under other Federal or State laws may adequately address the problem.

EPA has concluded that CERCLA cleanups need not comply with other environmental standards, as a matter of law, but that as a matter of sound practice, they should, except in certain circumstances. CERCLA contains criteria for responding to releases that may differ sharply from the considerations underlying other regulatory programs. For example, another environmental statute might require that standards be set at a level without regard to costs, while CERCLA requires that the selected Fund-financed remedial alternative take into account Fund-balancing cost considerations. As another example, extensive and potentially protracted permitting procedures under an environmental statute could impede rapid cleanups at CERCLA sites.

Nonetheless, other environmental requirements often provide critical guidance in determining the appropriate level of cleanup at a CERCLA site, directly or indirectly. Directly, an environmental regulation might define the level of protection that is "adequate" to protect health, welfare or the environment, which is a necessary element of determining the appropriate level of cleanup under CERCLA. Indirectly, an environmental criterion, although not specifically applicable to the activity at a CERCLA site, might provide useful information about the level of risk presented by exposure to known quantities of hazardous substances, or on appropriate treatment technologies.

This proposal attempts to reconcile these sometimes competing concerns, by providing that EPA will attain the substantive provisions of other Federal public health and environmental standards except in certain circumstances. These circumstances are designed to address situations when other environmental requirements are likely to conflict with CERCLA's goals. The proposal divides environmental requirements into two categories: Those *standards* that are "applicable or relevant," which must be *met* unless one of five circumstances exists, and other Federal and State standards, criteria, advisories and guidance which are to be *used* in developing that remedy. Generally, "applicable" standards are those that would otherwise be legally applicable if the actions were not undertaken pursuant to CERCLA section 104 or section 106. "Relevant" standards are those designed to apply to problems sufficiently similar to those encountered at CERCLA sites that their application is appropriate, although not legally required. Standards are also relevant if they would be legally applicable to the CERCLA cleanup but for jurisdictional restrictions associated with the requirement. For example, while RCRA site closure regulations might not be legally applicable to a "typical" RCRA facility which ceased operations prior to the effective date of RCRA subtitle C regulations, these regulations would generally be relevant to a determination of what type of capping or monitoring would be necessary to adequately protect health and the environment. Similarly, RCRA treats facilities different depending on whether they are "interim status" (prior to issuances of permit) or operating under a permit. If they are interim status they must comply with 40 CFR Part 265 standards and if they are permitted, they must comply with 40 CFR Part 264 standards. To the extent that the standards differ, EPA will generally be consistent with the often stricter standards of Part 264, where relevant, in determining the appropriate response at CERCLA sites because the 264 standards represent the ultimate RCRA compliance standards and are consistent with CERCLA's goals of long-term protection of public health and the environment. Printed as an appendix to this preamble is a memorandum entitled "Draft Policy on CERCLA Compliance With the Requirements of Other Environmental Laws" which includes a non-binding, advisory list of environmental requirements that EPA believes generally should fall into the "applicable or relevant" category.

The Agency specifically requests comment on applying applicable or relevant RCRA ground water protection and closure requirements to CERCLA actions.

A process, to be developed by the Agency, to assess the public health impacts of chemicals present at CERCAL remedial sites, may be used to set Alternative Concentration Limits (ACLs) pursuant to the RCRA ground water protection requirements (40 CFR 264.94). This process will identify the

most toxic and persistent 40 CFR Part 261 Appendix VIII chemicals present at a specific site and set ACLs for those chemicals. Setting ACLs for the most toxic and persistent chemicals should ensure that the cost-effective remedy will prevent present or potential hazard to human health or the environment.

In determining the appropriate extent of remedy as it relates to other Federal standards, the first step is to consider the extent to which the standard is in fact applicable or relevant to the unique circumstances at the site. For example, some Superfund sites involve situations that RCRA *did not "intend to address."* In those situations, the RCRA regulations would not be applicable per se, but may be relevant on a case-by-case basis. As an example, RCRA was not designed to cover the subsequent management of waste indiscriminantly disposed over 200 miles of roadway, or the subsequent management of contaminated river beds. In such situations, RCRA standards would not be applicable, but parts of the RCRA standards may be relevant.

The following are situations which define circumstances in which applicable or relevant standards are not required to be met by CERCAL remedial actions:

- *Interim measures:* If the selected remedy is not the final remedy for the site, it might be impractical or inappropriate to apply other environmental standards. For example, it might be appropriate to treat contaminated drinking water at the tap as an interim measure, pending final decisions on the appropriate extent of cleanup in the contaminated aquifer itself.
- *Fund-balancing:* As provided in section 104(c)(4) of CERCAL, for Fund-finance actions only, the lead agency will balance the need for protection of public health, welfare and the environment at the site against the amount of money available in the Fund to respond to other sites. Thus, the decisionmaker could select a remedy that does not meet an othewise applicable or relevant public health or environmental standard if complying with that standard would be disproportionately costly, and Fund monies could be more productively used at another site where a response was necessary.
- *Unacceptable Environmental Impacts:* In some cases, it might be possible to meet applicable or relevant Federal standards, but compliance might result in significant adverse environmental impacts. This might be the case, for example, when dredging contaminants from the bottom of a body of water to levels required by environmental standards would result in more harm to the ecosystem than an alternative remedial response.
- *Technical Impracticality:* This situation could occur when it is technically impractical, from an engineering perspective, to achieve the standard at the specific site. For example, although the environmental standard may require that contaminated ground water attain background levels, this may be impractical because of the unique hydrogeologic conditions. Another example is a situation where the site is characterized by a steep slope and the standard would require a cap. While the placement of a cap on a steep slope could be technically feasible, it would not be practical because of long-term problems with maintaining the integrity of the cap. The Agency does not intend that this determination be based on a cost benefit determination.
- For enforcement actions under section 106 of CERCLA only, the decisionmaker could choose not to meet an otherwise applicable or relevant standard if the fund is unavailable, there is a strong public interest in expedited clean up, and the litigation probably would not result in the desired remedy. For example, this situation could occur where the defendant lacks sufficient resources to pay for a complete remedy or where liability is in question, the Fund is unavailable and the public interest is served by expeditous cleanup. One situation where the Fund is unavailable is where the State does not have sufficient funds to make the necessary State cost-share match.

Three important qualifications apply to these situations. First, in EPA's experience they will only occur infrequently. That is, most remedial action *will* conform to applicable or relevant Federal public health and environmental standards. Second, when these circumstances exist, they will not result in selection of a remedy that disregards health and environment concerns rather, the decisionmaker will select the alternative that most closely approaches the level of protection provided by the applicable or relevant standard, considering the circumstances which prevented meeting the standard. Third and finally, the basis for not meeting the standard will be fully documented and explained in the appropriate decision documents.

EPA will use Federal health and environmental criteria, advisories, or guidance or State standards in developing the appropriate remedial response at a site, especially where there are no applicable or relevant Federal standards. If EPA determines that these criteria, advisories, or guidance or State standards are relevant, but are not used in the selected remedial alternative or are substantially adjusted, the decision documents will indicate the basis for adjusting or not using them.

In additon, for reason discussed earlier, CERCLA cleanup will generally not be subject to procedural and administrative requirements of other environmental programs, such as permitting. EPA will ensure public participation in these actions through community relations plans, discussed later in this preamble. However, remedial actions that involve storage, treatment or disposal of hazardous substances, pollutants or contaminants at off-site facilities shall only occur at facilities that are operating under appropriate Federal or State permits or authorization.

The final major change proposed in § 300.68 is to clarify the meaning of the term "cost-effective" in the context of selection of the appropriate extent of remedy. Section 300.68(j) in the current NCP provides that the Agency shall select the alternative which is "cost-effective (i.e., the lowest cost alternative that is technologically feasible and reliable and which effectively mitigates and minimizes damage to and provides adequate protection of public health, welfare, or the environment)." Unfortunately, this language has given many observers the erroneous impression that EPA was required in all cases to select the *lowest cost* remedy that provided *minimally adequate* protection of public health, welfare and the environment. EPA did not intend, nor does it believe that CERCLA requires, that cost effectiveness be defined in such narrow terms.

Therefore, to address this issue, EPA is proposing in 300.68(i) to eliminate the reference to selection of the "lowest cost alternative." Instead, 300.68(i) would simply provide that the appropriate extent of remedy shall be determined by selection of a cost effective remedial alternative which effectively mitigates or minimizes the threat to and provides adequate protection of public health, welfare, and the environment. Under the proposed revisions, this requires the selection of a remedy which at a minimum, attains or exceeds applicable or relevant Federal public health or environmental standards. This amendment would also clarify EPA's position that cost effectiveness does not mean simply the selection of the lowest cost minimally adequate remedy. EPA considered replacing this "lowest cost" language with a more sophisticated

decision rule that clearly reflected the concern that cost be taken into account in remedial selection, while providing the flexibility to select a remedy which is more reliable and protective than the least expensive minimally adequate alternative. Development of such a decision rule, however, is very difficult at this stage of the Superfund program.

Pending development of such a decision rule, EPA proposes to use the following general approach in selecting the cost-effective alternative from among remedies which provide what is considered to be at least minimally adequate protection. First, it is clear that among remedies which are *equally* feasible, reliable, and provide the same level of protection, EPA will select the least expensive remedy. Second, where all factors are not equal, EPA must evaluate the cost of each alternative and the level of protection provided by each alternative. Of course, in evaluating the cost of remedial alternatives, EPA must consider not only immediate capital costs, but the cost of dealing with the waste over the entire period that it would be expected to pose a threat to health and the environment. To give an example, EPA might select a treatment or destruction technology with a higher capital cost than long-term containment because the treatment/destruction offered a permanent solution to the problem. The reliability of various alternatives will be taken into account to the maximum extent possible, including the cost of such factors as the long-term operations and maintenance and the integrity of physical structures.

Finally, EPA clearly would not always pick the most protective option, regardless of cost. Instead, EPA would consider costs, technology, reliability, administrative and other concerns and their relevant effects on public health, welfare and the environment. This would allow the decisionmaker to select that alternative which, *at the specific site* in question, was most appropriate from a cost, technology, reliability and administrative perspective, considering public health, welfare, and environmental impacts.

Specific Changes

Section 300.68 generally follows the order in which a remedial action is planned and implemented. Several changes are proposed throughout the section. Some of these implement the major changes discussed above; others are designed to streamline the remedial program, to remove ambiguities, or to codify current EPA practice. These will be discussed in the order in which they appear in the section, using, for ease of reference, the letters and headings that begin each subsection.

(a) *Introduction.* This subsection has been revised to clarify the circumstances under which remedial actions may be taken. The language in the existing NCP indicates that remedial actions can only be taken at sites on the NPL. The purpose of this restriction was to ensure that the limited Fund monies were only used for remedial action at NPL sites, which had been identified as posing the greatest potential threats to human health and the environment, *not* to make the NPL the exclusive list of necessary remedial or enforcement actions. The purpose of the change is to clarify the purpose of the NPL. It provides that remedial action may be taken at any site; however, *Fund-financed* remedial action is available only for sites on the NPL. This allows parties to conduct remedial actions at non-NPL sites and to seek recovery of their costs from those responsible for the release through section 107 of CERCLA.

Other proposed revisions to this subsection include: introduction of the term "Remedial Project Manager" (RPM) to describe the remedial action counterpart of the "On-Scene Coordinator" (OSC) in removal actions; and, a provision that Federal, State, and local environmental permits or authorization are not required for Fund-financed remedial action, or for remedial action taken pursuant to section 106 of CERCLA except for storage, treatment or disposal of wastes at an off-site facility; implementing this portion of the policy discussed under "Overview of Changes," above.

(b) *State Involvement.* Among the proposed changes to this subsection is the statement that a State participating in a Fund-financed remedial action must meet the requirements of section 104(c)(3) of CERCLA; i.e., requirements that the State will assure future operation and maintenance of the remedial measure, that it will assure the availability of an off-site facility that meets RCRA requirements, and that it will share in the costs of remedial actions. These requirements are currently found in §§ 300.62 and 300.67(b) of the NCP.

Another change clarifies EPA's interpretation that planning activities taken pursuant to section 104(b) of CERCLA generally do not require a State cost-share. Thus these planning costs, such as RI/FS and design work, are not subject to the State cost-share requirement unless the site was owned at the time of any hazardous substance disposal by the State or political subdivision. The absence of the cost-share requirements for these activities has enabled EPA to move ahead more rapidly with remedial planning activities at NPL sites.

(c) *Scoping of Response Actions.* This section has been greatly expanded to reflect the early planning that precedes implementation of remedial action. The proposal requires examination of what types of actions may be necessary to remedy a release: Removal action, source control measures and actions to manage migration, or some combination of those measures. Because IRM's have been eliminated as a special category of remedial actions, removal actions would be considered in scoping the response action. This should foster an integrated process that allows rapid implementation of actions necessary to protect public health and the environment, consistent with longer term remedial actions.

The factors to consider in the scoping process, currently located in § 300.68(e)(2), have been moved to the scoping section and expanded to reflect factors that the lead agency should consider when approaching a response action. The proposal adds several new factors in § 300.68(c)(2), including:

- Paragraph (ii)—The proposed addition of a "routes of exposure" factor reflects sound environmental and is intended to assure that all actual and potential routes of exposure are considered.
- Paragraph (iii)—The proposal adds considerations relevant to off-site versus on-site disposal and the use of permanent destruction or immobilization for certain chemicals. In addition, EPA believes that the persistence, mobility and ability to bioaccumulate should be considered in determining how to handle substances. Where substances are persistent, mobile or bioaccumulate readily, the Agency believes that additional measures may be necessary to prevent future environmental or public health threats. Permanent destruction, neutralization, or immobilization will be preferred in treating or disposing of these wastes.
- Paragraph (iv)—The proposal adds floodplain and wetlands proximity as a factor to assure analysis of floodplains and wetlands in accordance with the requirements of Eexcutive Orders 11988 and 11990.
- Paragraph (vii)—Recycle/reuse of certain substances may be available as a way of permanently abating future threats of release. Recycle/reuse also has the added benefit of helping to conserve the capacity of RCRA permitted disposal facilities.

• Paragraph (xi)—Consistent with the proposed requirement regarding compliance with other environmental laws, among the factors proposed to be considered during scoping is the extent to which the contamination levels exceed applicable or relevant State and Federal environmental standards, advisories and criteria.

• Paragraph (xiii)—Where the remedial action may be carried out by responsible parties, the Agency proposes to assess the ability of the responsible parties to implement and maintain the remedial measure until the threat is abated. When responsible parties may not be able to support long-term monitoring or otherwise implement or maintain the remedy, it might be appropriate to require responsible parties to consider higher capital construction cost remedies that abate the threat more quickly and certainly.

(d) *Operable Unit.* As discussed earlier, the proposal reflects EPA's practice of dividing complex response actions into operable units. Operable units must be cost-effective and consistent with permanent remedial action and may be carried out as either removal or remedial actions.

(e) *Remedial Investigation/Feasibility Study.* As provided in the current NCP, the proposal requires evaluation of alternative remedial responses through a remedial investigation and feasibility study. This subsection also indicates that during remedial planning the analysis should assess the need for a removal action in lieu of or in addition to the remedial action.

(f) *Development of Alternatives.* This subparagraph addresses the first step of the cost-effectiveness analysis in the feasibility study and requires the development of alternative remedial responses. The proposed changes spell out in greater detail the range of alternatives that should be developed. These include off-site treatment or disposal alternatives and the no-action alternative, as well as alternatives designed to implement the proposed requirement regarding compliance with other environmental requirements. In this last category, the feasibility study should develop alternatives that attain, exceed, and fall short of other environmental requirements, to aid the decisionmaker in determining the alternative that best fits within the framework of that policy. In addition, the decisionmaker should take into account alternatives which consider relevant criteria, guidance or advisories, especially where there are no relevant or applicable standards. Finally, where appropriate, the feasibility study should take into account alternative technologies, such as waste minimization, destruction, and recycling.

(g) *Initial Screening of Alternatives.* Once alternatives are developed, section 300.68(g) requires screening of alternatives on the basis of cost, effectiveness, and engineering feasibility. In substance, this subsection remains largely unchanged. One change is to specify that an alternative that would otherwise be eliminated because of disproportionate costs should nonetheless be considered if there is no other remedy that adequately protects human health and the environment by meeting applicable and relevant standards, advisories, or criteria. Since these applicable and relevant requirements often define the minimally adequate level of public health and environmental protection, the decisionmaker normally should consider (although not necessarily select) the alternative incorporating applicable or relevant requirements, irrespective of costs.

A second change proposed in this subsection is to specify that the feasibility study should document any alternatives eliminated on the basis of cost. Finally, an expanded paragraph on "effectiveness" would replace the current paragraph on "Effects of the Alternative," and would clarify when ineffective alternatives should be eliminated. Two types of alternatives should generally be screened out: those that do not effectively contribute to the level of protection, and those with significant adverse effects and limited environmental benefits.

However, the fact that an alternative does not meet "applicable or relevant" standards would not necessarily be a reason to eliminate it, since under EPA's proposed requirement regarding compliance with other environmental laws, such an alternative might be selected under appropriate circumstances, indicated in 300.68(i).

(h) *Detailed Analysis of Alternatives.* This subsection requires a detailed analysis of those alternatives remaining after the initial screening, in terms of cost, engineering, and environmental and public health protection. Two substantive changes are proposed in this subsection.

The first explains how the proposed requirement regarding compliance with other environmental laws applies to the analysis of alternatives. Specifically, the analysis should consider the extent to which the alternative meets or exceeds applicable or relevant requirements. For management of migration actions, i.e., where contaminants have moved or are likely to move off-site, when no applicable or relevant requirements apply, the lead agency should evaluate the risks of exposure projected to remain after implementation of the alternative in those circumstances. This evaluation of risks is unnecessary for alternatives attaining or exceeding applicable or relevant requirements since those requirements generally establish the appropriate level of cleanup without further analysis of the residual risk.

An assessment of the risk posed by the source-control remedial measures likewise is not required, since the goal of these measures is to prevent future releases into the environment. In additions, these source control situations pose difficulty in modeling risks. For source control remedial measures, therefore, EPA will use a technology-based approach to determine the appropriate alternative for preventing further releases.

The second proposed change in this subsection is to require an analysis of whether recycle/reuse, waste minimization, destruction, or other advanced and innovative or alternative technologies are appropriate to remedy the release. This change parallels modifications proposed in paragraphs (d)(2)(vii) and (f)(2), discussed earlier.

(i) *Selection of Remedy.* This final step in the remedial process is the selection by the decisionmaker of the appropriate remedial alternative. There are two important changes in the proposal. First, as discussed earlier, the selected remedy must meet the substantive requirements of applicable or relevant Federal standards unless one of the enumerated circumstances is present. The applicable and relevant standards define the adequate level of protection of public health and the environment. One of these circumstances, "Fund-balancing," is the subject of § 300.68(k) of the current NCP. Accordingly, that subsection would be subsumed in the new subsection (i).

Second, also discussed earlier, the proposal clarifies that EPA is not required to select the lowest cost remedy that provides minimally adequate protection.

(j) *Appropriate Actions.* This new subsection would set out certain remedial actions that, in EPA's experience, are appropriate in specific circumstances. The subsection details appropriate remedial responses that are, in general, an appropriate response to contaminated ground water, contaminated surface water, contaminated soil or waste, and the threat of direct contact with hazardous substances. As with removals, Agency experience has indicated that certain

types of actions are generally appropriate to address situations commonly found at remedial sites. This specification is not intended to limit the lead agency from employing responses which are different than those listed or from responding to more than just the listed circumstances. The Agency retains the ability to develop the most appropriate response, considering the individual site and other characteristics.

(k) *Remedial Site Sampling.* Finally, another new subsection would specify those circumstances in which sampling performed in support of remedial action is presumed adequate. This subsection codifies current EPA practice on conducting site sampling.

Section 300.68(k) provides for a written plan for sampling performed pursuant to remedial action. This plan will specify the nature and extent of sampling. A written plan which meets the criteria of § 300.68(k) will be considered adequate. Section 300.68(k)(2) requires that this remedial quality assurance site sampling plan be reviewed and approved by the appropriate EPA Regional or Headquarters Quality Assurance Officer.

C. Site Evaluation Phase and NPL Determination

Introduction

Section 300.66 currently serves two purposes. First, it establishes criteria to determine the appropriate action when a preliminary site assessment indicates a need for further response, or when the OSC and lead Agency concur that further response should follow an immediate removal action. Second, it outlines the process and criteria for placing sites on the NPL.

Several changes are proposed in this section. In general, these changes call for the development of more detailed information in the site evaluation phrase. Additionally, the proposed modifications delete the prohibition against listing Federal facilities on the NPL, and include providing additional bases for including sites on the NPL, and provisions for deleting sites from the NPL. The effect of these latter changes will be increase EPA's flexibility to take remedial actions at problem sites, and to provide a more formal mechanism for removing sites from the NPL.

The NPL has been promulgated separately from this rulemaking. The promulgated NPL can be found at 49 FR 37070, September 21, 1984, and the most recent proposed revisions to the NPL can be found at 49 FR 40320, October 15, 1984.

Specific Changes

Subsection (a)—Site Evaluation. These provisions consolidate the substance of the material found in subsections (a)–(c) in the existing NCP. Subsection (a) discusses the site evaluation phase, which extends from the time of discovery of a release through preliminary assessment and site inspection. The proposal clarifies that the purpose of site evaluation is to determine the nature of potential threats occasioned by a release and to collect data for determining whether a release should be included on the NPL. To provide greater flexibility, paragraph (a)(2) of the proposal expands authorized activity to include preliminary assessments in addition to site inspections, and removes the requirements that response officials and enforcement officials conduct these activities jointly. Paragraph (a)(3) establishes that in remedial situations, preliminary assessments consist of review of existing data and may include off-site reconnaissance. The preliminary assessment is intended to eliminate further consideration of releases which do not pose threats to public health and the environment, to determine potential danger to those living or working in the vicinity of the releases, and to establish priority for scheduling site inspections.

Proposed paragraph (a)(4) would further elaborate the purposes for a site inspection: To determine whether a release poses no actual or potential threat to public health and the environment; to determine whether there is immediate potential danger to those living or working in the vicinity of the release; and to collect data to determine whether a release should be placed on the NPL.

Subsections (b)–(c)–NPL. The principal changes proposed in these provisions are intended to provide EPA with additional flexibility to place sites on the NPL. Since a site must be on the NPL to be eligible for Fund-financed remedial action, this increased flexibility provides greater opportunities to take remedial actions at sites, when appropriate. For the reasons stated below, EPA is providing for a somewhat shortened comment period on the proposal to add a new basis for listing a site on the NPL.

Proposed subsection (a) generally addresses the ways in which a release can be included on the NPL. In general, the NCP currently requires that a site satisfy one of two tests to be eligible for inclusion on the NPL: The release must score above a threshold level using the Hazard Ranking System (HRS), or the release must be designated by the State as its highest priority release. The proposal retains these provisions (the HRS has not been changed since July 1982).

Pursuant to CERCLA section 105(8)(B), the State may designate a top priority site for inclusion on the NPL. EPA will allow each State to designate *one* top priority site over the life of the NPL.

Proposed paragraph (b)(4) would add a new mechanism for including a release on the NPL irrespective of its HRS score, based on a determination that a site poses a significant threat to public health. Specifically, EPA may base that determination on whether the Department of Health and Human Services has issued a health advisory as a consequence of the release. This might, for example, make eligible for remedial action a site at which a small number of people are seriously threatened, although scoring on the HRS would not necessarily exceed the threshold level.

CERCLA does not require that a site be on the NPL to be eligible for Fund-financed remedial responses. That restriction is one EPA voluntarily imposed in the existing NCP, for reasons of Fund-management and to alert the public to the significance of a site being included among the priority releases. The Agency believes that the restriction still serves these important functions and should be retained. However, the restriction has led to instances in which remedial action, although seemingly appropriate, was unavailable because the site did not receive a sufficiently high HRS score. The above criteria attempt to address this problem by broadening the bases for inclusion on the NPL. EPA will continue to propose and solicit comments on revisions of the NPL, so that interested parties will have an opportunity to address the extent to which a particular site warrants being included on the list.

EPA is providing for a 30 day comment period on this proposal to provide an additional basis for inclusion of a site on the NPL, rather than the 60 day comment period provided for the remainder of the proposed revisions of the NCP. The Agency intends to review the comments on this proposal in an expedited fashion, and depending on the nature of the comments may finalize this change prior to a final decision on the remainder of the proposed amendments.

The Agency is identifying this particular issue for expedited comment for several reasons. First, EPA is now considering appropriate response measures at several sites which are not eligible for inclusion on the NPL based on the existing NCP criteria, but which

could be listed on the basis of the proposed new criteria. Addition of these new criteria for NPL listing could allow expedited addition of such sites to the NPL. As a result, EPA would be able to select remedial measures at these sites, if appropriate, such as where remedial measures are more cost-effective than taking removal actions at these sites.

Second, EPA has previously solicited comment on the general issue of alternative criteria for listing sites on the NPL (48 FR 40675–76, September 8, 1983), including the possible use of health advisories as a basis for listing sites which do not receive a sufficiently high HRS score. Third, EPA believes that the issue of adding a new listing criteria is a relatively discrete and narrow one. Thus, EPA believes that utilizing a 30 day comment period on this particular issue would not impose an undue burden on persons who would be interested in commenting on this issue.

Another proposed modification would delete the prohibition which limits sites currently owned by the Federal Government from being included on the NPL. EPA is soliciting comments on different ways of advising the public of the status of Federal Government clean-up efforts. One approach would be the listing on the NPL on the NPL of sites currently owned by the Federal Government. Other approaches the Agency can consider for Federal facilities include the periodic publishing of the list of each Agency's priorities through the A–106 process under Executive Order 12088, or the publishing of a list of each Federal agency's facility cleanup priorities independent of the NPL.

The proposal addresses when sites may be deleted from the NPL. Sites may be deleted where no further response is appropriate, based on the following criteria:

(1) If the responsible parties or other parties have completed all appropriate response actions;

(2) If all appropriate Fund-financed response under CERCLA has been completed and no further cleanup by responsible parties is appropriate; or

(3) If EPA has determined that the release poses no significant threats so that taking response action is not approprite at the time.

Notwithstanding deletion from the NPL, a previously listed site will remain eligible for Fund-financed remedial action if future conditions warrant that action.

Other, less significant changes to the NPL provisions include: Reiteration of the statutory criteria that the NPL contain at least 400 releases and potential releases, and that the list be updated annually; clarification that inclusion on the NPL is a precondition to eligibility for *Fund-financed* remedial action, not a precondition to liability under section 106 of CERCLA (enforcement actions) nor to action under section 107 for non-Fund-financed costs or Fund-financed non-remedial expenditure; and a requirement that States include appropriate documentation with HRS score sheets (as is currently done). EPA is not proposing to modify the HRS in this rulemaking and is not soliciting comments on the HRS.

D. Other Party Responses

The former § 300.71, concerning worker health and safety has been moved to § 300.38. The new § 300.71 addresses the requirements the NCP imposes on parties other than the lead agency (including responses by responsible parties, other private parties and Federal and State governments).

Discussion

Proposed § 300.71(a) recognizes that *parties* other than the lead agency may undertake response actions and specifies the roles the lead agency and other parties play in the different types of responses: Enforcement actions under CERCLA section 106 and response actions and recovery of costs by other parties pursuant to section 107.

Enforcement Actions

Section 300.71(a) clarifies the lead agency's responsibility in reviewing actions undertaken pursuant to § 106 of CERCLA. Proposed § 300.71(a) directs that the lead agency, *in specific limited circumstances*, evaluate the adequacy of the response action proposed by the responsible party and approve those actions, taking into consideration the factors discussed in §§300.65 (for removal actions) and 300.68 paragraphs (c) through (i) (for remedial actions). In enforcement remedial actions, the lead agency, however, will not apply the Fund-balancing considerations discussed in § 300.68(i).

Other Non-Lead Agency Responses and Recovery of Costs Pursuant to CERCLA Section 107

When a private party seeks to recover response costs from a responsible party under CERCLA section 107(a)(1–4)(B), that party must demonstrate that its response actions were *consistent with the NCP*. (States and the Federal Government must show that other actions were "not inconsistent" with the NCP.) To clarify what "consistent with the NCP" for this purpose means, § 300.71(a) has been added to the NCP.

First, § 300.71(a) (3) and (5) state that the lead agency does *not* have to evaluate and approve a response action for those costs to be recovered from a responsible party pursuant to CERCLA section 107. Instead, § 300.71(a)3) states that only response actions undertaken pursuant to section 106 actions instituted by the Federal Government and actions involving preauthorization of Fund moneys under 300.25(d) of the NCP require advance Federal government approval of a response action. Furthermore, § 300.71(a)(5) goes on to spell out the requirements a private party must meet to be consistent with the NCP. These requirements are as follows:

A. *Removal Actions:*

—take removal in circumstances as specified in § 300.65

B. *Remedial Actions:*

—consider factors as enumerated in § 300.68(c)–(i)

—provide for an appropriate analysis of alternatives

—selection of the cost-effective response.

The private party may choose a more costly response, but the responsible party is only responsible for the costs of the "cost-effective" remedy.

When a private party intends to take a response action and wishes to seek reimbursement from the Fund it must first become preauthorized [See § 300.25(d) for the preauthorization requirements].

Section 300.71(c) addresses the process of certification for individuals or organizations. Certification is a method for establishing engineering, scientific, or other technical expertise necessary to undertake remedial actions, safely and effectively. Demonstrating this technical expertise is one of the requirements for requesting preauthorization [See § 300.25(d)(5)]. Certification, however, is not necessary for fund preauthorization. To receive certification, the organization must submit a written request for certification that demonstrates that the organization has the qualifications necessary for implementing response action.

The advantage of certification is that the organization need only submit the written request demonstrating its qualifications one time rather than each time it requests preauthorization. Thus, an organization which becomes certified will administratively speed up the preauthorization process.

Section 300.71(c)(4) specifies that the Administrator will respond to certification requests within 180 days. The 180 days start when a complete

certification request is received by the Administrator. Once certification is granted, the individual or organization will be considered to be generally qualified, but the certification shall not constitute advance approval of all response work.

Section 300.71(e) states that response completed by any party does not release parties from liability to the government under CERCLA.

III. Other Revisions

In addition to the major revisions discussed in section II, the following minor revisions to all the subparts are proposed (including revisions to subpart F not discussed in the previous section). These revisions are presented below by subpart.

Subpart A

Section 300.5 Abbreviations.

The Agency proposes to add the abbreviation "RPM" meaning "Remedial Project Manager" to the list of abbreviations. This corresponds to other changes proposed in today's rulemaking that define the role and responsibilities of this Federal official.

Section 300.6 Defintions.

Discussion

A number of changes to this section are proposed. The first is the addition of definitions for terms used in the present Plan but not previously defined. These terms are "activation," "coastal waters," "CERCLA," "feasibility study," "inland waters," "specified ports and harbors," "size classes for releases," "first Federal official," "remedial investigation," and "source control." The intent of these additions is to address questions that have been raised concerning the defintion of these terms as used in the Plan. The second change is the addition of some new terms and the deletion of an existing term used in the Plan. The new terms added to the Plan are "managment of migration," "operable unit," "project plan" and "remedial project manager." The terms deleted from the Plan are "off-site remedial measures" and "responsible official." The final change is the revison of definitions for "OSC" and "lead agency." These definitions have been modified to correspond to present practice and to reflect changes proposed to other sections of the Plan.

Specific Changes

"Activation" has been defined to clarify that the entire RRT or NRT must not necessarily be assembled to consider issues raised during a response. There are many situations where the expertise of only a portion of the RRT or NRT membership is necessary to provide advice or assistance to the OSC/RPM, thus not requiring the participation of all members. The proposed definition states this position and provides the RRT or NRT charimen with the discretion to assemble the appropriate RRT or NRT members to carry out their responsiblities.

Definitions have been added for the terms "inland waters" and "coastal waters" as used to classify size of discharges for oil spills. These terms were not meant to correspond to the waters within the inland zone and coastal zone, but there were different interpretations as to what was the correct definiton. The definition of these terms should resolve inconsistencies between EPA and USCG OSCs when classifying oil spills on inland rivers.

"CERCLA" or "Superfund" has been defined. "Feasibility Study"and "Remedial Investigation," two key parts of remedial action have been defined. The term "specified ports and harbors" has been defined to mean port and harbor areas on inland rivers, and land areas immediately adjacent to those waters, where the U.S. Coast Guard (USCG) acts as predesignated OSC. Questions have been raised whether there were specific locations where the USCG should be OSC. The Agency's opinion, as indicated by the definition, is that exact locations where the USCG acts as OSC should be negotiated between USCG districts and EPA regions on a regional basis and identified in Regional Contingency Plans. Negotiations at this level can best account for resource availability of the two agencies.

A definition has also been added for the term "first Federal official" to clarify the roles and authorities of this individual. In many areas of the country, representatives of NRT member agencies may arrive at the scene of a discharge or release before the predesignated OSC. This definition clarifies that this official is authorized to coordinate response activities under this Plan and initiate actions normally performed by the OSC until their arrival. This new definition corresponds to an additional revision to 300.33 proposed today concerning the scope of authority for these officials.

The final definition added involves size classes for releases of hazardous substances, pollutants, or contaminants into the environment. Size classes are generally meant to be triggers for actions and report requirements under this Plan, and may not directly relate to the severity of a release. Thus, the Agency did not include a size classification for hazardous substance releases in the 1982 revision to the Plan. Since that time, there has been some confusion on whether hazardous substance releases should be classified in the same manner as oil spills. The Agency intended that releases be classified by the OSC taking into account the many factors that effect the impact of a release (e.g., quantity, environmental; medium affected, location). The Agency considered the use of a factor such as reportable quantity to classify releases, but does not feel that using this quantity, which relates only to reporting requirements, would account for all the variables that influences the impact of a release on public health or welfare or the environment. Thus the definition for size classification requires OSCs to classify a release based on their assessment of its threat to public health or welfare or the environment, taking into account the many variables that influence this potential threat.

The Agency also proposes to add another new term, "remedial project manager (RPM)," and delete the existing definition of "responsible official." These changes are ment to clarify who is responsible for coordinating Federal remedial actions resulting from releases of hazardous substances, pollutants, or contaminants. As a matter of practice, predesignated OSCs are generally involved only in oil response under subpart E and removals under subpart F. The Term "OSC" has not been widely used for the lead agency personnel managing remedial actions. The term RPM is added as the remedial action counterpart to the OSC to distinguish between the OSC and the RPM since the activities they are responsible for implementing under the Plan are different in scope, nature, and duration. This new definition complements definitional changes for OSC and lead agency. This change necessitates changes in subparts A, B, C, D, and F to reflect the role and responsibilities of the RPM. These changes will be cited throughout this preamble. EPA has reviewed each citation of the term "OSC" in the present Plan, and added the term "RPM" where appropriate.

The term "RPM" was not added in sections where only removal actions were indicated. EPA intends to designate RPMs for each remedial action undertaken under subpart F of this Plan. In addition, by agreement, the USCG will predesignate an RPM for any remedial actions involving vessels in the coastal zone. The definition of RPM for remedial actions on the Department of

Defense (DOD) facilities indicates the Federal official designated by DOD. This accounts for those situations where DOD may designate EPA to act as RPM for a remedial action involving their facilities, based on an EPA/DOD Memorandum of Understanding. Interested public may obtain copies of this MOU from EPA or DOD. The roles and responsibilities of an RPM are discussed in greater detail in the discussion of changes to 300.33 later in today's preamble.

The definitions for two terms presently included in 300.6 have been modified. These are "OSC" and "lead agency." The definition of OSC has been modified by deleting any reference to States acting under cooperative agreements under CERCLA, by limiting OSC responsibilities to responses under subpart E and removals under subpart F of the PLAN (to complement the new RPM responsibilities for remedial actions), and by adding language to clarify DOD predesignated OSC responsibilities. The deletion of States acting under cooperative agreements is meant to clarify the respective roles of the Federal Government and the States in removal actions. As redefined, the terms OSC and RPM will only apply to Federal officials, since this person is responsible for coordinating the response of Federal agencies under this Plan. As is discussed later in today's preamble, States acting as lead agency for a response under CERCLA will still carry out the responsibilities of the Federal OSC/RPM. The language concerning DOD has been clarified to indicate that DOD acts as predesignated OSC only for releases of hazardous substances from their vessels and facilities. For discharges of oil from DOD vessels and facilities, EPA or USCG OSCs will provide advice and oversight of response actions as they do for incidents involving other Federal agencies. This change is discussed in more detail later in today's preamble in the section covering proposed changes to §300.33. The definition of "lead agency" has also been modified to clarify the relationship of this term to "OSC" and the new "RPM" proposed today. As indicated above, the OSC and RPM are Federal officials. In the case of a State-lead response under subpart F of this Plan, the State will carry out the responsibilities of the OSC or RPM, but will not replace that Federal official. This change, combined with the change in the definition of OSC and the addition of the new term RPM, should help clarify any confusion over the respective roles of the OSC and lead agency as used in the Plan.

The Agency has reviewed the use of the terms OSC, RPM, and lead agency throughout the Plan. OSC or RPM is proposed where this individual is authorized to take action under the Plan; lead agency is proposed where the authority does not necessarily rest with the individual OSC/RPM (but the lead agency could internally delegate such authority as it sees fit). "OSC" is used in subpart E to reflect the vesting of authority in the lead Federal official on-scene due to the emergency nature of spill responses. "Lead agency" is used most frequently in subpart F to reflect vesting of authority with the agency since many actions in CERCLA responses (particularly remedial actions) require the OSC/RPM to consult and clear actions with other officials.

Subpart B

Section 300.22 Coordination among and by Federal agencies.

Discussion

An editorial change has been made to (d)(2) to correct a typographical error. The word "of" on line 3 is replaced by "or."

Also, although there has been no change in the language, the Agency would like to clarify existing language in paragraph (f) concerning coordination of responses to spills involving Outer Continental Shelf Lands Act (OCSLA) operations. There have been some inquiries concerning the status of a Department of Transportation/Department of Interior (DOI) Memorandum of Understanding that addresses response to OCS incidents. This MOU, which outlines the roles of the DOI representative and the USCG on-scene coordinator for discharges in connection with OCS operations, was signed on August 16, 1971 and remains in effect. The Agency does not believe it is necessary to refer to this MOU in the Plan since it serves only to clarify overlapping jurisdiction of the agencies under OCSLA and the Clean Water Act and does not affect the Federal OCS response. Interested public may obtain copies of the MOU from DOI or the USCG.

Section 300.23 Other assistance by Federal agencies.

Discussion

The Agency proposes to add a description of capabilities of NRT member agencies to support OSCs/RPMs during a response action. These capability statements were deleted in the 1982 revisions to the Plan. Since that time, the Agency has reconsidered this issue and feels that it is appropriate to include a brief description of Federal agency capabilities to increase the public's understanding of the respective capabilities of the various agencies that support an OSC or RPM during a response. References to the new term RPM are proposed in §§ 300.23(b) and 300.23(c)(1).

Section 300.24 State and local participation.

Discussion

The Agency proposes to add language to this section concerning the roles of State and local governments in protecting the public health and welfare during an initial response to a discharge or release and to clarify a State's use of the titles OSC and RPM.

Specific Changes

A new paragraph (e) is proposed to address the role of the State and local governments in protecting public health and welfare during a response. In most instances where a Federal response is necessary for a discharge of oil or release of a hazardous substance, pollutant, or contaminant, State and local officials are on scene before the OSC. The proposed addition reflects this first responder role to initiate public safety actions (roadblocks, crowd control, etc.) to protect the public health and welfare pending the arrival of the OSC. It also recognizes that it is a State and local responsibility, as a practical matter rather than Federal law, which will direct any evacuation necessary because of a discharge or release. The Agency believes that these officials are the most capable to carry out these actions, both because of their police powers and since most evacuations are time critical in nature. A similar change is also proposed to § 300.62 for responses under subpart F.

The Agency also proposes to add language to clarify that States may use the titles OSC and RPM for their response personnel without such use carrying the legal meanings for Federal officials in this Plan. This change is necessary since the OSC and RPM have been redefined as Federal officials. However, States acting as lead agency through a contract or cooperative agreement must carry out the same responsibilities as the Federal OSC/RPM (except coordinating and directing Federal agency response actions).

Section 300.25 Non-Government participation.

Discussion

The Agency proposes to add language at the end of paragraph (b) of this section to clarify the role of the scientific support coordinator (SSC) in coordinating technical and scientific information from non-government sources. Existing language in the Plan does not indicate who is responsible for coordinating these efforts. While this information is helpful in carrying out a response, the participation must be coordinated to ensure the OSC is not overburdened with this assistance. The SSC is the appropriate person to coordinate this non-government participation in technical and scientific issues. Also a reference to RPM is proposed in § 300.25(b).

Pursuant to section 111(a)(2) of CERCLA, § 300.25(d) requires that a person other than the Federal Government or a State or person operating under contract or cooperative agreement with the United States who takes response action and wishes to seek reimbursement from the Fund must first obtain prior approval from EPA of the response action and the submission of a claim against the Fund. This preauthorization requirement was intended to ensure that private responses for which Fund reimbursement is sought are cost-effective and otherwise in accordance with this Plan. In addition, the preauthorization requirement is necessary for proper Fund management, to ensure that Fund monies be available for the most urgent priorities.

This proposal would add paragraphs (2), (3), (4), and (5) to § 300.25(d). Fund preauthorization will be considered only for (1) releases warranting removal action pursuant to § 300.65; (2) 104(b) actions where the agency believes the site will be or is listed on the NPL; and (3) remedial actions at NPL sites. Preauthorization will be subject to Fund balancing considerations. The factors considered for determining priority are competing uses of the Fund, listing on the NPL, determination of potential threat to public health and the qualifications of the requester. Payment of a claim under section 112 will be conditioned on the lead agency certifying that costs incurred were necessary and consistent with the preauthorization. The Agency is currently in the process of developing separate regulations that will specifically address the preauthorization process.

Subpart C

Section 300.31 Organization.

Discussion

The Agency proposes to add a diagram outlining the NCP concepts, and maps showing the 10 Standard Federal Regions and 12 USCG Districts. These were included in the 1980 Plan and deleted in the 1982 revisions. The Agency feels that the addition of these items will increase the public's understanding of the national response mechanism and provide information on the EPA region or USCG district with jurisdiction over specific geographic locations in the U.S.

Section 300.32 Planning and coordination.

Discussion

Eight changes or additions to this section are proposed. The intent of all these modifications is to reflect present practices and to better define the roles of the NRT and RRT in the national response mechanism. Each proposed change is discussed below.

Specific Changes

The first set of changes apply to the designation of NRT or RRT chairmen during a responsive activation. Existing language in (a)(2) of this section and in 300.34(f)(2) indicates that the chairman for an activation is the representative of the Federal lead agency for the response. This has caused some confusion over whether DOD would act as chairman for responses involving releases of hazardous substances, pollutants, or contaminants from their vessels and facilities. The Agency believes, with DOD concurrence, that for continuity of organization, the EPA or USCG should act as chairman for the NRT or RRT during a response to an incident involving DOD. Thus, the Agency proposes to change the last sentence in (a)(2) and to add a sentence to (b)(1) indicating that the NRT or RRT chairman during an activation is the EPA or USCG representative, based on whether the discharge or release occurs in the inland zone or coastal zone, or as otherwise agreed upon by the USCG and EPA representatives. There could be situations, such as a DOD remedial action in the coastal zone, where the USCG would defer to EPA to act as chairman.

The second set of changes relate to the role of the NRT in providing advice to the RRTs. The existing language in (a)(8) indicates that the NRT may consider matters referred to it by an RRT for settlement. This has resulted in some concern since the word "settlement" seems to imply that there must be a dispute within the RRT before NRT involvement is appropriate. EPA did not intend this to be the case. RRTs are encouraged to refer matters to the NRT whenever necessary. To clarify this, EPA proposes to change (a)(8) to indicate that the NRT will consider any matters referred to it by RRTs for resolution of outstanding issues or to provide advice. Also, there has been some confusion since the present Plan does not address when it is appropriate for an RRT to refer matters to the NRT. To clarify this, a new paragraph (b)(7) is proposed. This language indicates that RRTs may refer matters to the NRT whenever there is insufficient national policy guidance, a technical issue requiring solution, a question concerning interpretation of language in the Plan, or a disagreement on discretionary actions between RRT members that cannot be resolved on a regional level. Note that disagreements at the RRT level must involve discretionary actions of the RRT. Actions of an RRT that are not discretionary in nature, although they may be disagreeable to some RRT members, would not be appropriate for referral to the NRT.

The third change to this section involves the addition of specific responsibility for the NRT to monitor response related research and development activities of Federal agencies. Many agencies have research and development (R&D) projects underway that support response activities. The Agency intends that the NRT monitor R&D activities of NRT agencies to ensure that the appropriate coordination occurs between agencies and that duplication of effort is minimized. The NRT will be in a position to identify areas requiring R&D, and to provide recommendations for future efforts to the appropriate agencies. The language proposed for a new (a)(7)(v) will task the NRT with this specific role.

The forth change to this section involves the role of the NRT and RRT in training and preparedness for response. Existing language in the Plan in (a)(6) authorizes the NRT to consider and make recommendations to appropriate agencies. While this has occurred, the Agency believes that the NRT and RRTs should take a more direct role in training and prepardness for response. To implement this, the Agency proposes to task the NRT and RRT with specific responsibilities in this area. The language proposed for a new (a)(7)(vi) under direct planning and preparedness responsibilities of the NRT adds the responsibility for monitoring response

training to encourage coordination of available training resources between member agencies. This should result in less duplication and better coordination of response training by Federal agencies with responsibilities under this Plan. In addition to the NRT role, RRTs will also have responsibility for training and preparedness at the regional level. The Agency proposes to task the RRTs specifically with encouraging the State and local response community with improving their response preparedness and to conduct training exercises as necessary within the region to ensure that members of the response community within the region are prepared to carry out their respective roles. The Agency does not see this as a significant change from present practice, since most RRTs are already involved in training exercises on a recurring basis. the New language proposed for (b)(6)(x) formalizes this role. The language proposed for (b)(6)(ix) also formalizes existing practices. With limits on the availability of Federal resources, State and local agencies are relied on extensively to provide initial response, assessment, and monitoring support for the OSC. The Agency intends that RRTs become involved in encouraging the improvement of State and local Response preparedness.

The fifth change to this section addresses training for OSCs, RPMs, and their on scene representatives. Existing language in the Plan does not address training of OSCs and RPMs. There has always been an implicit responsibility for the Federal agency providing the OSC to train those persons to carry out their responsibilities under the Plan. The proposed language added at (c)(1) formalizes this implicit responsibility. The Agency also proposes to add a new (c)(2) addressing training of on scene representatives of the OSC or RPM. A change proposed today in 300.33 authorizes the OSC or RPM to designate capable representatives of other Federal, State, and local government agencies to act as their on scene representatives at a response. The language added in (c)(2) tasks the OSC or RPM to ensure, to the extent practicable, that persons they designate to act as their on scene representatives are adequately trained and prepared to carry out actions they will be tasked with, such as monitoring cleanups, etc.

The sixth change to this section revises the description of the role of the RRT as described in paragraph (b) to clarify the makeup of an RRT. The existing language does not specifically address the structuring of RRTs. As a result, some RRTs are based on the Standard Federal Region while others have subdivided within a region to account for differences in geographic jurisdiction of member agencies. The proposed revision to paragraph (b) and (b)(6) and the addition to (b)(2) reflects the Agency's opinion that RRTs be based on the Standard Federal Regions. The revisions provide for a network of 10 standing RRTs to carry out the planning, coordination, training, evaluation, and preparedness within the region while preserving the incident-specific nature of the RRT to correspond with differences in geographic jurisdictions for member agencies. This structuring recognizes that "regional" boundaries of all RRT members do not correspond to the Standard Federal Regions and provides the flexibility for representation on the incident-specific team based on the geographic location of the incident. Agencies with regional boundaries that do not correspond to the Standard Federal Region, such as the USCG, will be authorized to designate additional representatives to the standing RRT to ensure that their agency is represented for all locations within the region. Participation for a particular incident will involve only those representatives with jurisdiction over the area affected by the release.

The seventh change addresses RRT responsibilities required by the recent rulemaking on subpart H of the Plan. A new sentence (b)(c)(i) is added to ensure that RRTs conduct advance planning on the use of dispersants and other chemical and biological agents. The current § 300.32(b)(6)(1)–(vii) are accordingly renumbered as (b)(6)(ii)–(viii).

The final change to this section deletes the reference in paragraph (d) to DOI providing SSCs for inland areas. As a matter of practice, the SSC for inland areas is normally provided by EPA. This change reflects this practice, but the language still provides for obtaining SSCs from other agencies if determined to be appropriate by the RRT.

Section 300.33 Response operations.

Discussion

Nine changes or additions are proposed to this section. the intent of these revision is to better reflect existing jurisdiction, authorities, and responsibilities of OSCs, to correspond to present practice, and to incorporate the roles and responsibilities of the remedial project manager (RPM). Specific references to the new term RPM are proposed where appropriate in each subparagraph in 300.33(b) except in 300.33(b)(1) and 300.33(b)(12) (as proposed renumbered), which are applicable only to removal actions. Changes to this section also correspond to revised sections being added in subpart C convering public information and worker health and safety. Each proposed change is discussed below.

Specific Change

The first change to this section is the revision of paragraph (a) to reflect the addition of remedial project managers (RPM), to clarify DOD's role as predesignated OSC for hazardous substance, pollutant, or contaminant releases only with respect to their vessels and facilities, and to specify the USCG role at waste sites in the coastal zone. As discussed earlier, the Agency proposes to disignate RPMs for remedial actions, and the existing language in the beginning of (a) has been changed to reflect this proposal. In addition, the language has been modified to reflect DOD's role as predesignated OSC and RPM for hazardous substance, pollutant, or contaminant release from their vessels and facilities. Finally, paragraph (a) has been revised to reflect the role of the USCG OSC in initial response to releases from hazardous waste sites in the coastal zone and to address the transition between the USCG OSC and EPA RPM for remedial actions at facilities in the coastal zone. This change incorporates provisions of the DOT/EPA Instrument of Redelegation of October 1981. This agreement was published in the **Federal Register** on December 31, 1981 at 46 FR 63294.

The second change to this section expands the authority of the first Federal official at the scene of a discharge or release. Existing language in (b)(i) tasks the first official of an agency with responsibilities under this Plan arriving on scene to coordinate activities under the Plan until arrival of the OSC. The Agency proposes to amend this paragraph to authorize this official to initiate necessary actions pending the arrival of the OSC. This authority includes initiating Federal Fund-financed cleanup actions if such actions are required prior to the arrival of the OSC on scene. This will allow for rapid emergency containment or mitigation measures in those situations where the predesignated OSC is not able to get to the scene of an incident immediately. It should be noted that the authority to initiate Fund-financed actions has been limited by requiring authorization by the OSC or an authorized representative of the lead agency before comitting funds. The first Federal official will normally not be familiar with the cirteria or restrictions for use of the applicable Fund, so any

initiation of action requiring funding must be approved by the OSC or other designated agency official before it occurs. This change should allow for rapid action when necessary, yet ensure that any actions taken before the arrival of the OSC are consistent with policies and procedures required by the CERCLA or 311(k) Fund manager.

The third change to this section adds language to (b)(3) authorization the OSC or RPM to designate capable persons from government agencies to act as their on scene representatives at a response. As a practical matter, because of limited resources, the OSC or RPM is not able to be on scene throughout a response. As a result, they rely on representatives from their own or from other agencies to monitor response actions when they are not present. This change formalizes this existing practice. It should be noted, however, that these designated representative are only acting on behalf of and may take actions only as authorized by the predesignated OSC or RPM, not assuming the full authorities and responsibilities of this person. In addition, State and local representatives are not authorized to act in responses funded by CERCLA or the 311(k) Fund unless the appropriate contract or cooperative agreement has been established.

The fourth change modifies existing language in (b)(8) concerning the responsibilities of Federal agencies for discharges of oil or releases of hazardous substances, pollutants, or contaminants from vessels or facilities under their jurisdiction. Existing language in this paragraph seems to limit hazardous substance responsibility to the 297 hazardous substances designated by EPA under section 311(b)(2) of the Clean Water Act. The Agency proposes to delete this limitation and to add additional responsibility for pollutant or contaminant releases. This change expands agency responsibility to include all releases covered by CERCLA. An additional change expands Federal agency responsibility to include contiguous lands under their jurisdiction. There has also been some confusion over the role of the OSC at a discharge or release involving a Federal agency. The existing language authorizes the OSC to conduct appropriate response activities if, in their opinion, the responsible agency does not act promptly or take appropriate action. There has been some concern that the responsible Federal agency may not have the expertise necessary to carry out a proper and timely response, or the OSC would act independently without providing sufficient opportunity for the Federal agency to respond. The Agency believes that it is implicit that the OSC will consult with the Federal agency before acting, but to clarify this, the language has been changed to require the OSC, or in the case of a remedial action the lead agency, to consult with and coordinate all response activities with the responsible agency. In addition, language has been added to indicate that the OSC or RPM is available to provide advice or assistance as requested by the responsible agency throughout that agency's response. In any case, involvement by the OSC or RPM will be limited by restrictions on the use of the 311(k) Fund and CERCAL Trust Fund at incidents involving Federal Facilities and vessels. The final change to (b)(8) clarifies that DOD designates OSCs or RPMs only for releases of hazardous substances, pollutants, or contaminants with respect to their vessels or facilities. DOD will still be responsible for discharges of oil from their vessels or facilities, but the predesignated EPA or USCG OSC will have an oversight role as they do for incidents involving other Federal agencies.

The fifth change modifies existing language in (b)(9) concerning the OSC's or RPM's relationship with the land managing agency or natural resource trustee. The existing language provides for the OSC to notify the land managing agency or natural resource trustee of a discharge or release affecting Federal resources under its jurisdiction. While this has occurred, questions have been raised concerning to what extent the OSC or RPM should consult with the affected agency or trustee. The Agency believes that the OSC or RPM should consult with and coordinate all response activities that may affect Federal resources with the appropriate land manager or resource trustee. The language added to (b)(9) reflects this opinion.

The sixth change to this section is the addition of an OSC/RPM responsibility to consult with DOI or DOC in those cases where a discharge or release may adversely affect any endangered or threatened species or result in destruction or adverse modification of their habitats. This responsibility was deleted in the 1982 revision to the Plan. As a result, there has been some confusion over the applicability of the Endangered Species Act and the other statutes that protect endangered or threatened species. The Agency feels that there has always been an implicit responsibility for the OSC to consider impacts on these species. In order to clear up any confusion which may exist, reference to this need to consult with either DOI or Department of Commerce has been added as (b)(10).

The seventh change involves the reference to addressing worker health and safety concerns in the existing (b)(10). As part of today's rulemaking, the Agency proposes to consolidate the worker health and safety provisions presently in 300.57 and 300.71 in a new section 300.38. The reasoning behind this consolidation is discussed later in today's preamble. the existing (b)(10) has been renumbered as (b)(11), and the reference to the applicable section of the Plan has been amended to reflect this change.

The eighth change involves the addition of an OSC/RPM responsibility as a new paragraph (b)(13) for ensuring that the appropriate public and private interests are both kept informed and their concerns considered throughout a response. This change relates to the proposed addition of a new section 300.39 addressing public information during a response. There has always been an implicit responsibility for OSCs to address public information concerns; this change merely formalizes this responsibility.

The ninth change to this section involves the addition of specific responsibilities for the RPM in remedial actions as a new § 300.33(b)(14).

Section 300.34 Special forces and teams.

Discussion

Six changes to this section are proposed. These changes are necessary to correspond to proposed revisions in other sections of the Plan and to reflect present practices. Each proposed change is discussed below.

Specific Changes

The first change to this section is the incorporation of the new term RPM. References to RPM are proposed for 300.34 (a), (a)(2), (c)(2), (c)(4), (e), (f)(4)(i), (f)(4)(iii), (f)(4)(iv), and (h)(i). (Note that the current 300.34(f)(5) is proposed for renumbering as 300.34(f)(4)—see below.)

The second change to this section relates to the description of USCG Strike Team capabilities in paragraph (a)(1). The reference to ship salvage capability has been deleted since the U.S. Navy is the Federal agency most knowledgeable and experienced in ship salvage. This change corresponds with a proposed addition to 300.37, discussed later in today's preamble, addressing marine salvage. Also, reference to U.S. Navy

capability is included in the DOD agency capability statement added to 300.23(b). In addition, the word "shipboard" has been added in front of "damage control" to avoid any confusion with the term "damages" as defined in CERCLA.

The third change to this section is an editorial correction to paragraph (c)(1). The correct name of the ERT is the "Environmental Response Team", not "Emergency Response Team".

The fourth change to this section is a general update of the language in paragraph (d) describing the roles of the SSC. Reference to RPMs has been added and other minor changes have been made to reflect current practices. In addition, a reference to the agency that provides the SSC has been added.

The fifth change to this section clarifies language in paragraph (e) concerning the availability of the USCG Public Information Assist Team (PIAT) and EPA Public Affairs Assist Team (PAAT) to support OSCs and RPMs during a response. Existing language indicates that these teams are available during major responses. The Agency did not intend to limit use of these teams to major incidents only. To clarify this, changes are proposed to clearly indicate that these teams are available to the OSC or RPM any time outside public affairs support is necessary.

The final change to this section deletes paragraph (f)(2) which refers to what agency acts as chairman of the RRT during activation for a response. As discussed earlier in this preamble, this information has been moved to 300.32(b)(1).

Section 300.35 Multiregional responses.

Discussion

Three changes are proposed to incorporate the new term "RPM" in this section. In 300.35(b), "/RPM" is added after each of the three OSC references.

Section 300.36 Communications.

Discussion

One change is proposed to incorporate the new term "RPM" in this section. In 300.36(a), "/RPM" is added after the second OSC reference only.

Section 300.37 Special considerations.

Discussion

The Agency proposes to rename this section from "Response equipment" to "Special Considerations" and add a new paragraph (b) to address marine salvage. In 1982, the Marine Board of the Commission on Engineering and Technical Systems, National Research Council completed a study of marine salvage in the United States. One of the recommendations of this committee was that the NCP be amended to address marine salvage. This change adds a brief description of marine salvage activities. In addition, because marine salvage activities are complex, the language added encourages OSCs to request technical assistance from DOD to draw on their salvage expertise when involved in a response where marine salvage activities are undertaken.

Section 300.38 (Proposed New) Worker health and safety.

Discussion

The Agency proposes to replace § 300.71 of the current NCP, Worker Health and Safety, and § 300.57(a), Special Considerations, with a new § 300.38, Worker Health and Safety, to reflect the recommendations of an interagency work group which has studied the issue of providing for the protection of the health and safety of employees involved in response actions. The Agency also proposes that § 300.33(b)(10) be revised accordingly (see previous discussion). This amendment is not intended to preempt the Occupational Safety and health Administration (OSHA) from exercising its authority at response sites.

A. Introduction. In December of 1980, a Memorandum of Understanding was signed by the EPA, USCG, OSHA and the National Institute for Occupational Safety and Health, which set up a work group to deal with the health and safety of employees involved in hazardous waste site investigations, clean-up and hazardous substance emergencies. The conclusions of the Work Group form the basis for this revision to the NCP.

B. Conclusions and Recommendations fo the Work Group. The work group concluded that the greatest employee safety and health protection currently available can best be provided by OSHA applying its safety and health regulations to hazardous substance response activities. The work group recommended that this approach be supplemented by the technical advice and assistance of qualified government and non-government personnel as needed, and by the comprehensive training of both workers and supervisors involved in hazardous substance response actions.

The work group recommended that continuing research should be conducted by both Government and nongovernment sources in the areas of open environment air monitoring technology, industrial hygiene and instrumentation, engineering controls and personal protective equipment, and in any related areas which serve to improve the safety and health protection of workers involved in hazardous substance response activities. It further recommended that the results of this research be made available to Federal, State, and local agencies as it is developed. The work group noted that the on-going effort to improve the protection afforded workers involved in hazardous substance response actions must not preclude the use of currently established methods for their protection.

The work group is preparing a "Occupational Safety and Health Guidance Manual for Superfund Activities." This guidance manual will provide governmental agency and private organization officials with the best information that the four Agencies have available on the subject of protecting workers involved in hazardous substance response actions. As new information becomes available, the manual will be updated to reflect relevant findings.

C. EPA Analysis and Conclusions. EPA believes that the work group's conclusions are sound as they apply to CERCLA response actions involving private sector employees and working conditions covered by the Occupational Safety and Health Act (OSH Act, 29 U.S.C. 651 *et seq.*). OSHA has promulgated safety and health regulations covering a wide variety of working conditions. These include the Occupational Safety and Health Standards (29 CFR Part 1910), commonly known as the General Industry Standards, the Safety and Health Regulations for Construction (29 CFR Part 1926) and, where applicable, the Shipyard and Longshoring Standards (29 CFR Parts 1915 and 1918) and OSHA Marine Terminal Regulations (29 CFR Part 1917). Many of the occupational safety and health hazards at response actions can be addressed effectively through application of OSHA standards. OSHA also has recordkeeping, reporting, and related regulations (29 CFR Part 1904). Moreover, OSHA enforcement expertise and available sanctions can be effective in encouraging compliance with these standards during response actions.

For purposes of the NCP, OSHA standards and policies will form the basis for worker safety and health protection; however, other safety and

health rules may apply. These include the following:

(1) As of February, 1984, 24 States operate OSHA-approved programs (State Plans) for occupational safety and health, pursuant to section 18 of the OSH Act. These operations, with respect to whether response actions in such States would need to comply with the State occupational safety and health requirements, would be subject to inspections by State OSH inspectors. (The State may choose not to cover CERCLA response activities, in which case jurisdiction reverts to Federal OSHA.)

(2) Federal agencies other than OSHA regulate worker safety and health for certain working conditions. Where an agency other then OSHA has statutory authority for regulating occupational safety and health and exercises that authority, OSHA is preempted under section 4(b)(1) of the OSH Act from applying its authorities to those working conditions. In some cases safety and health requirements of these other agencies could apply at sites of CERCLA response actions. For example, the Department of Transportation (DOT) has issued regulations requiring motor carriers to immobilize unattended motor vehicles. OSHA is precluded from issuing citations for hazards covered by these DOT standards.

The NCP modification recognizes these other Federal requirements and does not exclude their application and enforcement. This amendment is not intended to preempt OSHA from exercising its authority with respect to response actions.

(3) The occupational safety and health of Federal employees is provided for by their individual agencies. Section 19(a)(1) of the OSH Act requires these agencies to provide working conditions for their employees which are consistent with OSHA standards for private sector employees, and specific requirements with which Federal agencies must comply are set forth in Executive Order 12196 (45 FR 12769–12772, February 27, 1980) and 29 CFR Part 1960. OSHA evaluates the working conditions of Federal employees and Federal agencies' occupational safety and health programs.

(4) State and local government employees are not subject to Federal enforcement under the OSH Act; however, in the twenty-four States that have Federal OSHA-approved plans, States must ensure that State and local employees are provided working conditions consistent with the level of safety provided for private sector employees. Where such State plans exist, States have the right to inspect the working conditions of these employees and issue citations. In all non-plan States, State and local government workers are protected by whatever general provisions the State or local government has, if any, for the health and safety of its employees.

There may be hazardous situations at response actions that are not directly or completely covered by OSHA or other occupational safety and health standards. Nevertheless, under section (5)(a)(1) of the OSH Act employers have the general duty to furnish employees with a place of employment "* * * free from recognized hazards that are causing or are likely to cause death or serious physical harm." Under this provision of the OSH Act, OSHA may issue citations for hazards that may or may not be directly covered by an OSHA standard but which should not be allowed to continue.

Specific Changes

The Agency proposes to delete the existing language in §§ 300.57 and 300.71 addressing worker health and safety and to consolidate these requirements in a new § 300.38. This is being done to clarify the responsibilities of the OSC and RPM at a response. Differences in the language in §§ 300.57 and 300.71 of the present Plan has resulted in some confusion over the role of the OSC in ensuring worker health and safety in responses under subparts E and F. The Agency feels that the worker health and safety provisions apply equally to both oil and hazardous substance responses under the Plan, and consolidation of the worker health and safety provisions in one section should resolve this confusion.

The revisions also should clarify any confusion that exists concerning the responsibility of the OSC and RPM for the health and safety of workers at the response site. The revision makes it clear that each governmental agency and private employer is responsible for the health and safety of their own personnel. In a Federal Fund-financed response, the lead agency will be responsible for ensuring that a program to protect workers is made available and that workers at the scene of a response are apprised of the response site hazards and the provisions of the safety and health program at the scene, but responsibility for compliance with the program will rest with the government agency or private employer at the site. This is no different from present Agency guidance that requires a site safety plan for hazardous substance responses. The Federal Government is not assuming responsibility for individual workers.

Paragraph (b) of this new section tasks responsible parties at a non-Federal Fund-financed response with ensuring that response actions that they take include provisions for a safety and health program for their workers. The Agency believes that failure of a responsible party to ensure such measures could be considered an improper cleanup and allow action, including possible assumption of the cleanup, by the lead agency monitoring the response.

Section 300.39 (Proposed New) Public information.

Discussion

The Agency proposes to add a new § 300.39 to address public information at a response. Although public information has always been an OSC's responsibility, specific reference to this was deleted in the 1982 revision to the Plan. Since public information is such an important part of a response, the Agency feels that this general information should be included in the Plan and apply to responses under both subparts E and F. This change corresponds to revisions to subpart F also being proposed in today's rulemaking that address community relations at hazardous substance responses.

Paragraph (a) of this new section tasks OSCs, RPMs, and agency community relations personnel with ensuring that all appropriate public and private interests are kept informed and their concerns considered throughout a response. The Agency believes that it is essential to provide the public prompt, accurate information on the nature of an incident and the actions underway to mitigate any damage.

Paragraph (b) of this new section addresses the coordination of media relations. This paragraph outlines the establishment of an on-scene news office to coordinate media relations and issue official Federal information. During a large response, there may be a need for participating Federal agencies to make their own press releases or respond to media inquiries. It is essential that these actions be coordinated with the OSC or RPM, thus a requirement has been added that all Federal press releases or statements be cleared through the OSC or RPM. Regional Attorneys should also clear such releases or statements when EPA is the lead Agency. EPA OSC/RPMs have easy access to Regional Attorneys and usually have had experience working with these attorneys. Coast Guard or other non-EPA OSC/RPMs do not have to clear such releases or

statements through the Regional Attorneys. This is consistent with previous guidance in the Plan that was deleted in the 1982 revision.

Section 300.40 (Proposed New) OSC reports.

Discussion

The Agency proposes to create a new § 300.40 titled "OSC Reports", to move the report requirements presently in § 300.56 to this new section, and to revise this section to apply to both discharges of oil and releases of hazardous substances, pollutants, or contaminants. A change in the title of the section from "Pollution reports" to "OSC reports" is proposed to reflect the common name of these reports. The term "pollution reports" or "polreps" usually refers to frequent status reports filed by the OSC during the course of an incident.

Existing language in § 300.69 of the Plan has provisions for documenting incidents involving hazardous substances, but no specific format is required. This change will standardize the report format requirements for both subparts E and F. Reports will be required for all incidents classified as major by the OSC and for any other incident when requested by the RRT. In addition, changes proposed to 300.69 in today's rulemaking will require the completion of an OSC report for all CERCLA Fund-financed removal actions.

In addition to this significant change, six minor changes are proposed to the report format. Three changes add the terms "release" or "hazardous substance, pollutant, or contaminant" to account for the applicability to subpart F. The other three changes add requirements for documenting State participation, impacts of the discharge or release on natural resources, and public information/community relations activities.

Subpart D

Section 300.42 Regional contingency plans.

One change is proposed to incorporate the new term "RPM" in subpart D. In § 300.42(b), "RPM" is added after OSC.

Subpart E

Section 300.51 Phase I—Discovery and notification.

Discussion

The Agency proposed one change to subsection (b) concerning reporting of oil discharges. This change parallels a proposed change to § 300.63 discussed later in today's preamble concerning reporting of hazardous substance releases. Existing language in subsection (b) indicates that reports of oil discharges should be made to either the NRC or to the nearest USCG or EPA office. Any report not made directly to the NRC must be relayed to the NRC if not previously reported to the predesigned OSC. This language is based on regulations in 33 CFR Part 153 for reporting of oil discharges as required by the Clean Water Act. These provisions have resulted in a significant number of reports being received at locations other than the NRC. While in most cases this does not delay Federal response actions, it has been difficult for the USCG and EPA to determine the actual number of discharges that have occurred. In many cases, responsible parties notify both the NRC and the predesignated OSC, thus resulting in duplication of effort. The proposed regulations require reporting to the NRC unless direct reporting is impractical. In such cases, reports can be made to the predesignated USCG or EPA OSC, any USCG unit, or a USCG district office. The Agency believes that direct reporting to the NRC is the most effective and efficient means of facilitating government response action. With existing communications systems, OSCs are normally notified of discharge reports within 15 minutes of their receipt by the NRC.

The Agency proposed to amend subsection (b) to require all reports be made to the NRC unless direct reporting is impractical. An example of such a situation would be a vessel at sea, where a telephone is not available. In such cases, reporting to the nearest USCG unit or a predesignated OSC at the nearest EPA regional office will be authorized, and these locations will relay the information to the NRC. This should result in all discharge reports being recorded at the NRC. The Agency believes that direct reporting to the NRC is the best means of ensuring that the appropriate USCG or EPA OSC is rapidly notified of a discharge. Reports to any other locations may result in delays in relaying the information to the OSC. In addition, collecting all reports at the NRC will provide the USCG and EPA with accurate statistics on the frequency and location of oil discharges and allow for efficient allocation of resources to address such incidents.

The Coast Guard intends to amend the reporting regulations in 33 CFR Part 153 to reflect these revisions if this proposal is adopted. The Agency solicits comments on this proposed modification to reporting procedures.

Section 300.52 Phase II—Preliminary assessment and initiation of action.

Discussion

The Agency proposes one change to paragraph (d) concerning notification of natural resource trustees. These trustees require early notification of incidents that may have affected natural resources. In many instances, there may be impacts that are not readily apparent to the OSC, but could be determined by using the expertise of the resource trustee. This change encourages OSCs to consult with the natural resource trustee when practical for assistance in determining if resources have been damaged by an oil discharge.

Section 300.54 Documentation and cost recovery.

Discussion

Two changes are proposed to this section. The first change adds a requirement in paragraph (b) for OSCs to submit OSC reports. This corresponds to the previous discussion on moving the report requirements to 300.40.

The second change concerns the availability of documentation to natural resource trustees. Existing language in (b) states that documentation should be made available where practicable. The Agency did not intend to limit the trustee's access to this documentation. To clarify this, the words "where practicable" have been deleted.

Section 300.56 [Reserved]

Discussion

As discussed above, the Agency proposes to move the OSC report requirements to a new § 300.40 in subpart C. This new section will apply to both oil and hazardous substance incidents. The specific requirement for OSC reports for oil discharges has been added to 300.54. As a result, § 300.56 will be designated as "Reserved."

Section 300.57 Waterfowl conservation.

Discussion

As discussed above, the Agency proposes to consolidate the worker health and safety considerations in a new § 300.38. In conjunction with this change, paragraph (a) of this section will be deleted, § 300.57 renamed "Waterfowl Conservation", and the current lettering and title of the remaining paragraph (i.e., (b) Waterfowl Conservation) will be deleted.

Section 300.58 Funding.

Discussion

The Agency proposes to add language to paragraph (b) addressing reimbursement of Federal agencies for OSC support. Federal agencies have been called upon by the OSC in many situations to provide support that goes beyond program authorities for these agencies. In addition, some of this assistance results in the Federal agency incurring expenses that should be reimbursable. The Agency agrees with this. Procedures already exist in 33 CFR Part 153 for reimbursement to Federal agencies from the 311(k) Fund for certain costs incurred while providing assistance requested by the OSC. The change proposed to paragraph (b) will add specific reference to this procedures.

Subpart F

Section 300.61 General.

Discussion

This section describes various principles generally applicable to subpart F of the plan. The modifications proposed to this section are minor and are intended to clarify certain provisions and make them consistent with the rest of the Plan. Major modifications to subpart F are discussed in section II.

Specfic Changes

CERCLA section 104(a)(1) authorizes response unless the Agency determines that the response action be done properly by a responsible party. The Agency considers the timeliness of the response to be an important factor in determining whether the response will be conducted properly. Therefore, in § 300.61(b), EPA proposes stating that the responsible party response must be conducted in a timely fashion, or Fund-financed response action may be authorized. This clarifies existing EPA policy that the reponsible party seeking to conduct the site response must initiate and complete the response in a timely fashion or the Fund may be engaged to remedy the threats posed by the site.

In § 300.61(c) the Agency has added two additional factors to help coordinate and speed site response. These include involving the Regional Response Team (RRT) and encouraging the establishment of private organizations to aid in site response. As stated previously, the Agency believes that the RRT can help coordinate response measures when several Federal agencies are involved in the response and wants to advocate the use of the group. Private organizations, as outlined in § 300.71 of this proposal, may provide useful services in accelerating site response. In addition, § 300.61(c) allows the response personnel to consider alternative or innovative technology in developing the cost-effective response.

Section 300.61(d) has been amended to specify that the lead agency will provide surveillance of responsible party actions, where practicable. This codifies existing operating procedures under which the lead agency will generally oversee response actions, which will tend to assure adequate protection of public health, welfare and the environment.

Where surveillance indicates that necessary and proper response actions are not being taken, the lead agency may complete the remaining response actions. The responsible parties will be liable for any response costs resulting from surveillance and/or completion of response actions.

Finally, an important addition is being proposed in § 300.61(e). CERCLA section 107 states that persons may bring actions for recovery of costs incurred consistent with the NCP. (The Federal and State governments may recover for costs incurred "not consistent" with the Plan.) Section 107 does not limit such liability to only those costs incurred at those sites listed on the NPL. However, some question has arisen whether a site must be listed on the NPL for an action to be consistent with the NCP for purposes of recovery of costs by private parties and States. EPA proposes to clarify this issue and other issues in subsection (e). This subsection states that subpart F does not establish any preconditions to any enforcement action; nor does it limit the rights of any person to seek recovery of non Fund-financed response costs from responsible parties pursuant to CERCLA §107, except as provided in § 300.71. In addition, the subsection states that actions in implementing subpart F are discretionary and that subpart F does not create any rights to any Federal actions.

Section 300.62 State role.

Discussion

Several minor additions and clarifications are proposed in this section. The procedures and requirements outlined in this section require little modification.

Section 300.62(a)(1) has been amended to clarify that various agencies of the Federal Government may enter into contracts and cooperative agreements. The prior omission of the USCG, FEMA & HHS which have such authority, from this subsection was an oversight.

Proposed subsection (a)(2) specifies that cooperative agreements are unnecessary for State response and other actions that are not Fund-financed. Coordination with EPA or USCG is encouraged, however. Superfund State contracts and cooperative agreements are intended to facilitate coordination between the Federal and State governments. Where a Federal role is not required because the Fund is not involved, a contract or agreement is unnecessary. Likewise, the subsection clarifies that for any other party actions, such Superfund State contracts and agreements are not required.

However, if a State wants its expenditures for response actions taken at a site to count as part of its required cost-share match, a cooperative agreement or contract must be executed for this purpose.

The Agency is aware that some confusion may exist concerning the implications of State cooperative agreements or contracts. In subsection (c) language has been added to clarify that State cooperative agreements or contracts are not a precondition to enforcement action or cost-recovery pursuant to CERCLA section 107. This language reinforces the new proposed language in § 300.61(e) and § 300.71.

Section 300.62(d) has been changed to require that the State provide a firm commitment and funding only prior to *remedial action*. This reflects Agency policy not to require these commitments for remedial design and remedial planning activities.

Proposed subsection (h) recognizes the roles that State and local safety organizations currently play in response actions. Such organizations are expected to initiate public safety measures deemed necessary to protect public health and welfare of local populations. This language reflects the role State and local governments perform at this time, in undertaking evacuation and limiting public access when necessary.

Section 300.63 Discovery and notification.

Discussion

Three changes are proposed to revise subsections (b) and (c) concerning reporting of hazardous substance releases. This proposed revision will establish consistent reporting requirements for both oil discharges and hazardous substance releases and parallels a proposed revision to 300.51

discussed earlier in today's preamble. Existing language in subsection (b) requires all reports of hazardous substance releases be made to the NRC. In addition, EPA's soon to be promulgated Superfund Notification Rule, 40 CFR Part 302, provides that all reporting of releases pursuant to CERCLA section 103 (a) and (b) be made to the NRC. Since the requirement to provide notice only to the NRC was adopted in the NCP in 1982, EPA has received several requests to consider alternate reporting provision to account for situations when direct reporting to the NRC may not be practicable, such as releases from ships at sea. The Agency considered modifying the Superfund Notification Rule, 40 CFR Part 302 to provide for reporting to other than the NRC in some limited circumstances, but decided to defer consideration of such a change until this rulemaking in order to allow additional public comment and to assure that if such a change were adopted, appropriate mechanisms were in place so that even when initial notice was provided to other than the NRC, the NRC would receive notification in a timely manner. This requirement is based on the statutory language in section 103(a) of CERCLA that notice be provided to the NRC.

The Agency proposes to amend subsection (b) to require all reports be made to the NRC unless direct reporting is impractical. In such cases, reporting to a predesignated OSC at the nearest USCG office or EPA Regional Office will be authorized, and these officials are given the responsibility to relay the information to the NRC.

The Agency believes that authorizing initial reporting to the OSC is consistent with the intent of 103(a), as long as there is assurance that the report is subsequently relayed to the NRC, and that making the report to the OSC does not delay any necessary response. EPA believes that providing for initial notice to the OSC as discussed above would be consistent with this intent, yet would provide additional flexibility in those situations where reporting directly to the NRC is impractical. These situations will be limited, so most reports will still be made directly to the NRC.

The Agency intends to amend the reporting regulations in 40 CFR Parts 117 and 302 to reflect these revisions if this proposal is adopted and solicits comments on this proposed modification to reporting procedures. Pending adoption of this proposal to allow reporting to the OSC, in some limited circumstances, the requirement in § 300.63 and in the Superfund Notification Rule, 40 CFR Part 302 remain in effect.

A second change proposed to this section involves notification to States. Existing language in subsection (b) indicates that the NRC shall notify the Governor of a State affected by a release. This conflicts with existing procedures where reports to the States are made by the OSC or the lead agency. The Agency believes that the OSC or lead agency is in the best position to be familiar with State organizations that require notification. Revisions are proposed to subsection (c) to reflect that notifications to States will be made by the OSC or lead agency.

A third change proposed is the addition of a new subsection (d). The purpose of this addition is to clarify who should conduct further analysis of the release, based on the level of threat posed. If the notification indicates that a release may require response action under § 300.65, a preliminary assessment pursuant to § 300.64 should be initiated as soon as possible. If such response action is not likely to be required, a less detailed preliminary assessment pursuant to section 300.66 should be conducted. The Agency believes that this language will aid in clarifying confusion over the degree of preliminary assessment to be conducted, and when such assessments should be conducted.

Section 300.64 Preliminary assessment for removal actions.

Discussion

There are two types of preliminary assessment: One for removal actions and one for remedial responses. The preliminary assessment for remedial action is at times less comprehensive than the preliminary assessment for removal since less immediate threats will be more comprehensively evaluated during a site investiagion.

This section clarifies some confusion that has arisen over the level of preliminary assessment to be conducted. The title of this section has been changed to clarify that it applies only to removal preliminary assessment.

Specific Changes

In subsection (a), the statement that "Other releases shall be assessed as soon as practicable" has been deleted. This sentence was deleted so that the section would only apply to releases that may present a problem needing a removal, consistent with the title change.

The existing section does not address when it is appropriate to request input from HHS on public health issues. Proposed subsection (a) clarifies that the OSC may request HHS to evaluate the public health threat posed by the release if it would be helpful in determining the need for removal action.

The revised language includes a provision for notification of the natural resource trustee if resources may have been damaged. A new subsection (d) has been added that requires the OSC to notify the trustee if the preliminary assessment indicates that natural resources damage may have occurred. This seciton has been added to ensure that the trustee is award of possible damage at an early stage in the investigation and is able to initiate appropriate action.

The section also recognizes that damage may not be readily apparent to the OSC/RPM and encourages the OSC/RPM to seek the expertise of the natural resource trustee in determining if any damage exists. A complementary section on notification of trustees has also been inserted in § 300.69. Section 300.65 and § 300.66 were discussed in Section II.

Section 300.67 Community Relations.

Discussion

Section 300.67 is a new section. Experience gained during the early years of the program has shown that a strong community relations component is an important aspect of a successful cleanup program. The purpose of the community relations program is to provide communities with accurate information about problems posed by releases of hazardous substances, and give local officials and citizens the opportunity to comment on the technical solutions to the site problems.

Specific Changes

Subsection (a) requires that all removal actions pursuant to 300.65 and all remedial actions at NPL sites including enforcement actions, must have a formal community relations plan, except for short term or urgent removal actions or urgent enforcement actions. A formal plan will not be required for remedial response actions not listed on the NPL. This reflects current operating procedures and may encourage and expedite private and responsible parties responses to releases not listed on the NPL. In addition, because most USCG spill responses are removal situations, USCG will rarely be required to prepare a formal plan. Current USCG procedures will continue to be followed for spill incidents. The Agency's community relations guidance provides guidance in determining whether or not a plan is

necesssary for other removals or urgent enforcement actions. The Office of Emergency and Remedial Response may be contacted for copies of the guidance and propose updates.

The formal plan, based on discussions with citizens in the community, should include the following: A description of the site location and history; a thorough discussion of the history of community relations activities and a summary of recent citizen issues; site specific community relations objectives and communication activities; and a community relations workplan, staffing plan, budget and mailing list. Such plans should be reviewed by the public. The use of the RRT to assist community relations activities should be considered in developing such plans.

Subsection (b) states that in the case of actions posing a threat pursuant to § 300.65(b), or enforcement actions to compel response analogous to § 300.65 or other short term action to abate a threat to public health, welfare or the environment, a spokesperson will be designated to provide the community with information on the release and the response. This reflects current operating procedures in emergency situations. No new method of operation or procedures is contemplated by this section.

Subsection (c) is directed to the timing of the community relations plan for remedial actions at NPL releases including, Fund-financed and enforcement actions. This section reflects EPA's community relations guidance document and states that plans should be developed and implementation begun prior to field activities. This subsection also states that, in certain cases, the responsible party may develop and implement specific parts of the community relations plan with lead agency oversight. This will conserve Agency resources and may result in more responsible parties coming forward to correct past hazardous waste releases.

Section (d) states that the minimum public comment period allowed for review of feasibility studies for remedial actions at NPL releases shall be 21 calendar days. The comment period is to be held prior to final selection of the remedy and allows for effective community and responsible party input into the decision-making process. The public may also have the opportunity to comment during the development of the feasibility study. This will provide the public with advance warning as to possible remedial alternatives.

This public involvement is an important component of the administrative record development by the Agency in support of the remedy selected. For this reason, the Agency expects that all concerns regarding the cleanup be raised during this period by all affected parties.

Subsection (e) requires that a responsiveness summary be included in the record of decision, addressing the major issues raised by the community. The Agency believes a summary of major comments will be helpful in explaining how the Agency has taken the comments into account in reaching its final decision.

As noted earlier, the consent decree reached in the litigation with the Environmental Defense Fund concerning the NCP requires EPA to propose amendments to the NCP to . . . (c) provide comparable public participation for private-party response measures taken pursuant to enforcement actions. Thus, the provisions for public review of RI/FS in enforcement actions are comparable to those required for Fund-financed cleanup, and responsiveness summaries are required for enforcement actions as well as Fund-financed actions.

The lead agency in appropriate circumstances may schedule additional meetings involving potentially responsible parties and a limited number of representatives of the public, where these representatives have adequate legal and technical capability and can provide appropriate assurances concerning any confidential information that may arise during the discussions, if in the judgment of the lead Agency such meetings may facilitate resolution of issues involving the appropriate remedy at the site.

Two revisions are proposed to § 300.69. The first adds a requirement for the completion of OSC reports for all major releases and all Fund-financed removals. The second change adds language addressing the reimbursement of Federal agencies for costs incurred during a response.

Revisions of § 300.68 and § 330.71 were discussed in section II of this preamble.

Subpart G

Section 300.72 Designation of Federal Trustees.

The Agency proposes one minor change to correct a typographical error in subparagraph (b)(1) of this section. The word "in" at the end of line 4 is replaced by "or."

Section 300.73 State Trustee.

The change proposed in the first sentence is to simplify and consolidate the several references to CERCLA sections into a single general reference to CERCLA provisions for State trustees.

CERCLA Section 111 provides that:

(h)(1) In accordance with regulations promulgated under section 301(c) of this Act, damages for injury to, destruction of, or loss of natural resources resulting from a release of a hazardous substance, for the purposes of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act, shall be assessed by Federal officials designated by the President under the National Contingency Plan published under section 105 of the Act, and such officials shall act for the President as trustee under this section and section 311(f)(5) of the Federal Water Pollution Control Act.

(2) Any determination or assessment of damages for injury to, destruction of, or loss of natural resources for the purposes of this Act and section 311(f) (4) and (5) of the Federal Water Pollution Control Act shall have the force and effect of a rebuttable presumption on behalf of any claimant (including a trustee under section 107 of this Act or a Federal agency) in any judicial or adjudicatory administrative proceeding under this Act or section 311 of the Federal Water Pollution Control Act.

The Agency is considering whether to adopt one of three possible approaches with respect to the assessment of damages for injury to, destruction or loss of any State natural resources within its borders, belonging to, managed by or appertaining to such State.

The first approach is to amend this section to designate Federal officials who, as appropriate, could perform assessments of State natural resource damages at the request of State trustees. States could also perform assessments, however, only Federal assessments, performed in accordance with the regulations required by section 301(c) of CERCLA, would be entitled to the rebuttable presumption established in section 111(h)(2) of CERCLA.

The second approach would be that only States would perform assessments of damages for injury to, destruction or loss of any State natural resources and such assessments would be entitled to the rebuttable presumption in § 111(h)(2).

The final approach would be that only States would perform assessments of damages for injury to, destruction or loss of any State natural resources. Such assessments however, would be entitled to the rebuttable presumption in § 111(h)(2) only where they are performed in accordance with

regulations promulgated under section 301(c) of CERCLA.

The Agency requests on these various approaches.

Subpart H

Use of Dispersants and Other Chemicals.

Discussion

The Agency is proposing several changes to subpart H as promulgated in the **Federal Register** on July 18, 1984 (49 FR 29192).

In the preamble to the current subpart H, the statement was made that the SSC in inland areas was generally the DOI. Although the NCP, as promulgated on July 16, 1982 (47 FR 31208 stated that generally the SSC for the inland areas will be provided by EPA or DOI, today's proposed revisions delete the reference to DOI. As a matter of practice, the SSC for inland areas is normally provided by EPA. This change reflects current practice, although SSCs may be obtained from other agencies if determined to be appropriate by the RRT.

The Agency would also like to clarify its position on the authorization and consultation process for using dispersants, surface collecting agents, burning agents, or biological additives on oil discharged into navigable waters. Under § 300.84 (a) and (b) of the current subpart H (49 FR 20197, July 18, 1984), the OSC must obtain the concurrence of the EPA representative to the RRT and the concurrence of the States with jurisdiction over the navigable waters polluted by the oil discharge prior to authorizing the use of a product on the NCP Product Schedule. This provision will remain unchanged. However, a statement is proposed as an addition to subsections (a) and (b) to indicate that the OSC should consult with appropriate Federal agencies as practicable when considering the use of such products on an oil discharge. A similar change to § 300.84(b), burning agents will be made.

Section 300.84(e) which permits the OSC to authorize the use of such products without obtaining the concurrence of the EPA RRT representatives or the States if the RRT and the States with jurisdiction over the waters of the area approve in advance the use of certain products on the schedule. An addition is proposed to the last sentence in § 300.84(e) to allow use under such circumstances without consultation with other appropriate Federal agencies.

IV. Economic Impacts of Proposed NCP Revisions

The incremental economic effect of each of the proposed revisions is defined as the economic changes that may result from the revision compared to the current Superfund program without the revision. Some of the revisions have already been instituted as policy changes in the Superfund program and are being proposed as changes to the NCP for the purposes of consistency. These revisions can thus be considered not to result in economic effects when compared to the current NCP.

There are four major proposed revisions to the NCP. They are as follows:

- Eliminate planned removals and initial remedial measures as distinct response categories. Revise the provisions to establish one category of removal action to be accomplished in response to a threat to public health, welfare, or environment;
- Add explicit requirements for community relations programs and public comment at Fund-financed and enforcement responses;
- Explicitly require use of existing Federal public health and environmental standards, where applicable or relevant in selecting the appropriate remedy;
- Provide for listing of releases on the NPL which, while not meeting HRS criteria pose significant public health threats.

The anticipated effects and the proposed revisions are listed below:

1. In the current NCP, §§ 300.65 and 300.67 authorize two categories of removal action: immediate and planned. Section 300.68 authorizes IRMs to be taken as a part of a remedial action. The criteria for taking IRMs are similar to those for planned removals, except that IRMs must be cost-effective. Both planned removals and IRMs require State cost-sharing. The proposed revisions eliminate planned removal and IRM categories and expand the category of removals and modify the standard for taking action.

The anticipated effects of this proposed revision are as follows:

The State costs will be reduced, with a corresponding increase in demand on the Fund. With 60 projected planned removals and 104 projected IRMs expected to be reclassified as removals over a 6-year period, cost savings to States will be about $4.9 million (undiscounted FY 84 dollars). Increased demand of $4.9 million on the Fund could reduce funds available at one remedial response that might otherwise have been conducted. The revision may accelerate removal and remedial activity, thereby increasing costs to responsible parties and reducing health and environmental risks of exposure to hazardous substances and possibly reduce the longer term costs because of quicker response. States will also save the costs of preparing cooperative agreements in the case of reclassified removal actions.

2. In the current NCP, § 300.61(c)(3) states that, to the extent practicable, response personnel should be sensitive to local community concerns in accordance with applicable guidance.

The proposed revisions define major Superfund community relations program requirements and require response personnel to conduct a public comment period on draft feasibility studies.

The anticipated effects are minor. Full compliance may increase response costs slightly, particularly administrative costs to EPA and local governments, with a corresponding increase in costs to responsible parties. Greater public involvement may expedite response process in some cases, thereby offsetting any costs caused by delays.

3. In the current NCP use of existing EPA or other Federal standards is not explicitly discussed, except in the preamble.

The proposed revisions explicitly require the use of existing Federal public health and environmental standards in selecting the appropriate remedy, where such standards are applicable or relevant, with limited exceptions. Risk assessments are required where no standards are applicable or relevant. Under current operating procedures, we are generally meeting standards because we believe they generally define adequate protection of health and the environment.

The anticipated effects of this revision are as follows:

Some additional costs may be incurred by EPA in making necessary determinations and performing analyses. The magnitude of these effects will be estimated as guidance or policy is developed.

4. In the current NCP § 300.66 establishes the listing process for the NPL. Currently, EPA policy requires an HRS score of 28.50 to be added to the NPL.

The proposed revisions allow releases for which an HHS health advisory has been issued to be listed on the NPL.

The anticipated effects of this revision are as follows:

The effects depend upon the number of sites listed using the criteria. Costs to States and responsible parties will increase, but the magnitude of this

increase cannot be estimated accurately. Because sites so listed will have potentially major public health impacts, the proposed changes will give the Agency broader authority to undertake remedial action to protect public health and the environment. Given limited Fund size, listing of these sites will replace, rather than supplement, funds spent on other sites, resulting in no net economic impacts.

The anticipated effects of all of the revisions are as follows:

State costs will be reduced, with a corresponding increase in demands on the Fund. With a total of 356 Fund-financed RI/FS (320 at private sites), projected over FY 84–89 period, and 247 Fund-financed remedial designs projected over the same period (222 at private facilities), total cost savings to States will be about $30 million (FY 84 dollars). Increased demand of $30 million on the Fund could decrease by about 4 the number of sites that might otherwise receive remedial response. The policy change may accelerate remedial activities by removing the State cost-share requirement, resulting in earlier reduced risks of exposure to hazardous substances.

V. Summary of Supporting Analyses

A. Classification Under E.O. 12291

Proposed regulations must be classified as major or nonmajor to satisfy the rulemaking protocol established by Executive Order 12291. E.O. 12291 establishes the following criteria for a regulation to qualify as a major rule:

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

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

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

The proposed NCP is a nonmajor rule because it would have no significant incremental economic effects. To the extent that economic impacts do occur, they are likely to be positive.

This regulation was submitted to OMB for review under Executive Order 12291.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act of 1980, Agencies must evaluate the effects of a proposed regulation on "small entities." That Act recognizes three types of such entities:

1. Small businesses (specified by Small Business Administration regulations);

2. Small organizations (independently owned, nondominant in their field, nonprofit); and

3. Small governmental jurisdictions (serving communities with fewer than 5,000 people).

If the proposed rule is likely to have a "significant impact on a substantial number of small entities," the Act requires that a Regulatory Flexibility Analysis be performed. EPA certifies that the NCP will not have a significant impact on a substantial number of small entities. To the extent that impacts on small entities occur, they are likely to be positive.

Small businesses and small organizations will generally be affected only by the proposed changes that address enforcement actions. These changes in the NCP generally codify existing enforcement policies (e.g., proposed changes to require enforcement responses to comply with applicable or relevant federally enforceable environmental standards) and therefore modifying the NCP will not impose any additional burden on small entities subject to enforcement actions. Although requiring community relations plans (CRPs) at most enforcement responses will increase responsible party costs, these costs are small (averaging $6,000) relative to response costs and may save costs by expediting the response process. Moreover, it is a matter of Agency discretion whether to proceed with enforcement actions against small entities that may be significantly affected by such actions. Therefore, there are no necessary adverse impacts on small businesses and organizations directly associated with the NCP.

The proposed changes may affect some small government jurisdictions, but most of the effects are likely to be positive. For example, the proposed change to mandate CRPs may reduce the burden on small government jurisdictions by providing an efficient vehicle for the local government involvement.

C. Paperwork Reduction Act

Today's proposed rule does not impose any regulatory burden on parties outside of EPA, including any reporting or information collection requirements.

VI. Lists of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Hazardous substances, Intergovernmental relations, National resources, Occupational safety and health, Oil pollution, Reporting and record keeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

For the reasons set forth in the preamble, Part 300, Subpart J, Chapter I of Title 40, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 300 reads as follows:

Authority: Sec. 105 Pub. L. 96–510, 94 Stat. 2784, 42 U.S.C. 9605; Sec. 311(c)(2), Pub. L. 92–500 as amended, 86 Stat. 865, 33 U.S.C. 1321 (c)(2); E.O. 12316, 46 FR 42237; E.O. 11735, 38 FR 21243.

Dated: January 25, 1985.

Lee M. Thomas,

Acting Administrator.

1. 40 CFR Part 300 (Subparts A–G) is revised as follows (Appendix A is republished without change for reader convenience):

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

Subpart A—Introduction

Sec.

Subpart B—Responsibility

Subpart C—Organization

Subpart D—Plans

Subpart E—Operational Response Phases for Oil Removal

Authority: Sec. 105, Pub. L. 96-510, 94 Stat. 2764, 42 U.S.C. 9605 and sec. 311(c)(2), Pub. L. 92-500, as amended; 86 Stat. 865, 33 U.S.C. 1321(c)(2); Executive Order 12316, 47 FR 42237 (August 20, 1981); Executive Order 11735, 38 FR 21243 (August 1873).

Subpart A—Introduction

§ 300.1 Purpose and objectives.

The purpose of the National Oil and Hazardous Substances Pollution Contingency Plan (Plan) is to effectuate the response powers and responsibilities created by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and the authorities established by section 311 of the Clean Water Act (CWA), as amended.

§ 300.2 Authority.

The Plan is required by section 105 of CERCLA, 42 U.S.C. 9605, and by section 311(c)(2) of the CWA, as amended, 33 U.S.C. 1321(c)(2). In Executive Order 12316 (46 FR 42237) the President delegated to the Environmental Protection Agency the responsibility for the amendment of the NCP and all of the other functions vested in the President by section 105 of CERCLA. Amendments to the NCP shall be coordinated with members of the National Response Team prior to publication for notice and comment including the Federal Emergency Management Agency and the Nuclear Regulatory Commission in order to avoid inconsistent or duplicative requirements in the emergency planning responsibilities of those agencies.

§ 300.3 Scope.

(a) The Plan applies to all Federal agencies and is in effect for:

(1) The navigable waters of the United States and adjoining shorelines, for the contiguous zone, and the high seas beyond the contiguous zone in connection with activities under the Outer Contintental Shelf Lands Act or the Deep Water Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976). (See sections 311(b)(1) and 502(7) of the Clean Water Act.)

(2) Releases or substantial threats of releases of hazardous substances into the environment, and releases or substantial threats of releases of pollutants or contaminants which may present an imminent and substantial danger to public health or welfare.

(b) The Plan provides for efficient, coordinated and effective response to discharge of oil and releases of hazardous substances, pollutants and contaminants in accordance with the authorities of CERCLA and the CWA. It provides for:

(1) Division and specification of responsibilities among the Federal, State, and local governments in response actions, and appropriate roles for private entities.

(2) The national response organization that may be brought to bear in response actions, including description of the organization, response personnel and resources that are available to respond.

(3) The establishment of requirements for Federal regional and Federal local contingency Plans, and encouragement of preplanning for response by other levels of government.

(4) Procedures for undertaking removal operations pursuant to section 311 of the Clean Water Act.

(5) Procedures for undertaking response operations pursuant to CERCLA.

(6) Designation of trustees for natural resources for purposes of CERCLA.

(7) National policies and procedures for the use of dispersants and other chemicals in removal and response actions.

(c) In implementing this Plan, consideration shall be given to the Joint Canada/U.S. Contingency Plan; the U.S./Mexico Joint Contingency Plan and international assistance plans and agreements, security regulations and responsibilities based on international agreements, Federal statutes and executive orders. Actions taken pursuant to this Plan shall conform to the provisions of international joint contingency Plans, where they are applicable. The Department of State should be consulted prior to taking any action which may affect its activities.

§ 300.4 Application.

The Plan is applicable to response taken pursuant to the authorities under CERCLA and section 311 of the CWA.

§ 300.5 Abbreviations.

(a) Department and Agency Title Abbreviations.

DOC—Department of Commerce
DOD—Department of Defense
DOE—Department of Energy
DOI—Department of the Interior
DOJ—Department of Justice
DOL—Department of Labor
DOS—Department of State
DOT—Department of Transportation
EPA—Environmental Protection Agency
FEMA—Federal Emergency Management Agency
HHS—Department of Health and Human Services
NIOSH—National Institute for Occupational Safety and Health
NOAA—National Oceanic and Atmospheric Administration
USCG—U.S. Coast Guard

(1) Operational Title Abbreviations.

ERT—Environmental Response Team
FCO—Federal Coordinating Officer
NRC—National Response Center
NRT—National Response Team
NSF—National Strike Force
OSC—On-Scene Coordinator
PATT—Public Affairs Assist Team
PIAT—Public Information Assist Team
RPM—Remedial Project Manager
RRC—Regional Response Center
RRT—Regional Response Team
SSC—Scientitic Support Coordinator

§ 300.6 Definitions.

Terms not defined in this section have the meaning given by CERCLA or the CWA.

Activation means notification by telephone or other expeditious manner or, when required, the assembly of some or all appropriate members of the RRT or NRT.

Claim, as defined by section 101(4) of CERCLA, means a demand in writing for a sum certain.

CERCLA or "Superfund", is the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

Coastal waters, for the purposes of classifying the size of discharges, means the waters of the coastal zone except for

the Great Lakes and specified ports and harbors on inland rivers.

Coastal zone, as defined for the purpose of this Plan, means all U.S. waters subject to the tide, U.S. waters of the Great Lakes, specified ports and harbors on the inland rivers, waters of the contiguous zone, other waters of the high seas subject to this Plan, and the land surface or land substrata, ground waters, and ambient air proximal to those waters. The term coastal zone delineates an area of Federal responsibility for response action. Precise boundaries are determined by EPA/USCG agreements and identified in Federal regional contingency plans.

Contiguous zone means the zone of the high seas, established by the United States under Article 24 of the Convention on the Territorial Sea and Contiguous Zone, which is contiguous to the territorial sea and which extends nine miles seaward from the outer limit of the territorial sea.

Discharge, as defined by section 311(a)(2) of CWA, includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping of oil. For purposes of this Plan, discharge shall also mean substantial threat or discharge.

Drinking water supply, as defined by section 101(7) of CERCLA, means any raw or finished water source that is or may be used by a public water system (as defined in the Safe Drinking Water Act) or as drinking water by one or more individuals.

Environment, as defined by section 101(8) of CERCLA, means (a) the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the U.S. under the Fishery Conservation and Management Act of 1976, and (b) any other surface water, ground water, drinking water supply, land surface and subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.

Facility, as defined by section 101(9) of CERCLA, means (a) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (b) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

Feasibility study, is a process undertaken by the lead agency (or responsible party if the responsible party will be developing a clean-up proposal) for developing, evaluating and selecting remedial actions which emphasizes data analysis. The feasibility study is generally performed concurrently and in an interdependent fashion with the Remedial Investigation. In certain situations, the Agency may require potential responsible parties to conclude initial phases of the remedial investigation prior to initiation of the feasibility study. The Feasibility study process uses data gathered during the remedial investigation. This data is used to define the objectives of the response action and to broadly develop remedial action alternatives. Next, an initial screening of these alternatives is required to reduce the number of alternatives to a workable number. Finally, the feasibility study involves a detailed analysis of a limited number of alternatives which remain after the initial screening stage. The factors that are considered in screening and analyzing the alternatives are public health, economics, engineering practically, environmental impacts and institutional issues.

Federally permitted release, as defined by section 101(10) of CERCLA, means (a) discharges in compliance with a permit under section 402 of the Federal Water Pollution Control Act; (b) discharges resulting from circumstances identified and reviewed and made part of the public record with respect to a permit issued or modified under section 402 of the Federal Water Pollution Control Act and subject to a condition of such permit; (c) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Federal Water Pollution Control Act, which are caused by events occurring within the scope of relevant operating or treatment systems; (d) discharges in compliance with a legally enforceable permit under section 404 of the Federal Water Pollution Control Act; (e) releases in compliance with a legally enforceable final permit issued pursuant to section 3005(a) through (d) of the Solid Waste Disposal Act from a hazardous waste treatment, storage, or disposal facility when such permit specifically identifies the hazardous substances and makes such substances subject to a standard of practice, control procedure or bioassay limitation or condition, or other control on the hazardous substances in such releases; (f) any release in compliance with a legally enforceable permit issued under section 102 or section 103 of the Marine Protection, Research and Sanctuaries Act of 1972; (g) any injection of fluids authorized under Federal underground injection control programs or State programs submitted for Federal approval (and not disapproved by the Administrator of EPA) pursuant to part C of the Safe Drinking Water Act; (h) any emission into the air subject to a permit or control regulation under section 111, section 112, title 1 part C, title 1 part D, or State implementation plans submitted in accordance with section 110 of the Clean Air Act (and not disapproved by the Administrator of EPA), including any schedule or waiver granted, promulgated, or approved under these sections; (i) any injection or fluids or other materials authorized under applicable State law (1) for the purpose of stimulating or treating wells for the production of crude oil, natural gas, or water, (2) for the purpose of secondary, tertiary, or other enhanced recovery of crude oil or natural gas, or (3) which are brought to the surface in conjunction with the production of crude oil or natural gas and which are reinjected; (j) the introduction of any pollutant into a publicly owned treatment works when such pollutant is specified in and in compliance with applicable pretreatment standards of section 307 (b) or (c) of the CWA and enforceable requirements in a pretreatment program submitted by a State or municipality for Federal approval under section 402 of such Act, and (k) any release of source, special nuclear, or by-product material, as those terms are defined in the Atomic Energy Act of 1954, in compliance with a legally enforceable license, permit, regulation, or order issued pursuant to the Atomic Act of 1954.

First Federal official, means the first representative of a Federal agency, with responsibility under this Plan, to arrive at the scene of a discharge or release. This official coordinates activities under this Plan and is authorized to initiate necessary actions normally carried out by the OSC, until arrival of the predesignated OSC.

Fund or Trust Fund means the Hazardous Substance Response Trust Fund established by section 221 of CERCLA.

Ground water, as defined by section 101(12) of CERCLA, means water in a saturated zone or stratum beneath the surface of land or water.

Hazardous substance, as defined by section 101(14) of CERCLA, means (a) any substance designated pursuant to section 311(b)(2)(A) of the CWA; (b) any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA; (c) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid

Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress); (d) any toxic pollutant listed under section 307(a) of the CWA; (e) any hazardous air pollutant listed under section 112 of the Clean Air Act; and (f) any imminently hazardous chemical substance or mixture with respect to which the Administration has taken action pursuant to section 7 of the Toxic Substances Control Act. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (a) through (f) of this paragraph, and the term does not include natural gas, natural gas liquids, liquified natural gas or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

Inland waters, for the purposes of classifying the size of discharges, means those waters of the U.S. in the inland zone, waters of the Great Lakes, and specified ports and harbors on inland rivers.

Inland zone means the environment inland of the coastal zone excluding the Great Lakes and specified ports and harbors of inland rivers. The term inland zone delineates the area of Federal responsibility for response action. Precise boundaries are determined by EPA/USCG agreement and identified in Federal regional contingency plans.

Lead agency means the Federal agency (or State agency operating pursuant to a contract or cooperative agreement executed pursuant to a contract or cooperative agreement executed pursuant to section 104(d)(1) of CERCLA) that has primary responsibility for coordinating response action under this Plan. A Federal lead agency is the agency that provides the OSC or RPM as specified elsewhere in this Plan. In the case of a State as lead agency, the State shall carry out the same responsibilities delineated for OSCs/RPMs in this Plan (except coordinating and directing Federal agency response actions).

Management of Migration, means actions that are taken to minimize and mitigate the migration of hazardous substances or pollutants or contaminants and the effects of such migration. Management of migration actions may be appropriate where the hazardous substances or pollutants or contaminants are no longer at or near the area where they were originally located or situations where a source cannot be adequately identified or characterized. Measures may include, but are not limited to, provision of alternative water supplies, management of a plume of contamination or treatment of drinking water aquifer.

Natural Resources, as defined by section 101(16) of CERCLA, means land, fish, wildlife, biota, air water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of fishery conservation zones established by the fishery Conservation and Management Act of 1976), any State or local government or any foreign government.

Offshore facility, as defined by section 101(17) of CERCLA and section 311(a)(11) of the CWA, means any facility of any kind located in, on, or under any of the navigable waters of the U.S. and any facility of any kind which is subject to the jurisdiction of the U.S. and is located in, on, or under any other waters, other than a vessel or a public vessel.

Oil, as defined by section 311(a)(1) of CWA, means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

Oil pollution fund means the fund established by section 311(k) of the CWA.

Onshore Facility, (a) as defined by section 101(18) of CERCLA, means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under any land or non-navigable waters within the United States; and (b) as defined by section 311(a)(10) of CWA means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under any land within the United States other than submerged land.

On-Scene Coordinator (OSC) means the Federal official predesignated by the EPA or USCG to coordinate and direct Federal responses under Subpart E and removals under Subpart F of this Plan; or the DOD official designated to coordinate and direct the removal actions from releases of hazardous substances, pollutants, or contaminants from DOD vessels and facilities.

Operable Unit, is a discrete part of the entire response action that decreases a release, threat or release, or pathway of exposure.

Person, as defined by section 1012(21) or CERCLA, means an individual, firm, cooperation, association, partnership, consortium, joint venture, commercial entity, U.S. Government, State municipality, commission, political subdivision of a State, or any interstate body.

Plan means the National Oil and Hazardous Substances Pollution Contingency Plan published under section 311(c) of the CWA and revised pursuant to section 105 of CERCLA.

Pollutant or containment, as defined by section 104(a)(2) of CERCLA, shall include, but not be limited to, any element, substance, compound, or mixture, including disease causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingesting through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformation, in such organisms or their offspring. The term does not include petroleum, including crude oil and any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under section 101(14)(A) through (F) of CERCLA, nor does it include natural gas, liquified natural gas, or synthetic gas of pipeline quality (or mixture of natural gas and synthetic gas). For purposes of subpart F of this plan, the term pollutant or contaminant means any pollutant or contaminant whch may present an imminent and substantial danger to public health, or welfare.

Release, as defined by section 101(22) of CERCLA, means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, dumping, or disposing into the environment, but excludes (a) any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons (b) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; (c) release of source, by-product or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such act, or, for the purpose of section 104 of CERCLA or any other response action, any release of source, byproduct, or special nuclear material from any processing site designated under section 122(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978; and (d) the normal

application of fertilizer. For the purpose of this Plan, release also means substantial threat of release.

Remedial Investigation is a process undertaken by the lead agency (or responsible party if the responsible party will be developing a clean-up proposal) which emphasizes data collection and site characterization. The remedial investigation is generally performed concurrently and in an interdependent fashion with the feasibility study. However, in certain situations the Agency may require potential responsible parties to conclude initial phases of the remedial investigation prior to initiation of the feasibility study. A remedial investigation is undertaken to determine the nature and extent of the problem presented by the release. This includes sampling and monitoring, as necessary, and includes the gathering of sufficient information to determine the necessity for and proposed extent of remedial action. Part of the remedial investigation involves assessing whether the threat can be mitigated or minimized by controlling the source of the contamination at or near the area where the hazardous substances or pollutants or contaminants were originally located (source control remedial actions) or whether additional actions will be necessary because the hazardous substances or pollutants or contaminants have migrated from the area of their original location (management of migration).

Remedial Project Manager (RPM) means the Federal official designated by EPA (or the USCG for vessels) to coordinate, monitor, or direct remedial activities under Subpart F of this Plan; or the Federal official DOD designates to coordinate and direct Federal remedial actions resulting from releases of hazardous substances, pollutants, or contaminants from DOD facilities or vessels.

Remedy or remedial action, as defined by section 101(24) of CERCLA, means those actions consistent with permanent remedy taken instead of, or in addition to, removal action in the event of a release of threatened release of a hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, clean-up or released hazardous substances or contaminated materials recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation of residents and businesses and community facilities where the President determines that, along or in combination with other measures, such relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition off-site of such hazardous substances or may otherwise be necessary to protect the public health or welfare. The term does not include off-site transport of hazardous substances or contaminated materials unless the President determines that such actions (a) are more cost-effective than other remedial actions; (b) will create new capacity to manage in compliance with subtitle C of the Solid Waste Disposal Act, hazardous substances in addition to those located at the affected facility; or (c) are necessary to protect public health or welfare or the environment from a present or potential risk which may be created by further exposure to the continued presence of such substances or materials.

Remove or removal, as defined by section 311(a)(8) of CWA refers to removal of oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health, welfare, or the environment. As defined by section 101(23) of CERCLA, remove or removal means the clean-up or removal of released hazardous substances from the environment; such actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or the environment, which may otherwise result from such release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under section 104(b) of CERCLA, and any emergency assistance which may be provided under the Disaster Relief Act of 1974.

Respond or response, as defined by section 101(25) of CERCLA, means remove, removal, remedy, or remedial action.

Site Quality Assurance and Sampling Plan, is a written document, associated with site sampling activities, which presents in specific terms the organization (where applicable), objectives, functional activities, and specific quality assurance (OA) and quality control (OC) activities designed to achieve the data quality goals of a specific project(s) or continuing operation(s). The OA Project Plan is prepared for each specific project or continuing operation (or group of similar projects of continuing operations). The OA Project Plan will be prepared by the responsible Program Office, Regional Office, Laboratory, contractor, recipient of an assistance agreement or other ogranization.

Size classes of discharges refers to the following size classes of oil discharges which are provided as guidance to the OSC and serve as the criteria for the actions delineated in Subpart E. They are not meant to imply associated degrees of hazard to public health or welfare, nor are they a measure of environmental damage. Any oil discharge that poses a substantial threat to the public health or welfare or results in critical public concern shall be classified as a major discharge regardless of the following quantitative measures;

(a) *Minor discharge* means a discharge to the inland waters of less than 1,000 gallons of oil or a discharge to the coastal waters of less than 10,000 gallons of oil.

(b) *Medium discharge* means a discharge of 1,000 to 10,000 gallons of oil to the inland waters or a discharge of 10,000 to 100,000 gallons of oil to the coastal waters.

(c) *Major discharge* means a discharge of more than 10,000 gallons of oil to the inland waters or more than 100,000 gallons of oil to the coastal waters.

Size classes of releases refers to the following size classifications which are provided as guidance to the OSC for meeting pollution report requirements in Subpart C. The final determination of the appropriate classification of a release will be made by the OSC based on consideration of the particular release (e.g., size, location, impact, etc.).

(a) *Minor release* means a release of a quantity of hazardous substance, pollutant, or contaminant that posed minimal threat to public health or welfare or the environment.

(b) *Medium release* means all releases not meeting the criteria for classification as a minor or major release.

(c) *Major release* means a release of any quantity of hazardous substances, pollutant, or contaminant that posts a substantial threat to public health or welfare or the environment or results in significant public concern.

Source control remedial action means measures that are intended to contain the hazardous substances or pollutants or contaminants where they are located or eliminate potential contamination by transporting the hazardous substances or pollutants or contaminants to a new location. Source control remedial actions may be appropriate if a substantial concentration or amount of hazardous substances or pollutants or contaminants remain at or near the area where they are originally located and inadequate barriers exist to retard migration of hazardous substances or pollutants or contaminants into the environment. Source control remedial actions may not be appropriate if most hazardous substances or pollutants or contaminants have migrated from the area where originally located or if the lead agency determines that the hazardous substances or pollutants or contaminants are adequately contained.

Specified ports and harbors means those port and harbor areas on inland rivers, and land areas immediately adjacent to those waters, where the USCG acts as predesignated on-scene coordinator. Precise locations are determined by EPA/USCG regional agreements and identified in Federal regional contingency plans.

Trustee means any Federal natural resources management agency designated in Subpart G of this plan, and any State agency which may prosecute claims for damages under section 107(f) of CERCLA.

United States, as defined by section 311(2)(5) of CWA, refers to the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands. As defined by section 101(27) of CERCLA, *United States* and *State* include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas and any other territory or possession over which the U.S. has jurisdiction.

Volunteer means any individual accepted to perform services by a Federal agency which has authority to accept volunteer services (examples: see 16 U.S.C. 742f(c)). A volunteer is subject to the provisions of the authorizing statute, and § 300.25 of this Plan.

Subpart B—Responsibility

§ 300.21 Duties of President delegated to Federal agencies.

(a) In Executive Order 11735 and Executive Order 12316, the President delegated certain functions and responsibilities vested to him by the CWA and CERCLA, respectively. Responsibilities so delegated shall be responsibilities of Federal agencies under this Plan unless:

(1) Responsibility is redelegated pursuant to section 8(f) of Executive Order 12316, or

(2) Executive Order 11735 or Executive Order 12316 is amended or revoked.

§ 300.22 Coordination among and by Federal agencies.

(a) Federal agencies should coordinate their planning and response activities through the mechanisms described in Subpart C of this Plan and other means as may be appropriate.

(b) Federal agencies should coordinate planning and response action with affected State and local government and private entities.

(c) Federal agencies with facilities or other resources which may be useful in a Federal response situation should make those facilities or resources available consistent with agency capabilities and authorities.

(d) When the Administrator of EPA or the Secretary of the Department in which the Coast Guard is operating determines:

(1) That there is an imminent and substantial endangerment to the public health or welfare or the environment because of a release or threatened release of a hazardous substance from a facility; he/she may request the Attorney General to secure the relief necessary to abate the threat. The action described here is in addition to any actions taken by a State or local government for the same purpose.

(e) In accordance with section 311(d) of CWA, whenever a marine disaster in or upon the navigable waters of the United States has created a substantial threat of a pollution hazard to the public health or welfare because of a discharge or an imminent discharge from a vessel of large quantities of oil or hazardous substances designated pursuant to section 311(b)(2)(A) of CWA, the United States may:

(1) Coordinate and direct all public and private efforts to abate the threat;

(2) Summarily remove and, if necessary, destroy the vessel by whatever means are available without regard to any provisions of law governing the employment of personnel or the expenditure of appropriated funds. The authority for these actions has been delegated under Executive Order 11735 to the Administrator of EPA and the Secretary of the Department in which the Coast Guard is operating, respectively, for the waters for which each designates the OSC under this Plan.

(f) Response actions to remove discharges originating from the Outer Continental Shelf Lands Act operations shall be in accordance with this Plan.

(g) Where appropriate, discharges of radioactive materials shall be handled pursuant to the appropriate Federal radiological plan. For purposes of this Plan, the Federal Radiological Emergency Response Plan (49 FR 35896, Sept. 12, 1984) is the appropriate response plan.

§ 300.23 Other assistance by Federal agencies.

(a) Each of the Federal agencies listed in paragraph (b) of this section has duties established by statute, executive order, or Presidential directive which may be relevant to Federal response action following or in prevention of a discharge of oil or a release of a hazardous substance, pollutant or contaminant. These duties may also be relevant to the rehabilitation, restoration, and replacement of damaged or lost natural resources. Federal regional contingency plans should call upon agencies to carry out these duties in a coordinated manner.

(b) The following Federal agencies may be called upon by an OSC/RPM during the planning or implementation of a response to provide assistance in their respective areas of expertise as indicated below, consistent with agency capabilities and legal authorities:

(1) The Department of Agriculture (USDA) provides expertise in managing agricultural, forest, and wilderness areas. The Soil Conservation Service can provide to the OSC/RPM predictions of the effects of pollutants on soil and their movements over and through soil.

(2) The Department of Commerce (DOC), through NOAA, provides scientific expertise on living marine resources for which it is responsible and their habitats, including endangered species and marine mannals; coordinates scientific support for responses and contingency planning in coastal and marine areas, including assessments of the hazards that may be involved, predictions of movement and dispersion of discharged oil and released hazardous substance releases; provides information on actual and

predicted meteorological, hydrologic, ice, and oceanographic conditions for marine, coastal, and inland waters; furnishes charts and maps, including tide and circulation information for coastal and territorial waters and for the Great Lakes.

(3) The Department of Defense (DOD), consistent with its operational requirements, may provide assistance to other Federal agencies on request. The United States Army Corps of Engineers has specialized equipment and personnel for maintaining navigation channels, for removing navigation obstructions, for accomplishing structural repairs, and performing maintenance to hydropower electric generating equipment. The Corps can also provide design services, perform construction, and can provide contract writing and contract administration services for other Federal agencies. The United States Navy (USN), as a result of its mission and Pub. L. 80–513 (Salvage Act), is the Federal agency most knowledgeable and experienced in ship salvage, shipboard damage control, and diving. The USN has an extensive array of specialized equipment and personnel available for use in these areas as well as specialized containment, collection, and removal equipment specifically designed for salvage-related and open sea pollution incidents. Also, upon request of the OSC, locally deployed USN oil spill equipment may be provided. These services and equipment are available on a reimbursable basis to Federal agencies upon request when commercial equipment is not available. As described elsewhere in the Plan, DOD officials serve as OSCs for removal action and as RPMs for remedial actions resulting from releases of hazardous substances, pollutants, or contaminants from DOD vessels and facilities.

(4) The Department of Energy (DOE) provides advice to the OSC/RPM when assistance is required in identifying the source and extent of radioactive releases, and in the removal and disposal of radioactive contamination.

(5) The Department of Health and Human Services (HHS) is responsible for providing assistance on all matters related to the assessment of health hazards at a response, and protection of both response worker's and the public's health.

(6) The Federal Emergency Management Agency (FEMA) will provide advice and assistance to the OSC/RMP on coordinating civil emergency planning and mitigation efforts with other Executive agencies, State and local governments, and the private sector. In the event of a major disaster declaration or emergency determination by the President at a hazardous materials response site, FEMA will coordinate all disaster or emergency actions with the OSC/RPM.

(7) The Department of the Interior (DOI) should be contacted through Regional Environmental Officers (REO), who are the designated members of RRTs. Department land managers have jurisdiction over the National Park System, National Wildlife Refuges and Fish Hatcheries, the public lands, and certain water projects in western States. In addition, bureaus and offices have relevant expertise as follows: *Fish and Wildlife Service:* fish and wildlife, including endangered and threatened species, migratory birds, certain marine mammals; habitats, resource contaminants; laboratory research facilities. *Geological Survey:* geology, hydrology (ground water and surface), and natural hazards. *Bureau of Land Management:* Minerals, soils, vegetation, wildlife, habitat, archaeology, wilderness; hazardous materials; etc. *Minerals Management Services:* manned facilities for Outer Continental Shelf (OCS) oversight. *Bureau of Mines;* analysis and identification of inorganic hazardous substances. *Office of Surface Mining:* coal mine wastes, land reclamation. *National Park Service* biological and general natural resources expert personnel at Park units. *Bureau of Indian Affairs:* assistance in implementing NCP in American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(8) The Department of Justice (DOJ) can provide expert advice on complicated legal questions arising from discharge or releases and Federal agency responses. In addition, the DOJ represents the Federal Government, including its agencies, in litigation.

(9) The Department of Labor (DOL), through the Occupational Safety and Health Administration (OSHA), will provide the OSC/RPM with advice, guidance, and assistance regarding hazards to persons involved in removal or control or oil discharges and hazardous substance releases, and in the precautions necessary to prevent hazards to their health and safety.

(10) The Department of Transportation (DOT) provides expertise on all modes of transporting oil and hazardous substances. Through the USCG, DOD offers expertise in domestic/international fields of port safety and security, maritime law enforcement, ship navigation and construction, and the manning, operation, and safety of vessels and marine facilities. The USCG also maintains continuously manned facilities which can be used for command, control, and surveillance of oil discharges and hazardous substance releases occurring in the coastal zone. The USCG provides predesignated OSCs for the coastal zone.

(11) The Department of State (DOS) will lead in the development of joint international contingency plans. It will also help to coordinate an international response when discharges or releases cross international boundaries or involve foreign flag vessels. Additionally, this Department will coordinate requests for assistance from foreign governments and U.S. proposals for conducting research at incidents that occur in waters of other countries.

(12) The Environmental Protection Agency (EPA) provides expertise on environmental effects of oil discharges or releases of hazardous substances, pollutants, or contaminants and environmental pollution control techniques. EPA provides predesignated OSCs for the inland zone and RPMs for all remedial actions, unless otherwise agreed. EPA also will generally provide the SSC for responses in inland areas. EPA may enter into a contract or cooperative agreement with the appropriate State in order to implement a remedial action.

(c) In addition to their general responsibilities under paragraph (a) of this section, Federal agencies should:

(1) Make necessary information available to the NRT, RRTs, and OSCs/RPMs.

(2) Inform the NRT and RRTs (consistent with national security considerations) of changes in the availability of resources that would affect the operations of the Plan.

(3) Provide representatives as necessary to the NRT and RRTs and assist RRTs and OSCs in formulating Federal regional and Federal local contingency plans.

(d) All Federal agencies are responsible for reporting releases of hazardous substances and discharges of oil from facilities or vessels which are under their jurisdiction or control in accordance with section 104 (a) and (b) and 101(24) of CERCLA subject to the following:

(1) HHS is delegated all authorities under section 104(b) of CERCLA relating to a determination that illness, disease or complaints thereof may be attributable to exposure to a hazardous substance, pollutant or contaminant. (In addition, section 104(i) of CERCLA calls upon HHS to: establish appropriate disease/exposure registries: conduct appropriate testing for exposed

individuals; develop maintain and provide information on health effects of toxic substances; and maintain a list of areas restricted or closed because of toxic substance contamination.)

(2) FEMA is delegated the authorities vested in the President by section 104(a) of CERCLA to the extent they require permanent relocation of residents, businesses, and community facilities or temporary evacuation and housing of threatened individuals not otherwise provided for. (FEMA is also delegated authority under section 101(24) of CERCLA to the extent they require a determination by the President that "permanent relocation of residents and businesses and community facilities" is included within the terms "remedy" and "remedial action" as defined in section 101(24) of CERCLA.)

(3) DOD is delegated all authority of section 104 (a) and (b) of CERCLA with respect to releases from DOD facilities or vessels, including vessels owned or bareboat chartered and operated.

(e) If the situation is beyond the capability of State and local governments and the statutory authority of Federal agencies, the President, acting upon a request by the Government, may declare a major disaster or emergency and appoint a Federal Coordinating Officer to assume responsibility for direction and control of the Federal response.

§ 300.24 State and local participation.

(a) Each State governor is requested to assign an office or agency to represent the State on the appropriate RRT. Local governments are invited to participate in activities on the appropriate RRT as may be provided by State law or arranged by the State's representative. The State's representative may participate fully in all facets of activities of the appropriate RRT and is encouraged to designate the element of the State government that will direct State supervised response operations.

(b) State and local government agencies are encouraged to include contingency planning for response, consistent with this Plan and Regional Contingency Plans, in all emergency and disaster planning.

(c) States are encouraged to use State authorities to compel potentially responsible parties to undertake response actions, or to themselves undertake response actions which are not eligible for Federal funding.

(d) States may enter into contract or cooperative agreements pursuant to section 104(c)(3) and (d) of CERCLA or section 311(c)(2)(H) of the CWA, as appropriate, to undertake actions authorized under Subparts E and F of this Plan. Requirements for entering into these agreements are included in § 300.58 and § 300.62 of this Plan. While the terms "On-Scene Coordinator," "OSC," Remedial Project Manager," and "RPM" are reserved for Federal officials for the purpose of this Plan, a State agency may choose to use these titles for its response personnel without such use connoting the definitions, responsibilities, and authorities for these titles for Federal officials under this Plan. In the case of a State as lead agency, the State shall carry out the same responsibilities delineated for OSCs/RPMs in this Plan (except coordinating and directing Federal agency response actions).

(e) Since State and local public safety organizations would normally be the first government representatives at the scene of a discharge or release, they would be expected to initiate public safety measures necessary to protect public health and welfare, and are responsible for directing evacuations pursuant to existing State/local procedures.

§ 300.25 Nongovernment participation.

(a) Industry groups, academic organizations, and others are encouraged to commit resources for response operations. Specific commitments should be listed in Federal regional and Federal local contingency plans.

(b) It is particularly important to use the valuable technical and scientific information generated by the non-government local community along with those from Federal and State Government to assist the OSC/RPM in devising cleanup strategies where effective standard techniques are unavailable, and to ensure that pertinent research will be undertaken to meet national needs. The SSC shall act as liaison between the OSC/RPM and such interested organizations.

(c) Federal local contingency plans shall establish procedures to allow for well-organized, worthwhile, and safe use of volunteers. Local plans should provide for the direction of volunteers by the OSC, or by other Federal, State of local officials knowledgeable in contingency operations and capable of providing leadership. Local plans also should identify specific areas in which volunteers can be used, such as beach surveillance, logistical support, and bird and wildlife treatment. Unless specifically requested by the OSC, volunteer generally should not be used for physical removal or remedial activities. If, in the judgment of the OSC or an appropriate participating agency, dangerous conditions exist, volunteers shall be restricted from on-scene operations.

(d) (1) If any person other than the Federal Government or a State or person operating under contract or cooperative agreement with the United States, takes response action and intends to seek reimbursement from the Fund, such actions to be in conformity with this Plan for purposes of section 111(a)(2) of CERCLA may only be reimbursed if such person notifies the administrator of EPA or his/her designee prior to taking such action and receives prior approval to take such action.

(2) The process of prior approval of Fund reimbursement requests is preauthorization. Fund-preauthorization will be considered only for:

(i) Releases warranting a removal action pursuant to § 300.65;

(ii) 104(b) activities; and

(iii) Remedial actions on the National Priorities List.

(3) All requests for preauthorization will be reviewed to determine whether the request should receive priority for funding.

(4) Preauthorization does not obligate the Fund. For purposes of payment of a claim under CERCLA section 112, the responsible Federal official must certify that costs incurred were necessary and consistent with the Fund preauthorization.

(5) All persons requesting preauthorization must demonstrate the technical and other capabilities to respond safely and effectively to releases of hazardous substances, or pollutants or contaminants.

Subpart C—Organization

§ 300.31 Organizational concepts.

Three fundamental kinds of activity are performed pursuant to the Plan: Planning and coordination, operations at the scene of a discharge and/or release, and communications. The organizational elements created to perform these activities are discussed below in the context of their roles in these activities. The organizational concepts of this Plan are depicted in Figure 1. The Standard Federal Regional boundaries are shown in Figure 2 and the U.S. Coast Guard District boundaries are shown in Figure 3.

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National Contingency Plan Concepts

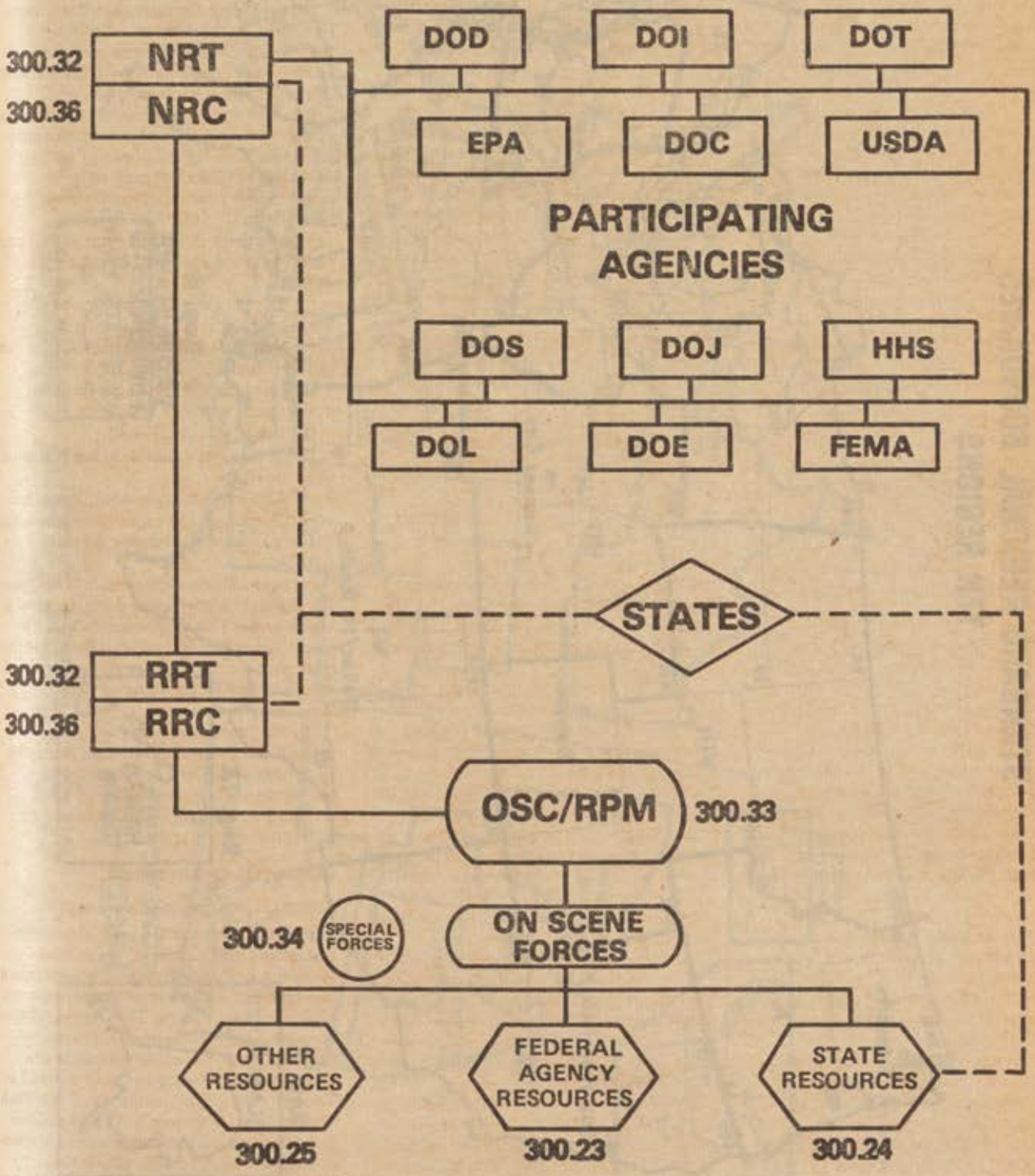


FIGURE 2

STANDARD REGIONAL BOUNDARIES
TEN REGIONS

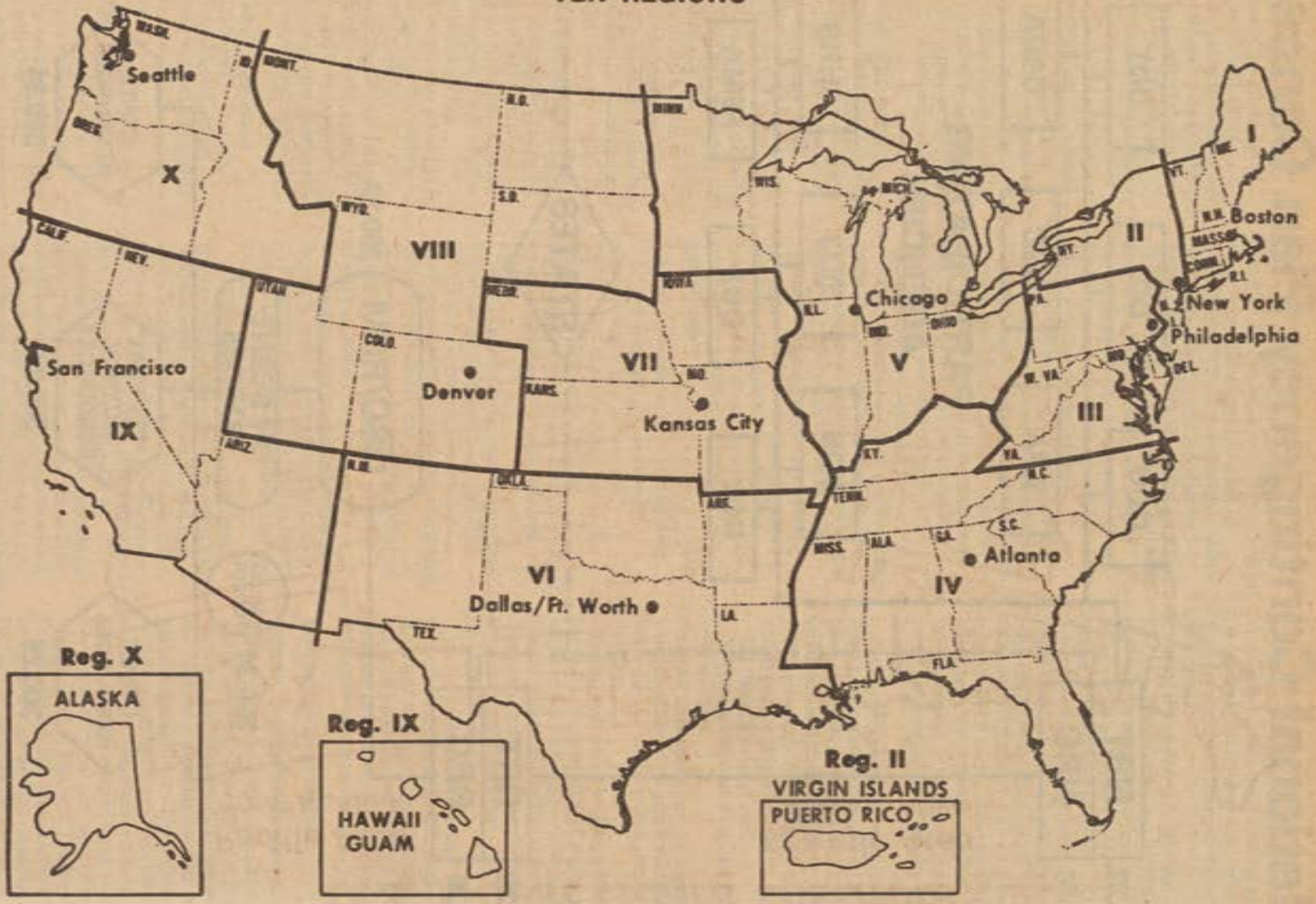
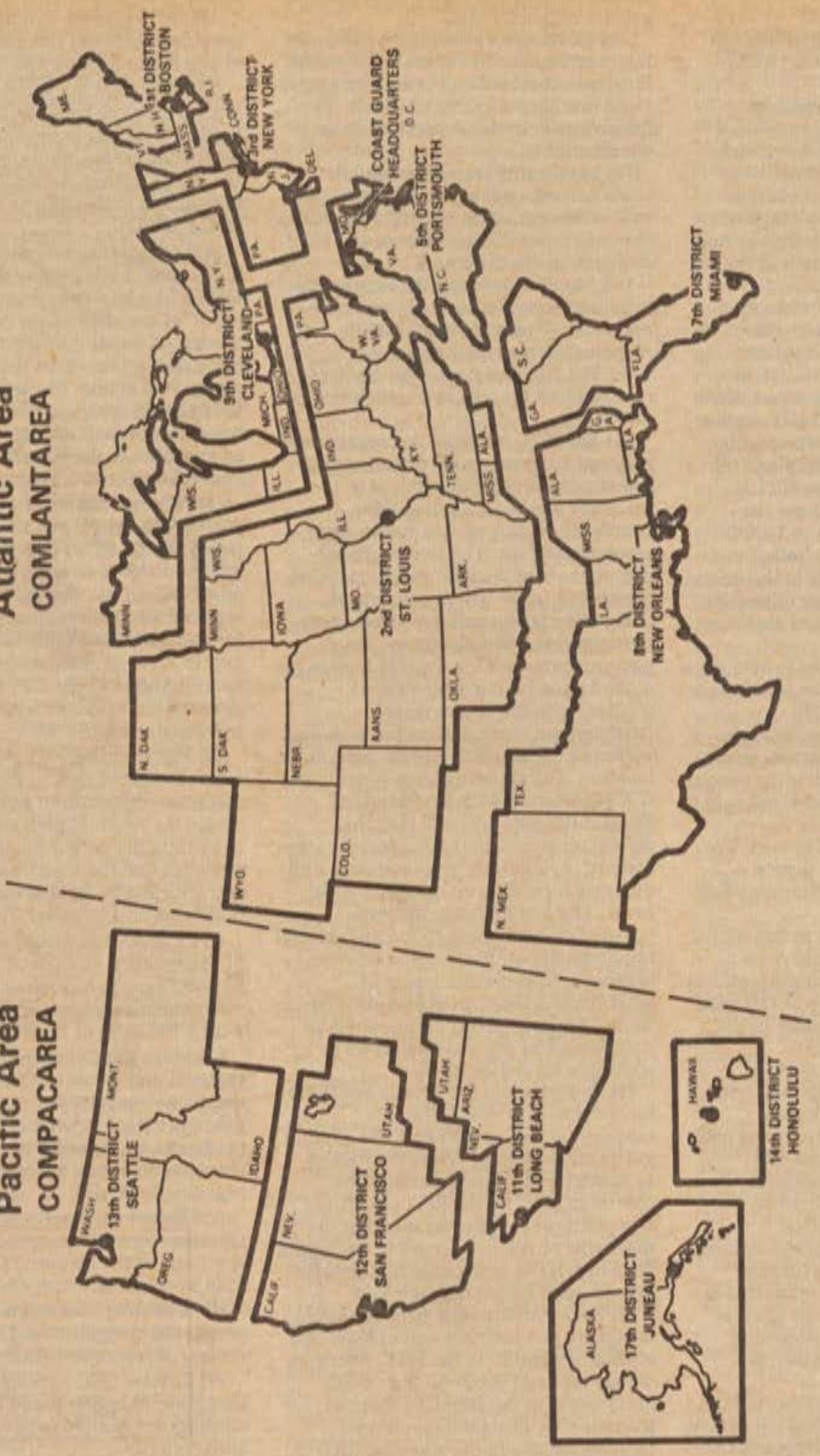


FIGURE 3

FIGURE 3


U.S. Coast Guard Districts
Pacific Area
COMPACAREA
Atlantic Area
COMLANTAREA
13th DISTRICT SEATTLE
12th DISTRICT SAN FRANCISCO
11th DISTRICT LONG BEACH
14th DISTRICT HONOLULU
17th DISTRICT JUNEAU
1st DISTRICT BOSTON
3rd DISTRICT NEW YORK
9th DISTRICT CLEVELAND
COAST GUARD HEADQUARTERS
5th DISTRICT PORTSMOUTH
7th DISTRICT MIAMI
8th DISTRICT NEW ORLEANS
2nd DISTRICT ST. LOUIS
BILLING CODE 6560-50-C

§ 300.32 Planning and coordination.

(a) National planning and coordination is accomplished through the National Response Team (NRT).

(1) The NRT consists of representatives from the agencies named in § 300.23. Each agency shall designate a member to the team and sufficient alternates to ensure representation, as agency resources permit. Other agencies may request membership on the NRT by forwarding such requests to the chairman of the NRT.

(2) Except for periods of activation because of a response action, the representative of EPA shall be the chairman and the representative of USCG shall be the vice chairman of the NRT. The vice chairman shall maintain records of NRT activities along with national, regional, and local plans for response actions. When the NRT is activated for response actions, the chairman shall be the EPA or USCG representative, based on whether the discharge or release occurs in the inland zone or coastal zone, unless otherwise agreed upon by the chairman and vice chairman.

(3) While the NRT desires to achieve a consensus on all matters brought before it, certain matters may prove unresolvable by this means. In such cases, each cabinet, department or agency serving as a participating agency on the NRT may be accorded one vote in NRT proceedings.

(4) The NRT may establish such by-laws and committees as it deems appropriate to further the purposes for which it is established.

(5) When the NRT is not activated for a response action, it shall serve as a standing committee to evaluate methods of responding to discharges or releases, to recommend needed changes in the response organization and to recommend revisions to this Plan.

(6) The NRT may consider and make recommendations to appropriate agencies on the training, equipping and protection of response teams and necessary research, development, demonstration, and evaluation to improve response capabilities.

(7) Direct planning and preparedness responsibilities of the NRT include:

(i) Maintaining national readiness to respond to a major discharge of oil or release of a hazardous substance or pollutant or contaminant which is beyond regional capabilities.

(ii) Monitoring incoming reports from all RRTs and activating when necessary;

(iii) Reviewing regional responses to oil discharges and hazardous substance releases, including an evaluation of equipment readiness and coordinate among responsible public agencies and private organizations;

(iv) Developing procedures to ensure the coordination of Federal, State, and local governments and private response to oil discharges and releases of hazardous substances, pollutants or contaminants;

(v) Monitoring response-related research and development, testing, and evaluation activities of NRT agencies to enhance coordination and avoid duplication of effort; and

(vi) Monitoring response training to encourage coordination of available resources between agencies with responsibilities under this plan.

(8) The NRT may consider matters referred to it for advice or resolution by an RRT.

(b) The RRT provides the appropriate regional mechanism for planning and preparedness activities before a response action is taken and for coordination and advice during such response actions. The two principal components of the RRT mechanism are a standing team, which consists of designated representatives from each participating Federal agency, State governments, and local governments (as agreed upon by the States); And incident-specific teams where participation will relate to the technical nature of the incident and its geographic location. The standing team jurisdiction will correspond with the Standard Federal Regions and will include communications, planning, coordination, training, evaluation, preparedness, and other such matters on a Region-wide basis. The incident-specific team jurisdiction will relate to the operational requirements of discharge or release response. Appropriate levels of activation, including participation by State and local governments, shall be determined by the designated RRT chairman for the incident.

(1) Except when the RRT is activated for a removal incident, the representatives of EPA and USCG shall act as co-chairmen. When the RRT is activated for response actions, the chairman shall be the EPA or USCG representative, based on whether the discharge or release occurs in the inland zone or coastal zone, unless otherwise agreed upon by the co-chairmen.

(2) Each participating agency should designate one member and at least one alternate member to the RRT. Agencies whose regional subdivisions do not correspond to the standard Federal Regions may designate additional representatives to the standing RRT to ensure appropriate coverage of the standard Federal Region. Participating States may also designate one member and at least one alternate member to the Team. All agencies and States may also provide additional representatives as observers to meetings of the RRT.

(3) RRT members should designate representatives from their agencies to work with OSCs in developing Federal local contingency plans, providing for the use of agency resources, and in responding to discharges and releases [see § 300.43].

(4) Federal regional and Federal local plans should adequately provide the OSC with assistance from the Federal agencies commensurate with agencies' resources, capabilities, and responsibilities within the region. During a response action, the members of the RRT should seek to make available the resources of their agencies to the OSC as specified in the Federal regional and Federal local contingency plans.

(5) Affected States are encouraged to participate actively in all RRT activities [see § 300.24(a)], to designate representatives to work with the RRT and OSCs in developing Federal regional and Federal local plans, to plan for and make available State resources, and to serve as the contact point for coordination of response with local government agencies whether or not represented on the RRT.

(6) The standing RRT will serve to recommend changes in the regional response organization as needed, to revise the regional plan as needed, and to evalute the preparedness of the agencies and the effectiveness of local plans for the Federal response to discharge and releases. The RRT should:

(i) Conduct advance planning for use of dispersants, surface collection agents, burning agents, biological additives, or other chemical agents in accordance with § 300.84(e) of this Plan.

(ii) Make continuing review of regional and local responses to discharges or releases, considering available legal remedies, equipment readiness and coordination among responsible public agencies and private organizations.

(iii) Based on observations of response operations, recommend revisions of the National Contingency Plan to the NRT.

(iv) Consider and recommend necessary changes based on continuing review of response actions in the region.

(v) Review OSC actions to help ensure that Federal regional and Federal local contingency plans are developed satisfactorily.

(vi) Be prepared to respond to major discharges or releases outside the region.

(vii) Meet at least semiannually to review response actions carried out during the preceding period, and consider changes in Federal regional and Federal local contingency plans.

(viii) Provide letter reports on their activities to the NRT twice a year, no later than January 31 and July 31. At a minimum, reports should summarize recent activities, organizational changes, operational concerns, and efforts to improve State and local coordination.

(ix) Encourage the State and local response community to improve their preparedness for response.

(x) Conduct training exercises as necessary to ensure preparedness of the response community within the region.

(7) Whenever there is insufficient national policy guidance on a matter before the RRT, a technical matter requiring solution, a question concerning interpretation of the Plan, or there is a disagreement on discretionary actions between RRT members that cannot be resolved at the regional level, it may be referred to the NRT for advice or resolution.

(c) The OSC is responsible for developing any Federal local contingency plans for the Federal response in the area of the OSC's responsibility. This may be accomplished in cooperation with the RRT and designated State and local representatives [see § 300.43]. Boundaries for Federal local contingency plans shall coincide with those agreed upon between EPA, DOD and the USCG (subject to Executive Order 12316) to determine OSC areas of responsibility and should be clearly indicated in the regional contingency plan. Where practicable, consideration should be given to jurisdictional boundaries established by State and local plans.

(1) The lead agency should provide appropriate training for its OSCs, RPMs, and other response personnel to carry out their responsibilities under this Plan.

(2) To the extent practicable, OSCs/RPMs should ensure that persons designated to act as their on-scene representatives are adequately trained and prepared to carry out actions under this Plan.

(d) Scientific support for the development of regional and local plans is organized by appropriate agencies to provide special expertise and assistance. Generally, the Scientific Support Coordinator (SSC) for plans encompassing the coastal area will be provided by NOAA, and the SSC for inland areas will generally be provided by EPA. SSCs may be obtained from other agencies if determined to be appropriate by the RRT.

§ 300.33 Response operations.

(a) EPA and USCG shall designate OSCs/RPMs for all areas in each region provided, however, that DOD shall designate OSCs/RPMs responsible for taking all actions resulting from releases of hazardous substances, pollutants, or contaminants from DOD facilities and vessels. DOD will be the removal response authority with respect to incidents involving DOD military weapons and munitions. Removal actions involving nuclear weapons should be conducted in accordance with the joint Department of Defense, Department of Energy, and Federal Emergency Management Agency agreement for Response to Nuclear Incidents and Nuclear Weapons Significant Incidents of January 8, 1981. The USCG will furnish or provide OSCs for oil discharges and for the immediate removal of hazardous substances, pollutants, or contaminants into or threatening the coastal zone except that the USCG will not provide predesignated OSCs for discharges and releases from hazardous waste management facilities or in similarly chronic incidents. EPA shall furnish or provide OSCs for discharges and releases into or threatening the inland zone and shall furnish or provide RPMs for federally funded remedial actions except as otherwise agreed. The USCG will provide an initial response to hazardous waste management facilities within the coastal zone in accordance with the DOT/EPA Instrument of Redelegation (46 FR 63294). EPA will also assume all remedial actions resulting from removals initiated by the USCG in the coastal zone except those involving vessels. The USCG OSC shall contact the cognizant EPA RPM as soon as it is evident that a removal may require a follow-up remedial action to ensure that the required planning can be initiated and an orderly transition to EPA lead can occur.

(b) The OSC/RPM directs Federal Fund-financed response efforts and coordinates all other Federal efforts at the scene of a discharge or release subject to Executive Order 12316. As part of the planning and preparation for response, the OSCs/RPMs shall be predesignated by the regional or district head of the lead agency.

(1) The first Federal official to arrive at the scene of a discharge or release should coordinate activities under this Plan and is authorized to initiate necessary actions normally carried out by the OSC until the arrival of the predesignated OSC. This official may initiate Federal Fund-financed actions only as authorized by the OSC or (if the OSC is unavailable) the authorized representative of the lead agency.

(2) The OSC/RPM shall, to the extent practicable under the circumstances, collect pertinent facts about the discharge or release, such as its source and cause; the existence of potentially responsible parties; the nature, amount, and location of discharged or released materials; the probable direction and time of travel of discharged or released materials; the pathways to human and environmental exposure; potential impact on human health, welfare, environment, and safety; the potential impact on natural resources and property which may be affected; priorities for protecting human health, welfare and the environment; and appropriate cost documentation.

(3) The OSC/RPM shall direct response operations [see Subparts E and F for descriptive details]. The OSC's/RPM's effort shall be coordinated with other appropriate Federal, State, local and private response agencies. OSC/RPMs may designate capable persons from Federal, State, or local agencies to act as their on-scene representative. State and local representatives, however, are not authorized to take actions under Subparts E and F that involve expenditures of CWA 311(k) or CERCLA funds unless an appropriate contract or cooperative agreement has been established.

(4) The OSC (and when the RRT has been activated for a remedial action, the RPM) should consult regularly with the RRT in carrying out this Plan and will keep the RRT informed of activities under this Plan.

(5) The OSC/RPM shall advise the appropriate State agency (as agreed upon with each State) as promptly as possible of reported discharges and releases.

(6) The OSC/RPM shall evaluate incoming information and immediately advise FEMA of potential major disaster situations. In the event of a major disaster or emergency, under the Disaster Relief Act of 1974 (Pub. L. 93-288), the OSC/RPM will coordinate any response activities with the Federal Coordinating Officer designated by the President. In addition, the OSC/RPM should notify FEMA of situations potentially requiring evacuation, temporary housing, and permanent relocation.

(7) In those instances where a possible public health emergency exists, the OSC/RPM should notify the HHS representative to the RRT. Throughout response actions, the OSC/RPM may call upon the HHS representative for assistance in determining public health

threats and for advice on worker health safety problems.

(8) All Federal agencies should plan for emergencies and develop procedures for dealing with oil discharges and releases of hazardous substances, pollutants, or contaminants from vessels and facilities under their jurisdiction. All Federal agencies, therefore, are responsible for designating the office that coordinates response to such incidents in accordance with this Plan and applicable Federal regulations and guidelines. The OSC/RPM should provide advice and assistance as requested by Federal agencies for incidents involving vessels or facilities under their jurisdiction. At the request of the Federal agency, or if, in the opinion of the OSC (or in a remedial action, the lead agency,) the responsible Federal agency does not act promptly or take appropriate action to respond to a discharge or release occurring on a vessel or facility, including contiguous lands under its jurisdiction, the OSC (or in a remedial action, the lead agency) designated to respond in the area where the discharge or release occurs may conduct appropriate response activities. If this occurs, the OSC (or in a remedial action, the lead agency) shall consult with and coordinate all response activities taken with the responsible Federal agency. With respect to release of hazardous substances, pollutants, or contaminants from DOD facilities or vessels, DOD designates the OSC/RPM.

(9) The OSC/RPM should advise the affected land managing agency and trustees of natural resources, as promptly as possible, of releases and discharges affecting Federal resources under its jurisdiction. The OSC or RPM should consult with and coordinate all response activities with the affected land managing agency or resource trustee to the extent practicable.

(10) Where the OSC/RPM becomes aware that a discharge or release may adversely affect any endangered or threatened species, or result in destruction or adverse modification of the habitat of such species, the OSC/RPM should consult with the DOI or DOC (NOAA).

(11) The OSC/RPM is responsible for addressing worker health and safety concerns at a response scene, in accordance with § 300.38 of this Plan.

(12) The OSC shall submit reports to the RRT and appropriate agencies as significant developments occur during removal actions.

(13) OSCs/RPMs should ensure that all appropriate public and private interests are kept informed and that their concerns are considered throughout a response in accordance with § 300.39 to the extent practicable.

(14) The RPM is the prime contact for remedial actions being taken (or needed to be taken) at sites on the proposed or promulgated National Priorities List (NPL). These actions include:

(i) *Fund Financed Cleanup/Federal Lead*—The RPM coordinates, directs and reviews the work of all EPA, State and local governments, U.S. Army Corps of Engineers, and all other agencies and contractors to assure compliance with this Plan. Based upon the reports of these parties, the RPM recommends action for decisions by lead agency officials. The RPM's period of responsibility begins prior to initiation of the Remedial Investigation/Feasibility Study (RI/FS) [described in § 300.68(e)] and continues through design, construction, deletion of the site from the NPL, and in some cases, the CERCLA cost recovery activity. The RPM should coordinate with the OSC to ensure an orderly transition from OSC response activities of a State-lead remedial activities.

(ii) *Fund Financed Cleanup/State Lead*—The RPM serves in an oversight capacity during the planning, design and cleanup activities of a State-lead remedial action, offering both technical and programmatic guidance.

(iii) The RPM should be involved in all decisionmaking processes necessary to ensure compliance with this Plan and the cooperative agreement between the EPA and the State.

300.34 Special forces and teams.

(a) The National Strike Force (NSF) consists of the Strike Teams established by the USCG on the Atlantic, Pacific and Gulf coasts and includes emergency task forces to provide assistance to the OSC/RPM.

(1) The Strike Teams can provide communication support, advice and assistance for oil and hazardous substances removal. These teams also have knowledge of shipboard damage control and diving. Additionally, they are equipped with specialized containment and removal equipment, and have rapid transportation available. When possible, the Strike Teams will train the emergency task forces and assist in the development of regional and local contingency plans.

(2) The OSC/RPM may request assistance from the Strike Teams. Requests for a team may be made directly to the Commanding Officer of the appropriate team, the USCG member of the RRT, the appropriate USCG Area Commander, or the Commandant of the USCG through the NRC.

(b) Each USCG OSC manages emergency task forces trained to evaluate, monitor, and supervise pollution responses. Additionally, they have limited "initial aid" response capability to deploy equipment prior to the arrival of a clean-up contractor, or other response personnel.

(c)(1) The Environmental Response Team (ERT) is established by EPA in accordance with its disaster and emergency responsibilities. The ERT includes expertise in biology, chemistry, hydrology, geology and engineering.

(2) It can provide access to special decontamination equipment for chemical releases and advice to the OSC/RPM in hazard evaluation; risk assessment; multimedia sampling and analysis program; on-site safety, including development and implementation plans; clean-up techniques and priorities; water supply decontamination and protection; application of dispersants; environmental assessment; degree of clean-up required; and diposal of contaminated material.

(3) The ERT also provides both introductory and intermediate level training courses to prepare response personnel.

(4) OSC/RPM or RRT requests for ERT support should be made to the EPA representative on the RRT; the EPA Headquarters, Director, Office of Emergency and Remedial Response; or the appropriate EPA regional emergency coordinator.

(d) Scientific Support Coordinators (SSCs) are available, at the request of OSCs/RPMs, to assist with actual or potential responses to discharges of oil or releases of hazardous substances, pollutants, or contaminants. Generally, SSCs are provided by the National Oceanic and Atmospheric Administration (NOAA) in coastal and marine areas, and by the Environmental Protection Agency (EPA) in inland regions.

(1) During a response, the SSC serves under the direction of the OSC/RPM and is responsible for providing scientific support for operational decisions and to coordinate on-scene scientific activity. Depending on the nature of the incident, the SSC can be expected to provide certain specialized scientific skills and to work with governmental agencies, universities, community representatives, and industry to compile information that would assist the OSC/RPM in assessing the hazards and potential effects of discharges and releases and in developing response strategies.

(2) If requested by the OSC/RPM, the SSC will serve as the principal liaison for scientific information and will facilitate communications to and from the scientific community on response issues. The SSC, in this role, will attempt to reach a consensus on scientific issues surrounding the response but will also ensure that any differing opinions within the community are communicated to the OSC/RPM.

(3) The SSC will assist the OSC/RPM in responding to requests for assistance from the State and Federal agencies regarding scientific studies and environmental assessments. Details on access to scientific support shall be included in regional contingency plans.

(e) The USCG Public Information Assist Team (PIAT) and the EPA Public Affairs Assist Team (PAAT) are available to assist OSCs/RPMs and regional or district offices meet the demands for public information and participation. Their use is encouraged any time the OSC/RPM requires outside public affairs support. Requests for these teams may be made through the NRC.

(f)(1) The RRT may be activated by the Chairman as an emergency response team when a discharge or release:

(i) Exceeds the response capability available to the OSC in the place where it occurs;

(ii) Transects regional boundaries; or

(iii) May pose a substantial threat to the public health, welfare or to the environment, or to regionally significant amounts of property. Regional contingency plans shall specify detailed criteria for activation of RRTs.

(2) The RRT may be activated during any pollution emergency by a request from any RRT representative to the chairman of the Team. Request for RRT activation shall later be confirmed in writing. Each representative, or an appropriate alternate, should be notified immediately when the RRT is activated.

(3) During prolonged removal or remedial action, the RRT may not need to be activated or may need to be activated only in a limited sense, or have available only those members of the RRT who are directly affected or can provide direct response assistance.

(4) When the RRT is activated for a discharge or release, agency representatives shall meet at the call of the chairman and may:

(i) Monitor and evaluate reports from the OSC/RPM. The RRT may advise the OSC/RPM on the duration and extent of Federal response and may recommend to the OSC/RPM specific actions to respond to the discharge or release.

(ii) Request other Federal, State or local government, or private agencies to provide resources under their existing authorities to respond to a discharge or release or to monitor response operations.

(iii) Help the OSC/RPM prepare information releases for the public and for communication with the NRT.

(iv) If the circumstances warrant, advise the regional or district head of the agency providing the OSC/RPM that a different OSC/RPM should be designated.

(v) Submit Pollution Reports (POLREPS) to the NRC as significant developments occur.

(5) When the RRT is activated, affected States may participate in all RRT deliberations. State government representatives participating in the RRT have the same status as any Federal member of the RRT.

(6) The RRT can be deactivated by agreement between the EPA and USCG team members. The time of deactivation should be included in the POLREPS.

(g) The NRT should be activated as an emergency response team when an oil discharge or hazardous substance release:

(1) Exceeds the response capability of the regions in which it occurs;

(2) Transects regional boundries;

(3) Involves significant population threat or national policy issues, substantial amounts of property, or substantial threats to natural resources; or

(4) Is requested by any NRT member.

(h) When activated for a response action, the NRT shall meet at the call of the chairman and may:

(1) Monitor and evaluate reports from the OSC/RPM. The NRT may recommend to the OSC/RPM, through the RRT, actions to combat the discharge or release.

(2) Request other Federal, State and local governments, or private agencies, to provide resources under their existing authorities to combat a discharge or release or to monitor response operations.

(3) Coordinate the supply of equipment, personnel, or technical advice to the affected region from other regions or districts.

§ 300.35 Multi-regional responses.

(a) If a discharge or release moves from the area covered by one Federal local or Federal regional contingency plan into another area, the authority for removal or response actions should likewise shift. If a discharge or release or substantial threat of discharge or release affects areas covered by two or more regional plans, the response mechanisms of both may be activated. In this case, removal or response actions of all regions concerned shall be fully coordinated as detailed in the regional plans.

(b) There shall be only one OSC/RPM at any time during the course of a response operation. Should a discharge or release affect two or more areas, the EPA, DOD and USCG, as appropriate, shall give prime consideration to the area vulnerable to the greatest threat. The RRT shall designate the OSC/RPM if EPA, DOD and USCG members are unable to agree on the designation. The NRT shall designate the OSC/RPM if members of one RRT to two adjacent RRTs are unable to agree on the designation.

(c) Where the USCG has provided the OSC for emergency response to a release from hazardous waste management facilities located in the coastal zone, responsibility for response action shall shift to EPA, in accordance with EPA/USCG agreements.

§ 300.36 Communications.

(a) The NRC is the national communications center for activities related to response actions. It is located at USCG Headquarters in Washington, D.C. The NRC receives and relays notices of discharges or releases to the appropriate OSC, disseminates OSC/RPM and RRT reports to the NRT when appropriate, and provides facilities for the NRT to use in coordinating a national response action when required.

(b) The commandant, USCG, will provide the necessary communications, plotting facilities, and equipment for the NRC.

(c) Notice of an oil discharge or release of a hazardous substance in an amount equal to or greater than the reportable quantity must be made immediately in accordance with 33 CFR Part 153, Subpart B and section 103(a) of CERCLA, respectively. Notification shall be made to the NRC Duty Officer, HQ USCG, Washington, D.C. telephone (800) 424-8802 (or current local telephone number). All notices of discharges or releases received at the NRC shall be relayed immediately by telephone to the OSC or lead agency.

(d) The RRC provides facilities and personnel for communications, information storage, and other requirements for the RRC.

§ 300.37 Speical considerations.

(a) *Response Equipment*—The Spill Cleanup Inventory (SKIM) system is available to help OSCs and RRTs and private parties gain rapid information as to the location of response and support equipment. This inventory is accessible through the NRC and USCG's OSCs. The

inventory includes private and commercial equipment, as well as government resources. The RRTs and OSCs shall ensure that data in the system are current and accurate. The USCG is responsible for maintaining and updating the system with RRT and OSC input.

(b) *Marine salvage.* (1) Marine salvage operations generally fall into five categories: Afloat salage; offshore salvage; river and harbor clearance; cargo salvage; and rescue towing. Each category requires different knowledge and specialized types of equipment. The complexity of such operations may be further compounded by local environmental and geographic conditions.

(2) The nature of marine salvage and the conditions under which it occurs combine to make such operations imprecise, difficult, hazardous, and expensive. Thus, responsible parties or other persons attempting to perform such operations without adequate knowledge, equipment, and experience could aggrevate, rather than relieve, the situation. OSCs with responsibility for monitoring, evaluating, or supervising these activities should request technical assistance from DOD as necessary to ensure that proper actions are taken.

§ 300.38 Worker health and safety.

(a) Requirements under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) (OSH Act) and under the laws of States with plans approved under Section 18 of the OSH Act (State OSH laws), as well as other applicable safety and health requirements, will be applied to response activities under this Plan. These requirements are subject to enforcement by the appropriate Federal and State agencies. Federal OSHA requirements include, among other things, all OSHA General Industry (29 CFR Part 1910), Construction (29 CFR Part 1926), Shipyard (29 CFR Part 1915), and Longshorning (29 CFR Part 1918), standards wherever they are relevant, as well as OSHA recordkeeping and reporting regulations. Employers at response actions under this Plan will also be subject to the general duty requirement of section 5(a)(1) of the OSH Act, 29 U.S.C. 654(a)(1). No action by the lead agency with respect to response activities under this Plan constitutes an exercise of statutory authority within the meaning of section 4(b)(1) of the OSH Act. All governmental agencies and private employers are directly responsible for the health and safety of their own employees.

(b) Under a response action taken by a responsible party, the responsible party must assure that an occupational health and safety program is made available for the protection of workers at the response site, and that workers entering the response site are apprised of the response site hazards and provisions of the safety and health program.

(c) Under a Federal Fund-financed response, the lead agency must assure that a program for occupational safety and health is made available for the protection of workers at the response site, and that workers entering the response site are apprised of the response site hazards and provisions of the safety and health program. Any contract relating to a Federal Fund-financed response action under this Plan shall require the contractor at the response site to comply with this program and with any applicable provision of the OSH Act and State OSH laws as defined in § 300.38(a).

§ 300.39 Public information.

(a) When an incident occurs, it is imperative to give the public prompt, accurate information on the nature of the incident and the actions underway to mitigate the damage. OSCs/RPMs and community relations personnel should ensure that all appropriate public and private interests are kept informed and that their concerns are considered throughout a response. They should coordinate with available public affairs/community relations resources to carry out this responsibility.

(b) An on-scene news office may be established to coordinate media relations and to issue official Federal information on an incident. Whenever possible, it will be headed by a representative of the lead agency. The OSC/RPM determines the location of the on-scene news office, but every effort should be made to locate it near the scene of the incident. If a participating agency believes public interest warrants the issuance of statements and an on-scene news office has not been established, the affected agency should recommend its establishment. All Federal news releases or statements by participating agencies should be cleared through the OSC/RPM.

§ 300.40 OSC reports.

(a) Within 60 days after the conclusion of a major discharge of oil, a major hazardous substance, pollutant, or contaminant release, or when requested by the RRT, the EPA or USCG OSC shall submit to the RRT a complete report on the response operation and the actions taken. The OSC shall at the same time send a copy of the report to the NRT. The RRT shall review the OSC's report and prepare an endorsement to the NRT for review. This shall be accomplished within 30 days after the report has been received.

(b) The OSC's report shall accurately record the situation as it developed, the actions taken, the resources committed and the problems encountered. The OSC's recommendations are a source for new procedures and policy.

(c) the format for the OSC's report shall be as follows:

(1) Summary of Events—a chronological narrative of all events, including:

(i) The cause of discharge of release;

(ii) The initial situation;

(iii) Efforts to obtain response by responsible parties;

(iv) The organization of the response, including State participation;

(v) The resources committed;

(vi) The location [waterbody (if applicable), State, city, latitude and longitude] of the hazardous substance, pollutant, or contaminant release or oil discharge. For oil discharges, indicate whether the discharge was in connection with activities regulated under the Outer Continental Shelf Lands Act (OCSLA), the Trans-Alaska Pipeline Authority Act or Deepwater Port Act;

(vii) Comments on whether the discharge or release might have or actually did affect natural resources;

(viii) Comments on Federal or State damage assessment activities and efforts to replace or restore damaged natural resources;

(ix) Details of any threat abatement action taken under CERCLA or under section 311 (c) or (d) of the CWA; and

(x) Public information/community relations activities.

(2) Effectiveness of Removal Actions—A candid and thorough analysis of the effectiveness of removal actions taken by:

(i) The responsible party;

(ii) State and local forces;

(iii) Federal agencies and special forces; and

(iv) [If applicable] contractors, private groups and volunteers.

(3) Problems Encountered—A list of problems affecting response with particular attention to problems of intergovernmental coordination.

(4) Recommendations—OSC recommendations, including at a minimum:

(i) Means to prevent a recurrence of the discharge or release;

(ii) Improvement of response actions;

(iii) Any recommended changes in the National Contingency Plan or Federal regional plan.

Subpart D—Plans

§ 300.41 Regional and local plans.

(a) In addition to the National Contingency Plan (NCP), a Federal regional plan shall be developed for each standard Federal region and, where practicable, a Federal local plan shall be developed.

(b) These plans will be available for inspection at EPA Regional Offices or USCG district offices. Addresses and telephone numbers for these offices may be found in the United States Government Manual (issued annually) or in local telephone directories.

§ 300.42 Regional contingency plans.

(a) The RRTs, working with the States, shall develop Federal regional plans for each standard Federal region. The purpose of these plans is coordination of a timely, effective response by various Federal agencies and other organizations to discharges of oil and releases of hazardous substances, pollutants and contaminants in order to protect public health, welfare and the environment. Regional contingency plans should include information on all useful facilities and resources in the region, from government, commercial, academic and other sources. To the greatest extent possible, regional plans will follow the format of the National Contingency Plan.

(b) SSCs shall organize and coordinate the contributions of scientists of each region to the response activities of the OCS/RPM and RRT to the greatest extent possible. SSCs, with advice from RRT members, shall also develop the parts of the regional plan that relate to scientific support.

(c) Regional plans shall contain lines of demarcation between the inland and coastal zones, as mutually agreed upon by USCG and EPA.

§ 300.43 Local contingency plans.

(a) Each OSC shall maintain a Federal local plan for response in his or her area of responsibility, where practicable. In areas in which the USCG provides the OSC, such plans shall be developed in all cases. The plan should provide for a well-coordinated response that is integrated and compatible with the pollution response, fire, emergency and disaster plans of local, State and other non-Federal entities. The plan should identify the probable locations of discharges or releases, the available resources to respond to multi-media incidents, where such resources can be obtained, waste disposal methods and facilities consistent with local and State plans developed under the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.), and a local structure for responding to discharges or releases.

(b) While the OSC is responsible for developing Federal local plans, a successful planning effort will depend upon the full cooperation of all the agencies' representatives and the development of local capabilities to respond to discharges or releases. Particular attention should be given, during the planning process, to developing a multi-agency local response team for coordinating on-scene efforts. The RRT should ensure proper liaison between the OSC and local representatives.

Subpart E—Operational Response Phases for Oil Removal

§ 300.51 Phase I—Discovery and notification.

(a) A discharge of oil may be discovered through:

(1) A report submitted by the person in charge of the vessel or facility in accordance with statutory requirements;

(2) Deliberate search by patrols; and

(3) Random or incidental observation by government agencies or the public.

(b) All reports of discharges should be made to the NRC. If direct reporting to the NRC is not practicable, reports may be made to the predesignated OSC at the nearest USCG or EPA office. All reports shall be promptly relayed to the NRC. Federal regional and Federal regional and Federal local plans shall provide for prompt reporting to the NRC, RRC, and appropriate State agency (as agreed upon with the State).

(c) Upon receipt of a notification of discharge, the NRC shall promptly notify the OSC. The OSC shall proceed with the following phases as outlined in Federal regional and Federal local plans.

§ 300.52 Phase II—Preliminary assessment and initiation of action.

(a) The OSC for a particular area is responsible for promptly initiating preliminary assessment.

(b) The preliminary assessment shall be conducted using available information, supplemented where necessary and possible by an on-scene inspection. The OSC shall undertake actions to:

(1) Evaluate the magnitude and severity of the discharge or threat to public health, welfare, or the environment;

(2) Assess the feasibility of removal;

(3) Determine the existence of potential responsible parties; and

(4) Ensure that authority exists for undertaking additional response actions.

(c) The OSC, in consultation with legal authorities when appropriate, shall make a reasonable effort to have the discharger voluntarily and promptly perform removal actions. The OSC shall ensure adequate surveillance over whatever actions are initiated. If effective actions are not being taken to eliminate the threat, or if removal is not being properly done, the OSC shall, to the extent practicable under the circumstances, so advise the responsible party. If the responsible party does not take proper removal actions, or is unknown, or is otherwise unavailable, the OSC shall, pursuant to section 311(c)(1) of the CWA, determine whether authority for a Federal response exists, and, if so, take appropriate response actions. Where practicable, continuing efforts should be made to encourage response by responsible parties.

(d) The OSC should ensure that the trustees of affected natural resources are notified, in order that the trustees may initiate appropriate actions when natural resources have been or are likely to be damaged (see Subpart G of Part 300). Where practicable, the OSC should consult with trustees in such determinations.

§ 300.53 Phase III—Containment, countermeasures, clean-up, and disposal.

(a) Defensive actions should begin as soon as possible to prevent, minimize, or mitigate threat to the public health or welfare or the environment. Actions may include: analyzing water samples to determine the source and spread of the oil; controlling the source of discharge; measuring and sampling; source and spread control or salvage operations; placement of physical barriers to deter the spread of the oil or to protect endangered species; control of the water discharged from upstream impoundment; and the use of chemicals and other materials in accordance with Subpart H, to restrain the spread of the oil and mitigate its effects.

(b) Appropriate actions should be taken to recover the oil or mitigate its effects. Of the numerous chemical physical methods that may be used, the chosen methods should be the most consistent with protecting the public health and welfare and the environment. Sinking agents shall not be used.

(c) Oil and contaminated materials recovered in cleanup operations shall be disposed of in accordance with Federal

regional and Federal local contingency plans.

§ 300.54 Phase IV—Documentation and cost recovery.

(a) Documentation shall be collected and maintained to support all actions taken under the CWA and to form the basis for cost recovery. In general, documentation should be sufficient to prove the source and circumstances of the incident, the responsible party or parties, and impact and potential impacts to the public health and welfare and the environment. When appropriate, documentation should also be collected for scientific understanding of the environment and for the research and development of improved response methods and technology. Damages to private citizens (including loss of earnings) are not addressed by this Plan. Evidentiary and cost documentation procedures and requirements are specified in the USCG Marine Safety Manual (Commandant Instruction M16000.3) and 33 CFR Part 153.

(b) OSCs shall submit OSC reports to the RRT as required by § 300.40.

(c) The OSC shall ensure the necessary collection and safeguarding of information, samples, and reports. Samples and information must be gathered expeditiously during the response to ensure an accurate record of the impacts incurred. Documentation materials shall be made available to the trustees of affected natural resources.

(d) Information and reports obtained by the EPA or USCG OSC shall be transmitted to the appropriate offices responsible for follow-up actions.

§ 300.55 General pattern of response.

(a) When the OSC receives a report of a discharge, actions normally should be taken in following sequence:

(1) Immediately notify the RRT and NRC when the reported discharge is an actual or potential major discharge.

(2) Investigate the report to determine pertinent information such as the threat posed to public health or welfare, or the environment, the type and quantity of polluting material, and the source of the discharge.

(3) Officially classify the size of the discharge and determine the course of action to be followed.

(4) Determine whether a discharger or other person is properly carrying out removal. Removal is being done properly when:

(i) The clean-up is fully sufficient to minimize or mitigate threat to the public health, welfare, and the environment (removal efforts are "improper" to the extent that Federal efforts are necessary to further minimize or mitigate those threats).

(ii) The removal efforts are in accordance with applicable regulations including this Plan.

(5) Determine whether a State or political subdivision has the capability to carry out response actions and a contract or cooperative agreement has been established with the appropriate fund administrator for this purpose.

(6) Notify the RRT (including the affected State), SSC, and the trustees of affected natural resources in accordance with the applicable regional plan.

(b) The preliminary inquiry will probably show that the situation falls into one of the five classes. These classes and the appropriate response to each are outlined below:

(1) If the investigation shows that no discharge exists, the case shall be considered a false alarm and should be closed.

(2) If the investigation shows a minor discharge with the responsible party taking proper removal action, contact should be established with the party. The removal action should be monitored to ensured continued proper action.

(3) If the investigation shows a minor discharge with improper removal action being taken, the following measures shall be taken:

(i) An immediate effort should be made to stop further pollution and remove past and on-going contamination.

(ii) The responsible party shall be advised of what action will be considered appropriate.

(iii) If the responsible party does not properly respond, he shall be notified of his potential liability for Federal response performed under the CWA. This liability includes all costs of removal and may include the costs of assessing and restoring damaged natural resources and other actual or necessary costs of a Federal response.

(iv) The OSC shall notify appropriate State and local officials, keep the RRT advised and initiate Phase III operations as conditions warrant.

(v) Information shall be collected for possible recovery of response costs in accordance with § 300.54.

(4) When the investigation shows that an actual or potential medium oil discharge exists, the OSC shall follow the same general procedures as for a minor discharge. If appropriate, the OSC shall recommend activation of the RRT.

(5) When the investigation shows an actual or potential major oil discharge, the OSC shall follow the same procedures as for minor and medium discharges.

§ 300.56 [Reserved]

§ 300.57 Waterfowl conservation.

The DOI representatives and the State liaison to the RRT shall arrange for the coordination of professional and volunteer groups permitted and trained to participate in waterfowl dispersal, collection, cleaning, rehabilitation and recovery activities (consistent with 16 U.S.C. 703–712 and applicable State laws). Federal regional and Federal local plans will, to the extent practicable, identify organizations or institutions that are permitted to participate in such activities and operate such facilities. Waterfowl conservation activities will normally be included in Phase III response actions (§ 300.53 of this subpart).

§ 300.58 Funding.

(a) If the person responsible for the discharge does not act promptly including timely actions, or take proper removal actions, or if the person responsible for the discharge is unknown, Federal discharge removal actions may begin under section 311(c)(1) of the CWA. The discharger, if known, is liable for the costs of Federal removal in accordance with section 311(f) of the CWA and other Federal laws.

(b) Actions undertaken by the participating agencies in response to pollution shall be carried out under existing programs and authorities when available. This Plan intends that Federal agencies will make resources available, expend funds, or participate in response to oil discharges under their existing authority. Authority to expend resources will be in accordance with agencies' basic statutes and, if required, through interagency agreements. Where the OSC requests assistance from a Federal agency, that agency may be reimbursed in accordance with the provisions of 33 CFR 153.407. Specific interagency reimbursement agreements may be signed when necessary to ensure that the Federal resources will be available for a timely response to a discharge of oil. The ultimate decisions as to the appropriateness of expending funds rests with the agency that is held accountable for such expeditures.

(c) The OSC shall exercise sufficient control over removal operation to be able to certify that reimbursement from the following funds is appropriate:

(1) The oil pollution fund, administered by the Commandant, USCG, has been established pursuant to section 311(k) of the CWA. Regulations governing the administration and use of

the fund are contained in 33 CFR Part 153.

(2) The fund authorized by the Deepwater Port Act is administered by the Commandant, USCG. Governing regulations are contained in 33 CFR Parts 136 and 150.

(3) The fund authorized by the Outer Continental Shelf Lands Act, as amended, is administered by the Commandant, USCG. Governing regulations are contained in 33 CFR Parts 136 and 150.

(4) The fund authorized by the Trans-Alaska Pipeline Authorization Act is administered by a Board of Trustees under the purview of the Secretary of the Interior. Governing regulations are contained in 43 CFR Part 29.

(d) Response actions other than removal, such as scientific investigations not in support of removal actions or law enforcement, shall be provided by the agency with legal responsibility for those specific actions:

(e) The funding of a response to a discharge from a Federally operated or supervised facility or vessel is the responsiblity of the operating or supervising agency.

(f) The following agencies have funds available for certain discharge removal actions:

(1) EPA may provide funds to begin timely discharge removal actions when the OSC is an EPA representative.

(2) The USCG pollution control efforts are funded under "operating expenses." These funds are used in accordance with agency directives.

(3) The Department of Defense has two specific sources of funds which may be applicable to an oil discharge under appropriate circumstances. (This does not consider military resources which might be made available under specific conditions.)

(i) Funds required for removal of a sunken vessel or similar obstruction of navigation are available to the Corps of Engineers through Civil Works Appropriations, Operations and Maintenance, General.

(ii) The U.S. Navy may conduct salvage operations contingent on defense operational commitments, when funded by the requesting agency. Such funding may be requested on a direct cite basis.

(4) Pursuant to section 311(c)(2)(H) of the CWA, the State or States affected by a discharge of oil, may act where necessary to remove such discharge and may, pursuant to 33 CFR Part 153, be reimbursed from the pollution revolving fund for the reasonable costs incurred in such a removal.

(i) Removal by a State is necessary within the meaning of section 311(c)(2)(H) of the CWA when the OSC determines that the owner or operator of the vessel, onshore facility, or offshore facility from which the discharge occurs does not affect removal properly, or is unknown, and that;

(A) State action is required to minimize or mitigate significant threat to the public health or welfare which Federal action cannot minimize or mitigate, or

(B) Removal or partial removal can be done by the State at a cost which is less than or not significantly greater than the cost which would be incurred by the Federal departments or agencies.

(ii) State removal actions must be in compliance with this Plan in order to qualify for reimbursement.

(iii) State removal actions are considered to be Phase III actions, under the same definitions applicable to Federal agencies.

(iv) Actions taken by local governments in support of Federal discharge removal operations are considered to be actions of the State for purposes of this section. Federal regional and Federal local plans shall show what funds and resources are available from participating agencies under various conditions and cost arrangements. Interagency agreements may be necessary to specify when reimbursement is required.

Subpart F—Hazardous Substances Response

§ 300.61 General.

(a) This subpart establishes methods and criteria for determining the appropriate extent of response authorized by CERCLA: (1) When there is a release of a hazardous substance or there is a substantial threat of such a release into the environment; or, (2) when there is a release or substantial threat of a release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare.

(b) Section 104(a)(1) of CERCLA authorizes removal or remedial action unless it is determined that such removal or remedial action will be done properly by the owner or operator of the vessel or facility from which the release or threat of release emanates, or by any other responsible party. If appropriate response actions are not being taken or executed properly, including in a timely manner, the lead agency may initiate proper action, terminate any improper actions and should so advise any known responsible party, and complete response activities.

(c) In determining the need for and in planning or undertaking Fund-financed action, the lead agency should, to the extent practicable:

(1) Engage in prompt response.

(2) Encourage State participation in response actions (see § 300.62).

(3) Conserve Fund monies by encouraging private party clean-up.

(4) Be sensitive to local community concerns (see § 300.67).

(5) Rely on established technology, but also consider alternative and innovative technology when feasible and cost-effective.

(6) Involve the RRT in both removal and remedial response actions at appropriate decision-making stages.

(7) Encourage the involvement and sharing of technology by industry and other experts.

(8) Encourage the involvement of organizations to coordinate responsible party actions, foster site cleanup and provide technical advice to the public, Federal and State Government and industry.

(d) The lead agency should, as practicable, provide surveillance over actions taken by responsible parties to ensure that a response is conducted consistent with this Plan.

(e) (1) This subpart does not establish any preconditions to enforcement action by either the Federal or State Governments to compel response actions by responsible parties.

(2) While some of this subpart is oriented toward federally funded response actions, this subpart may be used as guidance concerning methods and criteria for response actions by other parties under other funding mechanisms. Except as provided in § 300.71, nothing in this part limits the rights of any person to seek recovery of response costs from responsible parties pursuant to CERCLA section 107.

(3) Activities by the Federal and State Governments in implementing this subpart are discretionary governmental functions. This subpart does not create in any private party a right to Federal response or enforcement action. This subpart does not create any duty of the Federal Government to take any response action at any particular time.

§ 300.62 State role.

(a)(1) States are encouraged to undertake actions authorized under this subpart. Section 104(d)(1) of CERCLA authorizes the Federal Government to enter into contracts or cooperative agreements with the State to take Fund-financed response actions authorized under CERCLA, when the Federal government determines that the State

has the capability to undertake such actions.

(2) Cooperative agreements or State Superfund contracts are unnecessary for response actions that are not fund-financed, including any State or other party actions. Coordination with EPA or USCG is encouraged in such situations, however.

(b) EPA will provide assistance from the Fund to States pursuant to a contract or cooperative agreement. The cooperative agreement can authorize States to undertake most actions specified in this Subpart.

(c) Contracts and cooperative agreements between the State(s) and Federal Government for Fund-financed remedial action are subject to section 104(c)(3) of CERCLA. Such agreements are not a precondition to access, information gathering, investigations, studies or liability pursuant to section 106 and 107 of CERCLA.

(d) Prior to remedial action as defined in section 101(24) of CERCLA, the State must make a firm commitment, through either a new or amended cooperative agreement or State contract, to provide funding for remedial implementation by:

(1) Authorizing the reduction of a State credit to cover its share of costs;

(2) Identifying currently available funds earmarked for remedial implementation; or

(3) Submitting a plan with milestones for obtaining necessary funds.

(e) State credits allowed under section 104(c)(3) of CERCLA must be documented on a site-specific basis for State out-of-pocket, non-Federal eligible response costs between January 1, 1978, and December 11, 1980. Prior to remedial investigation activity at a site, the State must submit its estimate of these costs as a part of the cooperative agreement application, or as a part of the EPA State agreement. State credits will be applied against State cost shares for federally funded remedial actions. A State cannot be reimbursed from the Fund for credit in excess of its matching share nor may the credit be applied to any other site.

(f) Pursuant to section 104(c)(2) of CERCLA, prior to determining any appropriate remedial action, the lead agency shall consult with the affected State or States.

(g) States are encouraged to participate in all RRT planning and response activities.

(h) State and local public safety organizations are normally expected to initiate public safety measures (e.g., actions to limit public access to site) and are responsible for directing evacuations pursuant to existing State/local procedures.

§ 300.63 Discovery or notification.

(a) A release may be discovered through:

(1) Notification in accordance with sections 103 (a) or (c) of CERCLA;

(2) Investigation by government authorities conducted in accordance with section 104(e) of CERCLA or other statutory authority;

(3) Notification of a release by a Federal or State permit holder when required by its permit;

(4) Inventory efforts or random or incidental observation by government agencies or the public;

(5) Other sources.

(b) All reports of releases should be made to the NRC. If direct reporting to the NRC is not practicable, reports may be made to the predesignated OSC at the nearest USCG or EPA office. All such reports shall be promptly relayed to the NRC.

(c) Upon receipt of a notification of a release, the NRC shall promptly notify the appropriate OSC or lead agency. The OSC or lead agency shall notify the Governor of the State affected by the release.

(d) (1) When the OSC is notified of a release which may require response pursuant to § 300.65(b), a preliminary assessment should be undertaken by the OSC pursuant to § 300.64.

(2) When notification indicates that action pursuant to § 300.65(b) is not required, site evaluation should be undertaken by the lead agency pursuant to § 300.66.

§ 300.64 Preliminary assessment for removal actions.

(a) A preliminary assessment of a release or threat of a release identified for possible CERCLA response pursuant to § 300.65 should be undertaken by the OSC as promptly as possible. The OSC should base the assessment on readily available information. This assessment may include but is not limited to:

(1) Identification of the source and nature of the release or threat of release;

(2) Evaluation of the threat to public health by HHS;

(3) Evaluation of the magnitude of the potential threat;

(4) Evaluation of factors necessary to make the determination of whether a removal is necessary; and

(5) Determination if a non-Federal party is undertaking proper response.

(b) A preliminary assessment of releases or threats of releases from hazardous waste management facilities may include collection or review of data such as site management practices, information from generators, photographs, analysis of historical photographs, literature searches, and personal interviews conducted as appropriate. In addition, a perimeter (off-site) inspection may be necessary to determine the potential for a release. Finally, if more information is needed, a site visit may be performed, if conditions are such that it may be performed safely.

(c) A preliminary assessment should be terminated when the OSC or lead agency determines:

(1) There is no release or threat of release;

(2) The source is neither a vessel nor a facility;

(3) The release does not involve a hazardous substance, nor a pollutant or contaminant;

(4) The amount, quantity and concentration released does not warrant Federal response;

(5) A party responsible for the release, or any other person, is providing appropriate response, and on-scene monitoring by the government is not required; or

(6) The assessment is completed.

(d) If it is determined during the assessment that natural resources have been, or are likely to be damaged, the OSC or lead agency should ensure that the trustees of the affected natural resources are notified in order that the trustees may initiate appropriate actions. Where practicable, the OSC should consult with trustees in making such determinations.

(e) If the preliminary assessment indicates that removal action under § 300.65 is not required, but that remedial actions under § 300.68 may be necessary, the lead agency should initiate site evaluation pursuant to § 300.66.

§ 300.65 Removals.

(a) (1) In determining the appropriate extent of action to be taken at a given release, the lead agency shall first review the preliminary assessment and the current site conditions to determine if removal action is appropriate.

(2) Where the responsible parties are known, an effort initially should be made, to the extent practicable considering the exigencies of the circumstances, to have them perform the necessary removal actions. Where responsible parties are unknown an effort initially should be made, to the extent practicable considering the exigencies of the circumstances, to locate them and have them perform the necessary removal action.

(3) This section does not apply to removal actions taken pursuant to section 104(b) of CERCLA. The criteria

for such actions are set forth in section 104(b).

(b) (1) At any release, regardless of whether it is included on the National Priorities List, where the lead agency determines that there is a threat to public health, welfare or the environment, based on the factors in subsection (b)(2), the lead agency may take any appropriate action to abate, minimize, stabilize, mitigate or eliminate the release or threat of release, or the threat resulting from that release or threat of release.

(2) The following factors shall be considered in determining the apropriateness of a removal action pursuant to this subsection:

(i) Actual or potential exposure to hazardous substances or pollutants or contaminants by nearby populations, animals or food chain;

(ii) Actual or potential contamination of drinking water supplies or sensitive ecosystems;

(iii) Hazardous substances or pollutant or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release;

(iv) High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate.

(v) Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released;

(vi) Threat of fire or explosion;

(vii) The availability of other appropriate Federal or State response and enforcement mechanisms to respond to the release;

(viii) Other situations or factors which may pose similar threats to public health, welfare or the environment.

(3) Removal actions, other than those authorized under section 104(b) of CERCLA, shall be terminated after $1 million has been obligated for the action or 6 months have elapsed from the date of initial response unless the lead agency determines that: (i) there is an immediate risk to public health, welfare or the environment, (ii) continued response actions are immediately required to prevent, limit, or mitigate an emergency, and (iii) such assistance will not otherwise be provided on a timely basis.

(4) If the lead agency determines that a removal action pursuant to this subsection is appropriate, actions should begin as soon as possible to prevent, minimize or mitigate the threat to public health, welfare or the environment. The lead agency should, at the earliest possible time, also make any necessary determinations contained in paragraph (b)(3) of this section.

(c) The following removal actions are as a general rule appropriate in the following situations; however, this list does not limit the lead agency from taking any other actions deemed necessary in response to any situation or preclude the lead agency from deferring response action to other appropriate Federal or State enforcement or response authorities.

(1) Fences, warning signs, or other security or site control precautions—where humans or animals have access to the release;

(2) Drainage controls (e.g. run-off or run-on diversion)—where precipitation or run-off from other sources (e.g. flooding) may enter the release area from other areas;

(3) Stabilization of berms, dikes, or impoundments—where needed to maintain the integrity of the structures;

(4) Capping of contaminated soils or sludges—where needed to reduce migration of hazardous substances, or pollutants or contaminants into soil, ground water or air.

(5) Using chemicals and other materials to retard the spread of the release or to mitigate its effects—where the use of such chemicals will reduce the spread of the release;

(6) Removal of highly contaminated soils from drainage areas—where removal will reduce the spread of contamination;

(7) Removal of drums, barrels, tanks or other bulk containers containing or that may contain hazardous substances or pollutants or contaminants—where it will reduce the likelihood of spillage, leadage, exposure to humans, animals or food chain, or fire or explosion.

(8) Provison of alernative water supply—where it will reduce the likelihood of exposure of humans or animals to contaminated water.

(d) Where necessary to protect public health or welfare, the lead agency may request that FEMA conduct a temporary relocation or evacuation.

If the lead agency determines that the removal action will not fully address the threat or potential threat posed by the release and the release may require remedial action, the OSC should coordinate with the RPM to ensure an orderly transition from removal to remedial response activities.

(f) Although Fund-financed removal actions and removal actions pursuant to CERCLA section 106 are not required to comply with other Federal, State and local laws governing the removal activity, including permit requirements, such removal actions shall, to the greatest extent practicable considering the exigencies of the circumstances, attain or exceed applicable or relevant Federal public health or environmental standards. Applicable standards are those standards that would be legally applicable if the actions were not undertaken pursuant to CERCLA section 104 or section 106. Relevant standards are those designed to apply to circumstances sufficiently similar to those encountered at CERCLA sites that their application would be appropriate, although not legally required. Federal criteria, guidance and advisories and State standards also should be considered in formulating the removal action.

(g) Fund-financed removal actions and removal actions pursuant to section 106 of CERCLA involving the storage, treatment, or disposal of hazardous substances or pollutants or contaminants at off-site facilities shall involve only such off-site facilities that are operating under appropriate Federal or State permits or authorization.

§ 300.66 Site evaluation phase and national priorities list determination.

(a) (1) *The Site Evaluation Phase.* This phase of response includes activities beginning with discovery of a release and extends through the initial evaluaton (preliminary assessment and site inspection—see § 300.64). The purpose of the site evaluation phase is to further categorize the nature of any releases and potential threats to public health, welfare, and the environment and to collect data as required to determine whether a release should be included on the National Priorities List (NPL). (See § 300.66 (b) and (c) below.)

(2) Pursuant to section 104 (b) and (e) of CERCLA and other authorities, the lead agency may undertake preliminary assessments and site inspections to gather appropriate information to determine if a release warrants response, and if so, its priority for response.

(3) For response actions that may be taken pursuant to § 300.68, a preliminary assessment consists of a review of existing data and may include an off-site reconnaissance. The purposes of such a preliminary assessment are:

(i) To eliminate from further consideration those releases where available data indicates no threat or potential threat to public health or the environment exists;

(ii) To determine if there is any potential need for removal action;

(iii) To establish priority for scheduling a site inspection.

(4) A site inspection consists of a visual inspection of the site and

routinely includes collection of samples. There are several major purposes for a site inspection:

(i) To determine which releases pose no threat or potential threat to public health and the environment;

(ii) To determine if there is any immediate threat to persons living or working near the release;

(iii) To collect data, where appropriate, to determine whether a release should be included on the NPL.

(b) *Methods for Establishing Priorities.* (1) Section 105(8)(A) of CERCLA requires the President to include as part of the Plan criteria for establishing priorities among releases and potential releases. Three mechanisms are set forth here for that purpose: The Hazard Ranking System (HRS); designation by the States of their top priority releases; and determination that a site poses a significant threat to public health, welfare or the environment as indicated in paragraph (b)(4) of this section. These criteria will be used to establish and amend the NPL (see § 300.66(c)).

(2) The primary mechanism for identifying releases for inclusion on the NPL will be scores calculated by applying the HRS (Appendix A).

(3) Each State may designate a release as the State's highest priority release by certifying in writing, signed by the Governor or the Governor's designee, that the release presents the greatest danger to public health, welfare or the environment among known releases in the State. Each State may designate one top priority site over the life of the NPL.

(4) In addition to those releases identified by their HRS scores as candidates for the NPL, EPA may identify for inclusion on the NPL any other release that the Agency determines is a significant threat to public health, welfare or the environment. EPA may make such a determination when the Department of Health and Human Services has issued a health advisory as a consequence of the release.

(c) (1) The National Priorities List. Section 105(8)(B) of CERCLA requires the President to establish a list of at least 400 releases and potential releases, based upon the criteria developed pursuant to section 105(8)(A) of the Act. CERCLA also requires the States to identify their priorities at least annually and requires that each State's designated top priority releases be included among the one hundred (100) highest priority releases, to the degree practicable. The process for establishing the NPL is set forth below.

(2) The NPL serves as a basis to guide the allocation of Fund resources among releases. Only those releases included on the NPL will be considered eligible for Fund-financed remedial action.

Inclusion on the NPL is not a precondition to liability pursuant to Agency action under CERCLA section 106 or to action under CERCLA 107, for recovery of non-Fund-financed costs or Fund-financed costs other than remedial construction costs.

(3) States that wish to submit candidates for the NPL must use the HRS (Appendix A of this part) to score the releases and furnish EPA with appropriate documentation for the scores.

(4) EPA will notify the States at least thirty days prior to the deadline for submitting candidate releases for the NPL or any revisions.

(5) EPA will review the States' HRS scoring documents and revise the application of the hazard ranking criteria when appropriate. EPA will add any additional priority releases known to the Agency after consultation with the States. Taking into account the HRS scores, the States' top priority releases, and the criteria specified in (b)(4) of this section, EPA will compile the NPL.

(6) Ranking of Releases. Minor differences in HRS scores among releases may not accurately differentiate among threats represented by the releases. Thus, releases having similar scores may be presented in groups on the NPL.

(7) Sites may be deleted from the NPL where no further response is appropriate. In deleting sites the Agency will consider whether any of the following criteria have been met:

(i) EPA in consultation with the State has determined that responsible or other parties have completed all appropriate response actions required at that time;

(ii) All appropriate Fund-financed response under CERCLA has been completed, and EPA has determined that no further cleanup by responsible parties is appropriate at that time; or

(iii) Based on a remedial investigation, EPA has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate at that time.

(8) All releases deleted from the NPL are eligible for further Fund-financed remedial actions should future conditions warrant such action.

(9) EPA will submit the recommended NPL to the NRT for review and comment. EPA will publish any proposed revisions to the NPL for public comment.

(10) EPA will revise and publish the NPL at least annually.

§ 300.67 Community relations.

(a) A formal community relations plan must be developed and implemented for removal actions taken pursuant to 300.65 and for remedial action at NPL sites, including enforcement actions, except as provided for in subsection (b). Such plans must specify the communication activities which will be undertaken during the response and shall include provision for a pubilc comment period on the alternatives analysis undertaken pursuant to § 300.68. The use of the RRT to assist community relations activities should be considered in developing community relations plans.

(b) In the case of actions taken pursuant to 300.65 or enforcement action to compel response analogous to section 300.65, or other short term action needed to abate a threat to public health, welfare, or the environment, a spokesperson will be designated by the lead agency. The spokesperson will inform the community of actions taken, respond to inquiries, and provide information concerning the release. In such cases, if the action is of short duration, or if response is needed immediately, a formal plan is not necessary. However, if the removal action extends over 45 days, a formal plan must be developed and implemented.

(c) For all remedial actions at NPL sites including Fund-financed and enforcement actions, a community relations plan must be developed, and approved, prior to initiation of field activities and implemented during the course of the action. In enforcement actions a responsible party may be permitted with lead agency oversight to develop and implement appropriate parts of the community relations plan.

(d) In remedial actions at NPL sites including Fund-financed and enforcement actions, feasibility studies that outline alternative remedial measures must be provided to the public for review and comment for a period of not less than 21 calendar days. Such review and comment shall precede selection of the remedial response. Public meeting(s) should, as a general rule, be held during the comment period. The lead agency may also provide the public with an opportunity to comment during the development of the feasibility study.

(e) A document which summarizes the major issues raised by the public and how they are addressed must be included in the decision document approving the remedy.

(f) In enforcement actions in litigation under CERCLA section 106, the community relations plan, including

provision for public review of any feasibility study prepared for source control or management of migration measures, may be modified or adjusted at the direction of the court of jurisdiction or to accommodate the court calendar.

(g) Where parties agree to implement the permanent site remedy pursuant to an administrative order on consent, the lead agency shall provide public notice and a 30-day period for public comment, including comment on remedial measures. Where settlement is embodied in a consent decree, public notice and opportunity for public comment shall be provided in accordance with 28 CFR 50.7. A document summarizing the major issues raised by the public and how they are addressed will be prepared.

§ 300.68 Remedial action.

(a) (1) *Introduction.* Remedial actions are those responses to releases that are consistent with permanent remedy to prevent or minimize the release of hazardous substances or pollutants or contaminants so that they do not migrate to cause substantial danger to present or future public health, welfare, or the environment [CERCLA section 101(24)]. Fund-financed remedial action may be taken only at those releases on the NPL.

(2) The Remedial Project Manager (RPM) shall carry out responsibilities in a remedial action as delineated in § 300.33(b).

(3) Federal, State and local public health or environmental permits are not required for Fund-financed remedial action or remedial actions taken pursuant to Federal action under section 106 of CERCLA. However, remedial actions that involve storage, treatment, or disposal of hazardous substances, pollutants or contaminants at off-site facilities shall involve only such off-site facilities that are operating under appropriate Federal or State permits or authorization.

(b) (1) *State Involvement.* States are encouraged to undertake Fund-financed remedial response in accordance with § 300.62 of this Plan.

(2) States must meet the requirements of CERCLA section 104(c)(3) prior to undertaking Fund-financed remedial action.

(3) Planning activities associated with remedial actions taken pursuant to CERCLA section 104(b) shall not require a State cost share unless the facility was owned at the time of any disposal of hazardous substances therein by the State or a political subdivision thereof. such planning activities include, but are not limited to, remedial investigations, feasibility studies, and design of the proposed remedy. For sites owned by a State or its political subdivision, cost sharing commitment is required prior to remedial action.

(c) (1) *Scoping of Response Actions.* The lead agency, in cooperation with State(s), will examine available information and determine, based on the factors indicated in paragraph (c)(2) of this section, the type of response that may be needed to remedy the release. This scoping will serve as a basis for requesting funding for a necessary removal action, remedial investigation or feasibility study. Initial analysis should indicate the extent to which the release or threat of release may pose a threat to public health, welfare or the environment, the types of removal measures and/or remedial measures suitable to abate the threat, and set priorities for implementation of the measures.

(2) The following should be assessed in determining whether and what type of remedial and/or removal actions should be considered:

(i) Population, environmental, and welfare concerns at risk;

(ii) Routes of exposure;

(iii) Amount, concentration, hazardous properties, environmental fate (e.g. ability to bio-accumulate, persistence, mobility, etc), and form of the substance(s) persent;

(iv) Hydrogeological factors (e.g., soil permeability, depth to saturated zone, hydrologic gradients, proximity to a drinking water aquifer, floodplains and wetlands proximity);

(v) Climate (rainfall, etc.);

(vi) The extent to which the source can be adequately identified and characterized;

(vii) Whether substances at the site may be reused or recycled;

(viii) The likelihood of future releases if the substances remain on-site;

(ix) The extent to which natural or man-made barriers currently contain the substances and the adeguacy of the barriers;

(x) The extent to which the substances have migrated or are expected to migrate from the area of their original location or new location if relocated and whether future migration may pose a threat to public health, welfare, or the environment;

(xi) Extent to which contamination levels exceed applicable or relevant Federal or State public health or environmental standards, advisories and criteria and the extent to which there are applicable or relevant standards for the storage, treatment, or disposal of materials of the type present at the release;

(xii) Contribution of the contamination to an air, land or water pollution problem;

(xiii) Ability of responsible party to implement and maintain the remedy until the threat is permanently abated;

(xiv) The availability of other appropriate Federal or State response and enforcement mechanisms to respond to the release;

(xv) Other appropriate matters may be considered.

(3) As a remedial investigation progresses, the project may be modified if the lead agency determines that, based on the factors in subparagraph (2) of this section, such modifications would be appropriate.

(d) *Operable Unit.* Response action may be conducted in operable units. Operable units may be conducted as remedial and/or removal actions.

(1) Response actions may be separated into operable units consistent with achieving a permanent remedy. These operable units may include removal actions pursuant to § 300.65(b), and/or remedial actions involving source controls, and/or management of migration.

(2) The RPM should recommend whether or not operable units should be implemented prior to selection of the appropriate final remedial measure.

(3) In some instances, implementation of operable units can and should begin before selection of an appropriate final remedial action if such measures are cost-effective and consistent with a permanent remedy. Compliance with § 300.68(b) is a prerequisite to implementing remedial operable units.

(e) *Remedial Investigation/Feasibility Study* (RI/FS). A RI/FS should be undertaken by the lead agency conducting the remedial action to determine the nature and extent of the threat presented by the release and evaluate proposed remedies. This includes sampling, monitoring, and exposure assessment, as necessary, and includes the gathering of sufficient information to determine the necessity for and proposed extent of remedial action. Part of the RI/FS may involve assessing whether the threat can be prevented or minimized by controlling the source of the contamination at or near the area where the hazardous substances were originally located (source control measures) and/or whether additional actions will be necessary because the hazardous substances have migrated from the area of or near their original location (management of migration). Planning for remedial action at these releases should also assess the need for removals.

During the remedial investigation, the original scoping of the project may be modified based on the factors in § 300.68(c).

(f) *Development of Alternatives.* (1) A reasonable number of alternatives must be developed including:

(i) Alternatives for treatment or disposal at an off-site facility, as appropriate;

(ii) Alternatives which attain applicable or relevant Federal public health or environmental standards;

(iii) As appropriate, alternatives which exceed applicable or relevant Federal public health or environmental standards;

(iv) Alternatives which do not attain applicable or relevant public health or environmental standards but will reduce the likelihood of present or future threat from the hazardous substances and which provide significant protection to public health, welfare, and the environment. This must include an alternative which most closely approaches the level of protection provided by the applicable or relevant standards.

(v) No action alternative.

(2) These alternatives should be developed based upon the analysis conducted under paragraphs (c), (d) and (e) of this section. The alternatives should consider and integrate waste minimization, destruction, and recycling where appropriate. This must include an alternative which most closely approaches the level of protection provided by the applicable or relevant standards.

(g) *Initial Screening of Alternatives.* The alternatives developed under paragraph (f) of this section will be subject to an initial screening to narrow the list of potential remedial actions for further detailed analysis. When an alternative is eliminated in screening, the rationale should be documented in the feasibility study. Three broad criteria should be used in the initial screening of alternatives:

(1) *Cost.* For each alternative, the cost of implementing the remedial action must be considered including operation and maintenance costs. An alternative that far exceeds the costs of other alternatives evaluated and that does not provide substantially greater public health or environmental protection, or technical reliability should usually be excluded from further consideration unless there is no other remedy which meets applicable or relevant Federal public health or environmental standards.

(2) *Acceptable Engineering Practices.* Alternatives must be feasible for the location and conditions of the release, applicable to the problem, and represent a reliable means of addressing the problem.

(3) *Effectiveness.* Those alternatives that do not effectively contribute to the protection of public health, welfare, and the environment should not be considered further. If an alternative has significant adverse effects, and very limited environmental benefits, it should also be excluded from further consideration.

(h) *Detailed Analysis of Alternatives.* (1) A more detailed evaluation will be conducted of the limited number of alternatives that remain after the initial screening in paragraph (g).

(2) The detailed analysis of each alternative should include:

(i) Refinement and specification of alternatives in detail, with emphasis on use of established technology. Innovative or advanced technology should be evaluated as an alternative to conventional technology;

(ii) Detailed cost estimation, including operation and maintenance costs, and distribution of costs over time;

(iii) Evaluation in terms of engineering implementation, reliability, and constructability;

(IV) An assessment of the extent to which the alternative is expected to effectively prevent, mitigate, or minimize threats to, and provide adequate protection of, public health, welfare, and the environment. This shall include an evaluation of the extent to which the alternative attains or exceeds applicable or relevant Federal public health or environmental standards advisories and criteria. Where the analysis determines that Federal public health or environmental standards are not applicable or relevant, the analysis should evaluate the risks of the various exposure levels projected or remaining after implemention of the alternative under consideration.

(V) An analysis of whether recycle/reuse, waste minimization or destruction or other advanced, innovative or alternative technologies is appropriate to reliably minimize present or future threats to public health, welfare or the environment.

(VI) An analysis of any adverse environmental impacts, methods for mitigating these impacts, and costs of mitigation.

(3) In performing the detailed analysis of alternatives, it may be necessary to gather additional data to complete the analysis.

(i) *Selection of Remedy.* (1) The appropriate extent of remedy shall be determined by the lead agency's selection of a cost-effective remedial alternative which effectively mitigates and minimizes threats to and provides adequate protection of public health, welfare and the environment. This will require selection of a remedy which attains or exceeds applicable or relevant Federal public health or environmental standards. In making this determination, the lead agency will consider the extent to which the Federal standard(s) are applicable or relevant to the specific circumstances at the site.

(2) In selecting the appropriate extent of remedy from among the alternatives which will achieve adequate protection of public health, welfare and the environment in accordance with (1) of this subsection, the lead agency will consider cost, technology, reliability, administrative and other concerns, and their relevant effects on public health, welfare and the environment.

(3) If there are no applicable or relevant Federal public health or environmental standards, the lead agency will select that cost-effective alternative which effectively mitigates and minimizes threats to and provides adequate protection of public health, welfare, and the environment, considering cost, technology, and the reliability of the remedy.

(4) Applicable or relevant Federal public health and environmental criteria and advisories and State standards shall be used, with appropriate adjustment, in determining the appropriate action.

(5) Notwithstanding paragraph (1)(i) of this section, the lead agency may select an alternative that does not meet applicable or relevant Federal public health or environmental standards in one of the following circumstances:

(i) The selected alternative is not the final remedy and will become part of a more comprehensive remedy.

(ii) All of the alternatives which meet applicable or relevant Federal standards fall into one or more of the following categories:

(A) *Fund-Balancing*: For Fund-financed responses only, considering the amount of money available in the Fund, the need for protection of public health, welfare and the environment at the facility under consideration is outweighed by the need for action at other sites which may present a threat to public health, welfare or the environment. Fund-balancing is not a consideration in determining the appropriate extent of remedy when the response will be performed or funded by a responsible party.

(B) *Technical Impracticality:* No alternative that attains or exceeds applicable or relevant Federal public health or environmental standards is technically practical to implement;

(C) *Unacceptable Environmental Impacts:* The alternatives that attain or exceed applicable or relevant Federal public health or environmental standards, if implemented, will result in significant adverse environmental impacts; or

(iii) Where the remedy is to be carried out pursuant to Federal action under CERCLA section 106, the Fund is unavailable, there is a strong public interest in expedited clean up, and the litigation probably would not result in the desired remedy.

(6) In the event that one of the circumstances in subsection (5) of this section applies, the lead agency shall select that alternative which most closely approaches the level of protection provided by applicable or relevant Federal public health or environmental standards.

(7) (i) If a factor under subsection (i)(5) is used in eliminating an alternative or in scaling down the extent of remedy it must be explained and documented in the appropriate decision document.

(ii) If relevant Federal public health or environmental criteria, advisories or guidance or State standards are not used or are adjusted, the decision documents must explain and document the reasons. The rationale for not using such standards, criteria, advisories or guidance may include one or more of the circumstances enumerated in § 300.68(i)(5).

(j) *Appropriate Actions:* The following remedial actions are as a general rule appropriate in the following situations; however, this list does not limit the lead agency from taking any other actions deemed necessary in response to any situation.

(1) In response to contaminated ground water—elimination or containment of the contamination to prevent further contamination, treatment and/or removal of such ground water to reduce or eliminate the contamination, physical containment of such ground water to reduce or eliminate potential exposure to such contamination, and/or restrictions on use of the ground water to eliminate potential exposure to the contamination.

(2) In response to contaminated surface water—elimination or containment of the contamination to prevent further pollution, and/or treatment of the contaminated water to reduce or eliminate its hazard potential;

(3) In response to contaminated soil or waste—actions to remove, treat, or contain the soil or waste to reduce or eliminate the potential for hazardous substances or pollutants or contaminants to contaminate other media (ground water, surface water, or air) and to reduce or eliminate the potential for such substances to be inhaled, absorbed, or ingested;

(4) In response to the threat of direct contact with hazardous substances or pollutants or contaminants—any of the actions listed in § 300.65(c) to reduce the likelihood of such contact or the severity of any effects from such contact.

(k) *Remedial Site Sampling:* (1) Sampling performed pursuant to Fund-financed remedial action must have written quality assurance site sampling plan. Sampling performed pursuant to the written quality assurance site sampling plan will be adequate if the quality assurance site sampling plan includes, at a minimum, the following elements:

(i) A description of the objectives of the sampling efforts with regard to both the phase of the sampling and the ultimate use of the data;

(ii) Sufficient specification of sampling protocol and procedures;

(iii) Sufficient sampling to adequately characterize the source of the release, likely transport pathways, and/or potential receptor exposure; and,

(iv) Specifications of the types, locations, and frequency of samples taken, taking into account the unique properties of the site, including the appropriate hydrological, geological, hydrogeological, physiographical, and meteorological properties of the site.

(2) In Fund-financed actions or actions under CERCLA section 106, the quality assurance site sampling plan must be reviewed and approved by the appropriate EPA Regional or Headquarters quality assurance office.

§ 300.69 Documentation and cost recovery.

(a) During all phases of response, documentation shall be collected and maintained to support all actions taken under this Plan, and to form the basis for cost recovery. In general, documentation should be sufficient to provide the source and circumstances of the condition, the identity of responsible parties, accurate accounting of Federal or private party costs incurred, impacts and potential impacts to the public health, welfare and environment. Where applicable, documentation should also include when the National Response Center received notification of a release of a reportable quantity and should clarify when Fund-balancing has been used to limit the Federal response.

(b) The information and reports obtained by the lead agency for Fund-financed response action should be transmitted to the RRC. Copies can then be forwarded to the NRT, members of the RRT, and others as appropriate. In addition, OSCs shall report as required by § 300.40 for all major releases and all Fund-financed removal actions taken.

(c) Information and documentation of actual or potential natural resource damages shall be made available to the trustees of affected natural resources.

(d) Actions undertaken by the participating agencies in response shall be carried out under existing programs and authorities when available. This plan intends that Federal agencies will make resources available, expend funds, or participate in responses to releases under their existing authority. Authority to expend resources will be in accordance with Agencies' statutes and, if required, through interagency agreements. Where the lead agency requests assistance from a Federal agency, that agency may be reimbursed. Specific interagency reimbursement agreements may be signed when necessary to ensure that the Federal resources will be available for a timely response to a release. The ultimate decision as to the appropriateness of expended funds rests with the agency tha is held accountable for such expenditures.

§ 300.70 Methods of remedying releases.

(a) The following section lists methods for remedying releases that may be considered by the lead agency in taking response action. This list of methods should not be considered inclusive of all possible methods of remedying releases.

(b) Engineering Methods for On-Site Actions—(1)(i) *Air emissions control*—The control of volatile gaseous compounds should address both lateral movements and atmospheric emissions. Before gas migration controls can be properly installed, field measurements to determine gas concentrations, pressures, and soil permeabilities should be used to establish optimum design for control. In addition, the types of hazardous substances present, the depth to which they extend, the nature of the gas and the subsurface geology of the release area should, if possible, be determined. Typical emission control techniques include the following:

(A) Pipe vents;

(B) Trench vents;

(C) Gas barriers;

(D) Gas collection;

(E) Overpacking.

(ii) *Surface water controls*—These are remedial techniques designed to reduce water infiltration and to control runoff at release areas. They also serve to reduce erosion and to stabilize the surface of covered sites. These types of

control technologies are usually implemented in conjunction with other types of control include the following:

(A) Surface seals;

(B) Surface water diversions and collection systems;

(*1*) Dikes and berms;

(*2*) Ditches, diversions, waterways;

(*3*) Chutes and downpipes;

(*4*) Levees;

(*5*) Seepage basins and ditches;

(*6*) Sedimentation basins and ditches;

(*7*) Terraces and benches;

(C) Grading;

(D) Revegetation.

(iii) *Ground water controls*—Ground water pollution is a particularly serious problem because, once an aquifer has been contaminated, the resource cannot usually be cleaned without the expenditure of great time, effort and resources. Techniques that can be applied to the problem with varying degrees of success are as follows:

(A) Impermeable barriers;

(*1*) Slurry walls;

(*2*) Grout curtains;

(*3*) Sheet pilings;

(B) Permeable treatment beds;

(C) Ground water pumping;

(*1*) Water table adjustment;

(*2*) Plume containment.

(D) Leachate control—Leachate control systems are applicable to control of surface seeps and seepage of leachate to ground water. Leachate collection systems consist of a series of drains which intercept the leachate and channel it to a sump, wetwell, treatment system, or appropriate surface discharge point. Technologies applicable to leachate control include the following:

(*1*) Subsurface drains;

(*2*) Drainage ditches;

(*3*) Liners.

(iv) *Contaminated water and sewer lines*—Sanitary sewers and municipal water mains located down gradient from hazardous waste disposal sites may become contaminated by infiltration of leachate or polluted ground water through cracks, ruptures, or poorly sealed joints in piping. Technologies applicable to the control of such contamination to water and sewer lines include:

(A) Grouting;

(B) Pipe relining and sleeving;

(C) Sewer relocation.

(2) Treatment technologies.

(i) *Gaseous emissions treatment*—Gases from waste disposal sites frequently contain malodorous and toxic substances, and thus require treatment before release to the atmosphere. There are two basic types of gas treatment systems:

(A) Vapor phase adsorption;

(B) Thermal oxidation.

(ii) *Direct waste treatment methods*—In most cases, these techniques can be considered long-term permanent solutions. Many of these direct treatment methods are not fully developed and the applications and process reliability are not well demonstrated. Use of these techniques for waste treatment may require considerable pilot plant work. Technologies applicable to the direct treatment of wastes are:

(A) Biological methods:

(*1*) Treatment via modified conventional wastewater treatment techniques;

(*2*) Anaerobic, aerated and facultative lagoons;

(*3*) Supported growth biological reactors.

(B) Chemical methods;

(*1*) Chlorination;

(*2*) Precipitation, flocculation, sedimentation;

(*3*) Neutralization;

(*4*) Equalization;

(*5*) Chemical oxidation.

(C) Physical methods:

(*1*) Air stripping;

(*2*) Carbon absorption;

(*3*) Ion exchange;

(*4*) Reverse osmosis;

(*5*) Permeable bed treatment;

(*6*) Wet air oxidation;

(*7*) Incineration.

(iii) *Contaminated soils and sediments*—In some cases where it can be shown to be cost-effective, contaminated sediments and soils will be treated on the site. Technologies available include:

(A) Incineration;

(B) Wet air oxidation;

(C) Solidification;

(D) Encapsulation;

(E) In site treatment:

(*1*) Solution mining (soil washing or soil flushing);

(*2*) Neutralization/detoxification;

(*3*) Microbiological degradation.

(c) Offsite Transport for Storage, Treatment, Destruction or Secure Disposition.

(1) General—Offsite transport or storage, treatment, destruction, or secure disposition offsite may be provided in cases where EPA determines that such actions:

(i) Are most cost-effective than other forms of remedial actions;

(ii) Will create new capacity to manage, in compliance with Subtitle C of the Solid Waste Disposal Act, hazardous substances in addition to those located at the affected facility; or

(iii) Are necessary to protect public health, welfare, or the environment from a present or potential risk which may be created by further exposure to the continued presence of such substances or materials.

(2) Contaminated soils and sediments may be removed from the site. Technologies used to remove contaminated sediments on soils include:

(i) Excavation;

(ii) Hydraulic dredging;

(iii) Mechanical dredging.

(d) Provision of Alternative water supplies can be provided in several ways.

(1) Provision of individual treatment units;

(2) Provision of water distribution system;

(3) Provision of new wells in a new location or deeper wells;

(4) Provision of cisterns;

(5) Provision of bottled or treated water;

(6) Provision of upgraded treatment for existing distribution systems.

(e) *Relocation*—Permanent relocation of residents, businesses, and community facilities may be provided where it is determined that human health is in danger and that, alone or in combination with other measures, relocation would be cost-effective and environmentally preferable to other remedial response. Temporary relocation may also be taken in appropriate circumstances.

§ 300.71 Other party responses.

(a) (1) As an alternative or in addition to any Fund-financed response, the lead agency may seek to have those persons responsible for the release respond to the release pursuant to CERCLA section 106 and other authorities.

(2) In addition, any person may undertake a response action to reduce or eliminate the release or threat of release of hazardous substances, or pollutants or contaminants. Section 107 of CERCLA authorizes persons to recover certain response costs consistent with this Plan from responsible parties.

(3) When a person (including a responsible party) other than the lead agency takes the response, the lead agency shall evaluate and approve the adequacy of proposals submitted when the response is:

(i) action taken pursuant to enforcement action under section 106 of CERCLA; or

(ii) action involving preauthorization of Fund expenditures, pursuant to § 300.25 (d) of this Plan.

(4) In evaluating proposed response actions specified in (a)(3) above, the lead agency shall consider the factors discussed in paragraphs (c) through (i) of § 300.68 for remedial actions and the

factors discussed in § 300.65(b) for removal actions. The lead agency will not, however, apply the Fund balancing considerations set forth in paragraph (i)(5)(B)(ii) (A) of section 300.68 to determine the appropriate extent of remedy provided by parties under paragraph (a)(3)(i) of this section.

(5) When a responsible party or other person takes a response action in a circumstance other than that specified in (a)(3) above, to be consistent with the NCP for purposes of recovering their costs pursuant to CERCLA section 107 (or for a State or Federal government response, to be not inconsistent), that person must:

(i) Where the action is a removal action, act in circumstances warranting removal and implement removal action consistent with § 300.65.

(ii) Where the action is a remedial action:

(A) Provide for an appropriate analysis of remedial alternatives;

(B) Consider the factors discussed in paragraphs (c) through (i) of § 300.68; and

(C) Select the cost-effective response;

(6) Persons performing response actions which are neither fund-financed nor pursuant to enforcement action under section 106 of CERCLA shall comply with all otherwise legally applicable Federal, State and local requirements, including permit requirements as appropirate.

(b) *Organizations.* Pursuant to CERCLA section 105(9) organizations may assist or conduct site response by:

(1) organizing responsible parties,

(2) initiating negotiation or other cooperative efforts,

(3) apportioning costs among liable parties,

(4) recommending appropriate settlements to the lead agency,

(5) conducting the RI/FS in accordance with this plan,

(6) evaluating and recommending appropriate remedies to the lead agency,

(7) implementing and overseeing response actions,

(8) obtaining assurances for continued site maintenance from responsible parties and/or,

(9) recommending sites for deletion after completion of all appropriate response action.

(c) *Certification.* Organizations may be certified to conduct site response actions. Certification is not necessary for, but may facilitate, Fund preauthorization under § 300.25(d) and lead agency evaluation of the adequacy of responsible party proposals.

(1) An organization may request certification by submitting a written request to the Administrator or designee establishing that the requesting organization has engineering, scientific, or other technical expertise necessary to evaluate the appropriate extent of remedy, oversee the design of remedial actions, and/or implement those actions.

(2) For each specific release being addressed, the certified organization must:

(i) Meet the requirements of § 300.25(d) if requesting preauthorization;

(ii) Have established procedures to recuse members of the organization that may have a conflict of interest with a party potentially responsible for the release.

(3) The Administrator will respond to a request for certification within 180 days of receipt of the request. The Administrator may grant certification, request further information relating to the requested certification or deny certification.

(4) Certification is effective for 2 years from the date of latest certification. If certification is not renewed at that time it automatically expires.

(5) Certification is not to be construed as approval by the lead agency of response actions undertaken by that organization. Certification does not authorize that organization to act on behalf of, or as a agent for the lead agency.

(6) Certification may be revoked at the discretion of the Administrator for failure to comply with this Plan or the requirements of CERCLA.

(d) *Releases from Liability.* Implementation of response measures by responsible parties, certified organizations or other persons does not release those parties from liability.

Subpart G—Trustees for Natural Resources

§ 300.72 Designation of Federal Trustees.

When natural resources are lost or damaged as a result of a discharge of oil release of a hazardous substance, the following officials are designated to act as Federal trustees pursuant to section 111(h)(1) of CERLA for purposes of sections 111(h)(1), 111(b) and 107(f) of CERCLA:

(a) (1) *Natural Resource Loss.* Damage to resources of any kind loclated on, over or under land subject to the management or protection of a Federal land managing agency, other than land or resources in or under United States waters that are navigable by deep draft vessels, including waters of the contiguous zone and parts of the high seas to which the National Contingency Plan is applicable and other waters subject to tidal influence.

(2) *Trustee.* The head of the Federal land managing agency, or the head of any other single entity designated by it to act as trustee for a specific resource.

(b) (1) *Natural Resource Loss.* Damage to fixed or non-fixed resources subject to the management or protection of a Federal agency, other than land or resources in or under United States waters that are navigable by deep draft vessels, including waters of the contiguous zone and parts of the high seas to which the National Contingency Plan is applicable and other waters subject to tidal influence.

(2) *Trustee.* The head of the Federal agency authorized to manage or protect these resources by statute, or the head of any other single entity designated by it to act as trustee for a specific resource.

(c) (1) *Natural Resource Loss.* Damage to a resource of any kind subject to the management or protection of a Federal agency and lying in or under United States waters that are navigable by deep draft vessels, including waters of the contiguous zone and parts of the high seas to which the National Contingency Plan is applicable and other waters subject to tidal influence, and upland areas serving as habitat for marine mammals and other species subject to the protective jurisdiction of NOAA.

(2) *Trustee.* The Secretary of Commerce or the head of any other single Federal entity designated by it to act as trustee for a specific resource; provided, however, that where resources are subject to the statutory authorities and jurisdictions of the Secretaries of the Departments of Commerce or the Interior, they shall act as co-trustees.

(d) (1) *National Resource Loss.* Damages to natural resources protected by treaty (or other authority pertaining to Native American tribes) or located on lands held by the United States in trust for Native American communities or individuals.

(2) *Trustee.* The Secretary of the Department of the Interior, or the head of any other single Federal entity disignated by it to act as trustee for specific resources.

§ 300.73 State trustees.

States may act as trustee for natural resouces within the boundary of a State belonging to, managed by, controlled by or appertaining to such State as provided by CERCLA.

§ 300.74 Responsibilities of trustees.

(a) The Federal trustees for natural resources shall be responsible for assessing damages to the resource in accordance with regulations promulgated under section 301(c) of

CERCLA, seeking recovery for the losses from the person resonsible or from the Fund, and devising and carring out restoration, rehabilitation and replacement plans pursuant to CERCLA.

(b) Where there are multiple trustees, because of co-existing or contiguous natural resources or concurrent jurisdictions, they shall coordinate and cooperate in carrying out these responsibilities.

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Appendix A—Uncontrolled Hazardous Waste Site Ranking System: A Users Manual (Federal Register Version; July 16, 1982)

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1.0 Introduction

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) (Pub. L. 96-510) requires the President to identify the 400 facilities in the nation warranting the highest priority for remedial action. In order to set the priorities, CERCLA requires that criteria be established based on relative risk or danger, taking into account the population at risk; the hazardous potential of the substances at a facility; the potential for contamination of drinking water supplies, for direct human contact, and for destruction of sensitive ecosystems; and other appropriate factors.

This document describes the Hazard Ranking System (HRS) to be used in evaluating the relative potential of uncontrolled hazardous substance facilities to cause human health or safety problems, or ecological or environmental damage. Detailed instructions for using the HRS are given in the following sections. Uniform application of the ranking system in each State will permit EPA to identify those releases of hazardous substances that pose the greatest hazard to humans or the environment. However, the HRS by itself cannot establish priorities for the allocation of funds for remedial action. The HRS is a means for applying uniform technical judgement regarding the potential hazards presented by a facility relative to other facilities. It does not address the feasibility, desirability, or degree of cleanup required. Neither does it deal with the readiness or ability of a State to carry out such remedial action as may be indicated, or to meet other conditions prescribed in CERCLA.

The HRS assigns three scores to a hazardous facility:

- S_M reflects the potential for harm to humans or the environment from migration of a hazardous substance away from the facility by routes involving ground water, surface water, or air. It is a composite of separate scores for each of the three routes.
- S_{FE} reflects the potential for harm from substances that can explode or cause fires.
- S_{DC} reflects the potential for harm from direct contact with hazardous substances at the facility (i.e., no migration need be involved).

The score for each hazard mode (migration, fire and explosion and direct contact) or route is obtained by considering a set of factors that characterize the potential of the facility to cause harm (Table 1). Each factor is assigned a numerical value (on a scale of 0 to 3, 5 or 8) according to prescribed guidelines. This value is then multiplied by a weighting factor yielding the factor score. The factor scores are then combined: scores within a factor category are added; when the total scores for each factor category are multiplied together to develop a score for ground water, surface water, air, fire and explosion, and direct contact.

In computing S_{FE} or S_{DC}, or an individual migration route score, the product of its factor category scores is divided by the maximum possible score, and the resulting ratio is multiplied by 100. The last step puts all scores on a scale of 0 to 100.

S_M is composite of the scores for the three possible migration routes:

$$S_M = \frac{1}{1.73}\sqrt{S_{gw}^2 + S_{sw}^2 + S_a^2}$$

where: S_{gw} = ground water route score
S_{sw} = surface water route score
S_a = air route score

The effect of this means of combining the route scores is to emphasize the primary (highest scoring) route in aggregating route scores while giving some additional consideration to the secondary or tertiary routes if they score high. The factor 1/1.73 is used simply for the purpose of reducing S_M scores to a 100-point scale.

The HRS does not quantify the probability of harm from a facility or the magnitude of the harm that could result, although the factors have been selected in order to approximate both those elements of risk. It is a procedure for ranking facilities in terms of the potential threat they pose by describing:

- The manner in which the hazardous substances are contained,
- The route by which they would be released,
- The characteristics and amount of the harmful substances, and
- The likely targets.

The multiplicative combination of factor category scores is an approximation of the more rigorous approach in which one would express the hazard posed by a facility as the product of the probability of a harmful occurrence and the magnitude of the potential damage.

The ranking of facilities nationally for remedial action will be based primarily on S_M. S_{FE} and S_{DC} may be used to identify facilities requiring emergency attention.

2.0 Using the Hazard Ranking System—General Considerations

Use of the HRS requires considerable information about the facility, its surroundings, the hazardous substances present, and the geological character of the area down to the aquifers that may be at risk. Figure 1 illustrates a format for recording general information regarding the facility

being evaluated. It can also serve as a cover sheet for the work sheets used in the evaluation.

Where there are no data for a factor, it should be assigned a value of zero. However, if a factor with not data is the only factor in a category (e.g., containment), then the factor is given a score of 1. If data are lacking for more than one factor in connection with the evaluation of either S_{gw}, S_{sw}, S_a, S_{FE} or S_{DC}, that route score is set at zero.

The following sections give detailed instructions and guidance for rating a facility. Each section begins with a work sheet designed to conform to the sequence of steps required to perform the rating. Guidance for evaluating each of the factors then follows. Using the guidance provided, attempt to assign a score for each of the three possible migration routes. Bear in mind that if data are missing for more than one factor in connection with the evaluation of a route, then you must set that route score at 0 (i.e., there is no need to assign scores to factors in a route that will be set at 0).

3.0 Ground Water Migration Route

3.1 *Observed Release.* If there is direct evidence of release of a substance of concern from a facility to ground water, enter a score of 45 on line 1 of the work sheet for the ground water route (Figure 2); then you need not evaluate route characteristics and containment factors (lines 2 and 3). Direct evidence of release must be analytical. If a contaminant is measured (regardless of frequency) in ground water or in a well in the vicinity of the facility at a significantly (in terms of demonstrating that a release has occurred, not in terms of potential effects) higher level than the background level, then quantitative evidence exists, and a release has been observed. Qualitative evidence of release (e.g., an oily or otherwise objectionable taste or smell in well water) constitutes direct evidence only if it can be confirmed that it results from a release at the facility in question. If a release has been observed, proceed to "3.4 *Waste Characteristics*" to continue scoring. If direct evidence is lacking, enter a value of 0 on line 1 and continue the scoring procedure by evaluating *Route Characteristics.*

3.2 *Route Characteristics. Depth to aquifer of concern* is measured vertically from the lowest point of the hazardous substances to the highest seasonal level of the saturated zone of the aquifer of concern (Figure 3). This factor is one indicator of the ease with which a pollutant from the facility could migrate to ground water. Assign a value as follows:

Distance	Assigned value
>150 feet	0
76 to 150 feet	1
21 to 75 feet	2
0 to 20 feet	3

Net precipitation (precipitation minus evaporation) indicates the potential for leachate generation at the facility. Use net seasonal rainfall (seasonal rainfall minus seasonal evaporation) data if available. If net precipitation is not measured in the region in which the facility is located, calculate it by subtracting the mean annual lake evaporation for the region (obtained from Figure 4) from the normal annual precipitation for the region (obtained from Figure 5). EPA Regional Offices will have maps for areas outside the continental U.S. Assign a value as follows:

Net precipitation	Assigned value
−10 inches	0
−10 to +5 inches	1
+5 to +15 inches	2
+15 inches	3

Permeability of unsaturated zone (or intervening geological formations) is an indicator of the speed at which a contaminant could migrate from a facility. Assign a value from Table 2.

Physical state refers to the state of the hazardous substances at the time of disposal, except that gases generated by the hazardous substances in a disposal area should be considered in rating this factor. Each of the hazardous substances being evaluated is assigned a value as follows:

Physical state	Assigned value
Solid, consolidated or stabilized	0
Solid, unconsolidated or unstabilized	1
Powder or fine material	2
Liquid, sludge or gas	3

3.3 *Containment. Containment* is a measure of the natural or artificial means that have been used to minimize or prevent a contaminant from entering ground water. Examples include liners, leachate collection systems, and sealed containers. In assigning a value to this rating factor (Table 3), consider all ways in which hazardous substances are stored or disposed at the facility. If the facility involves more than one method of storage or disposal, assign the highest from among all applicable values (e.g., if a landfill has a containment value of 1, and, at the same location, a surface impoundment has a value of 2, assign containment a value of 2).

3.4 *Waste Characteristics.* In determining a waste characteristics score, evaluate the most hazardous substances at the facility that could migrate (i.e., if scored, containment is not equal to zero) to ground water. Take the substance with the highest score as representative of the potential hazard due to waste characteristics. Note that the substance that may have been observed in the release category can differ from the substance used in rating waste characteristics. Where the total inventory of substances in a facility is known, only those present in amounts greater than the reportable quantity (see CERCLA section 102 for definition) may be evaluated.

Toxicity and Persistence have been combined in the matrix below because of their important relationship. To determine the overall value for this combined factor, evaluate each factor individually as discussed below. Match the individual values assigned with the values in the matrix for the combined rating factor. Evaluate several of the most hazardous substances at the facility independently and enter only the highest score in the matrix on the work sheet.

Value for toxicity	Value for persistence			
	0	1	2	3
0	0	0	0	0
1	3	6	9	12
2	6	9	12	15
3	9	12	15	18

Persistence of each hazardous substance is evaluated on its biodegradability as follows:

Substance	Assigned value
Easily biodegradable compounds	0
Straight chain hydrocarbons	1
Substituted and other ring compounds	2
Metals, polycyclic compounds and halogenated hydrocarbons	3

More specific information is given in Tables 4 and 5.

Toxicity of each hazardous substance being evaluated is given a value using the rating scheme of Sax (Table 6) or the National Fire Protection Association (NFPA) (Table 7) and the following guidance:

Toxicity	Assigned value
Sax level 0 or NFPA level 0	0
Sax level 1 or NFPA level 1	1
Sax level 2 or NFPA level 2	2
Sax level 3 or NFPA level 3 or 4	3

Table 4 presents values for some common compounds.

Hazardous waste quantity includes all hazardous substances at a facility (as received) except that with a containment value of 0. Do not include amounts of contaminated soil or water; in such cases, the amount of contaminating hazardous substance may be estimated.

On occasion, it may be necessary to convert data to a common unit to combine them. In such cases, 1 ton = 1 cubic yard = 4 drums and for the purposes of converting bulk storage, 1 drum = 50 gallons. Assign a value as follows:

Tons/cubic yards	Number of drums	Assigned value
0	0	0
1 to 10	1 to 40	1
11 to 62	41 to 250	2
63 to 125	251 to 500	3
126 to 250	501 to 1,000	4
251 to 625	1,001 to 2,500	5
626 to 1,250	2,501 to 5,000	6
1,251 to 2,500	5,001 to 10,000	7
>2,500	>10,000	8

3.5 *Targets. Ground water use* indicates the nature of the use made of ground water drawn from the aquifer of concern within 3 miles of the hazardous substance, including the geographical extent of the measurable concentration in the aquifer. Assign a value using the following guidance:

Ground water use	Assigned value
Unusable (e.g., extremely saline aquifer, extremely low yield, etc.)	0
Commercial, industrial or irrigation and another water source presently available; not used, but usable	1
Drinking water with municipal water from alternate unthreatened sources presently available (i.e., minimal hookup requirements); or commercial, industrial or irrigation with no other water source presently available	2
Drinking water; no municipal water from alternate unthreatened sources presently available	3

Distance to nearest well and population served have been combined in the matrix below to better reflect the important relationship between the distance of a population from hazardous substances and the size of the population served by ground water that might be contaminated by those substances. To determine the overall value for this combined factor, score each individually as discussed below. Match the individual values assigned with the values in the matrix for the total score.

Value for population served	Value for distance to nearest well				
	0	1	2	3	4
0	0	0	0	0	0
1	0	4	6	8	10
2	0	8	12	16	20
3	0	12	18	24	30
4	0	16	24	32	35
5	0	20	30	35	40

Distance to nearest well is measured from the hazardous substance (not the facility boundary) to the nearest well that draws water from the aquifer of concern. If the actual distance to the nearest well is unknown, use the distance between the hazardous substance and the nearest occupied building not served by a public water supply (e.g., a farmhouse). If a discontinuity in the aquifer occurs between the hazardous substance and all wells, give this factor a score of 0, except where it can be shown that the contaminant is likely to migrate beyond the discontinuity. Figure 6 illustrates how the distance should be measured. Assign a value using the following guidance:

Distance	Assigned value
>3 miles	0
2 to 3 miles	1
1 to 2 miles	2
2,000 feet to 1 mile	3
<2,000 feet	4

Population served by ground water is an indicator of the population at risk, which includes residents as well as others who would regularly use the water such as workers in factories or offices and students. Include employees in restaurants, motels, or campgrounds but exclude customers and travelers passing through the area in autos, buses, or trains. If aerial photography is used, and residents are known to use ground water, assume each dwelling unit has 3.8 residents. Where ground water is used for irrigation, convert to population by assuming 1.5 persons per acre of irrigated land. The well or wells of concern must be within three miles of the hazardous substances, including the area of known aquifer contamination, but the "population served" ned not be. Likewise, people within three miles who do not use water from the aquifer of concern are not to be counted. Assign a value as follows:

Population	Assigned value
0	0
1 to 100	1
101 to 1,000	2
1,001 to 3,000	3
3,001 to 10,000	4
>10,000	5

4.0 Surface Water Route

4.1 *Observed Release.* Direct evidence of release to surface water must be quantitative evidence that the facility is releasing contaminants into surface water. Quantitative evidence could be the measurement of levels of contaminants from a facility in surface water, either at the facility or downhill from it, that represents a significent (in terms of demonstrating that a release has occurred, not in terms of potential effects) increase over background levels. If direct evidence of release has been obtained (regardless of frequency), enter a value of 45 on line 1 of the work sheet (Figure 7) and omit the evaluation of the route characteristics and containment factors. If direct evidence of release is lacking, enter a value of 0 on line 1 and continue with the scoring procedure.

4.2 *Route characteristics. Facility slope and intervening terrain* are indicators of the potential for contaminated runoff or spills at a facility to be transported to surface water. The facility slope is an indicator of the potential for runoff or spills to leave the facility. Intervening terrain refers to the average slope of the shortest path which would be followed by runoff between the facility boundary and the nearest downhill surface water. This rating factor can be assessed using topographic maps. Table 8 shows values assigned to various facility conditions.

One-year 24-hour rainfall (obtained from Figure 8) indicates the potential for area storms to cause surface water contamination as a result of runoff, erosion, or flow over dikes. Assign a value as follows:

Amount of rainfall (inches)	Assigned value
<1.0	0
1.0 to 2.0	1
2.1 to 3.0	2
>3.0	3

Distance to the nearest surface water is the shortest distance from the hazardous substance, (not the facility or property boundary) to the nearest downhill body of surface water (e.g., lake or stream) that is on the course that runoff can be expected to follow and that at least occasionally contains water. Do not include man-made ditches which do not connect with other surface water bodies. In areas having less than 20 inches of normal annual precipitation (see Figure 5), consider intermittent streams. This factor indicates the potential for pollutants flowing overland and into surface water bodies. Assign a value as follows:

Distance	Assigned value
>2 miles	0
1 to 2 miles	1
1,000 feet to 1 mile	2
<1,000 feet	3

Physical state is assigned a value using the procedures in Section 3.2.

4.3 *Containment. Containment* is a measure of the means that have been taken to minimize the likelihood of a contaminant entering surface water either at the facility or beyond the facility boundary. Examples of containment are diversion structures and the use of sealed containers. If more than one type of containment is used at a facility, evaluate each separately (Table 9) and assign the highest score.

4.4 *Waste Characteristics.* Evaluate waste characteristics for the surface water route with the procedures described in Section 3.4 for the ground water route.

4.5 *Targets. Surface water use* brings into the rating process the use being made of surface water downstream from the facility. The use or uses of interest are those associated with water taken from surface waters within a distance of three miles from the location of the hazardous substance. Assign a value as follows:

Surface water use (fresh or salt water)	Assigned value
Not currently used	0
Commercial or industrial	1
Irrigation, economically important resources (e.g., shellfish), commercial food preparation, or recreation (e.g., fishing, boating, swimming)	2
Drinking water	3

Distance to a sensitive environment refers to the distance from the hazardous substance (not the facility boundary) to an area containing an important biological resource or to a fragile natural setting that could suffer an especially severe impact from pollution. Table 10 provides guidance on assigning a value to this rating factor.

Population served by surface water with water intake within 3 miles downstream from facility (or 1 mile in static surface water such as a lake) is a rough indicator of the potential hazard exposure of the nearby population served by potentially contaminated surface water. Measure the distance from the probable point of entry to surface water following the surface flow (stream miles). The population includes residents as well as others who would regularly use the water such as workers in factories or offices and students. Include employees in restaurants, motels, or campgrounds but exclude customers and travelers passing through the area in autos, buses and trains. The distance is measured from the hazardous substance, including observations in stream or sediment samples, regardless of facility boundaries. Where only residential houses can be counted (e.g., from an aerial photograph), and

residents are known to be using surface water, assume 3.8 individuals per dwelling unit. Where surface water is used for irrigation, convert to population by assuming 1.5 persons per acre of land irrigated. Assign a value as follows:

DISTANCE TO SURFACE WATER

Population	>3 miles	2 to 3 miles	1 to 2 miles	2,001 feet to 1 mile	0 to 2,000 feet
0	0	0	0	0	0
1 to 100	0	4	6	8	10
101 to 1,000	0	8	12	16	20
1,001 to 3,000	0	12	18	24	30
3,001 to 10,000	0	16	24	32	35
>10,000	0	20	30	35	40

5.0 Air Route

5.1 *Observed Release.* The only acceptable evidence of release for the air route is data that show levels of a contaminant at or in the vicinity of the facility that significantly exceed background levels, regardless of the frequency of occurrence. If such evidence exists, enter a value of 45 on line 1 of the work sheet (Figure 9); if not, assign line 1 a 0 value and then $S_a = 0$. Record the date, location, and the sampling protocol for monitoring data on the work sheet. Data based on transitory conditions due to facility disturbance by investigative personnel are not acceptable.

5.2 *Waste Characteristics.* The hazardous substance that was observed for scoring the release category may be different from the substance used to score waste characteristics.

Reactivity and incompatibility, measures of the potential for sudden release of concentrated air pollutants, are evaluated independently, and the highest value for either is recorded on the work sheet.

Reactivity provides a measure of the fire/explosion threat at a facility. Assign a value based on the reactivity classification used by NFPA (see Table 11). Reactivity ratings for a number of common compounds are given in Table 4.

Incompatibility provides a measure of the increased hazard when hazardous substances are mixed under uncontrolled conditions, leading to production of heat, pressure, fire, explosion, violent reaction, toxic dusts, mists, fumes or gases, or flammable fumes or gases. Table 12 provides examples of incompatible combinations of materials. Additional information can be obtained from *A Method for Determining the Compatibility of Hazardous Wastes,* H. K. Hatayama, *et al.,* EPA–600/2–80–076 (1980). Assign a value using the following guidance:

Incompatibility	Assigned value
No incompatible substances are present	0
Present but do not pose a hazard	1
Present and may pose a future hazard	2
Present and posing an immediate hazard	3

Toxicty should be rated for the most toxic of the substances that can reasonably be expected to be transported away from the facility via the air route. Using the information given in Tables 4, 6, and 7, assign values as follows:

Toxicity	Assigned value
Sax Level 0 or NFPA level 0	0
Sax Level 1 or NFPA level 1	1
Sax Level 2 or NFPA level 2	2
Sax Level 3 or NFPA level 3 or 4	3

Hazardous Waste Quantity. Assign hazardous waste guantity a value as described in Section 3.4.

5.3 *Targets. Population within a four-mile radius* is an indicator of the population which may be harmed should hazardous substances be released to the air.

The distance is measured from the location of the hazardous substances, not from the facility boundary. The population to be counted includes persons residing within the four-mile radius as well as transients such as workers in factories, offices, restaurants, motels, or students. It excludes travelers passing through the area. If aerial photography is used in making the count, assume 3.8 individuals per dwelling unit. Select the highest value for this rating factor as follows:

DISTANCE TO POPULATION FROM HAZARDOUS SUBSTANCE

Population	1 to 4 miles	½ to 1 mile	¼ to ½ mile	0 to ¼ mile
0	0	0	0	0
1 to 100	9	12	15	18
101 to 1,000	12	15	18	21
1,001 to 3,000	15	18	21	24
3,001 to 10,000	18	21	24	27
>10,000	21	24	27	30

Distance to sensitive environment is an indicator of the likelihood that a region that contains important biological resources or that is a fragile natural setting would suffer serious damage if hazardous substances were to be released from the facility. Assign a value from Table 10.

Land use indicates the nature and level of human activity in the vicinity of a facility. Assign highest applicable value from Table 13.

6.0 Computing the Migration Hazard Mode Score, S_M

To compute S_M, complete the work sheet (Figure 10) using the values of S_{gw}, S_{sw}, and S_{ac} obtained from the sections.

7.0 Fire and Explosion

Compute a score for the fire and explosion hazard mode, S_{FE}, when either a state or local fire marshall has certified that the facility presents a significant fire or explosion threat to the public or to sensitive environments or there is a demonstrated fire and explosion threat based on filed observations (e.g., combustible gas indicator readings). Document the threat.

7.1 *Containment. Containment* is an indicator of the measures that have been taken to minimize or prevent hazardous substances at the facility from catching fire or exploding. Normally it will be given a value of 3 on the work sheet (Figure 11). If no hazardous substances that are individually ignitable or explosive are present and those that may be hazardous in combination are segregated and isolated so that they cannot come together to form incompatible mixtures, assign this factor a value of 1.

7.2 *Waste Characteristics. Direct evidence* of ignitability or explosion potential may exist in the form of measurements with appropriate instruments. If so, assign this factor a value of 3; if not, assign a value of 0.

Ignitability is an indictor of the threat of fire at a facility and the accompanying potential for release of air contaminants. Assign this rating factor a value based on the NEPA classification scheme (Table 14). Table 4 gives values for a number of common compounds. Assign values as follows:

Ignitability	Assigned value
Flashpoint 200 °F. or NEPA level 0	0
Flashpoint 140 °F to 200 °F or NEPA level 1	1
Flashpoint 80 °F to 140 °F or NEPA level 2	2
Flashpoint <80 °F or NEPA levels 3 or 4	3

Reactivity. Assign values as in Section 5.2.

Incompatibility. Assign values as in Section 5.2.

Hazardous Waste Quantity. Assign values as in Section 3.4.

7.3 *Targets. Distance to nearest population* is the distance from the hazardous substance to the nearest building or area in which one or more persons are likely to be located either for residential, educational, business, occupational, or recreational purposes. It is an indicator of the potential for harm to humans from fire and explosion. The building or area need not be off-site. Assign values as follows:

Distance	Assigned value
>2 miles	0
1 mile to 2 miles	1
½ mile to mile	2
210 feet to ½ mile	3
51 feet to 200 feet	4
0 to 50 feet	5

Distance to nearest building is and indicator of the potential for property damage as a result of fire or explosion. Assign a value as follows:

Distance	Assigned value
>½ mile	0
201 feet to ½ mile	1
51 to 200 feet	2
0 to 50 feet	3

Distance to nearest sensitive environment is measured from the hazardous substances, not from the facility boundary. It is an indicator of potential harm to a sensitive environment from fire or explosion at the facility. Select the highest value using the guidance provided in Table 15 *except* assign a value of 3 where fire could be expected to spread to a sensitive environment even though that environment is more than 100 feet from the hazardous substance.

Land Use. Assign values as in section 5.3.

Population within two-mile radius (measured from the location of the hazardous substance, not from the facility boundary) is a rough indicator of the population at risk in the event of fire or explosion at a facility. The population to be counted includes those residing within the two mile radius as well as people regularly in the vicinity such as workers in factories, offices, or students. It does not include travelers passing through the area. If aerial photography is used in making the count, assume 3.8 individuals per dwelling. Assign values as follows:

Population	Assigned value
0	0
1 to 100	1
101 to 1,000	2
1,001 to 3,000	3
3,001 to 10,000	4
>10,000	5

Number of buildings within two mile radius (measured from the hazardous substance, not from the facility boundary) is a rough indicator of the property damage that could result from fire and explosion at a facility. Assign values to this factor as follows:

Number of buildings	Assigned value
0	0
1 to 26	1
27 to 260	2
261 to 790	3
791 to 2,600	4
>2,600	5

8.0 Direct Contact

The direct contact hazard mode refers to the potential for injury by direct contact with hazardous substances at the facility.

8.1 *Observed Incident.* If there is a confirmed instance in which contact with hazardous substances at a facility has caused injury, illness, or death to humans or domestic or wild animals, enter a value of 45 on line 1 of the work sheet (Figure 12) and proceed to line 4 (toxicity). Document the incident giving the date, location and pertinent details. If no such instance is known, enter "0" on line 1 and proceed to line 2.

8.2 *Accessibility. Accessibility to hazardous substance* refers to the measures taken to limit access by humans or animals to hazardous substances. Assign a value using the following guidance:

Barrier	Assigned value
A 24-hour surveillance system (e.g., television monitoring or surveillance by guards or facility personnel) which continuously monitors and controls entry onto the facility; or an artificial or nautral barrier (e.g., a fence combined with a cliff), which completely surrounds the facility; and a means to control entry, at all times, through the gates or other entrances to the facility (e.g., an attendant, television monitors, locked entrances, or controlled roadway access to the facility)	0
Security guard, but no barrier	1
A barrier, but no separate means to control entry	2
Barriers do not completely surround the facility	3

8.3 *Containment. Containment* indicates whether the hazardous substance itself is accessible to direct contact. For example, if the hazardous substance at the facility is in surface impoundments, containers (sealed or unsealed), piles, tanks, or landfills with a cover depth of less than 2 feet, or has been spilled on the ground or other surfaces easily contacted (e.g., the bottom of shallow pond or creek), assign this rating factor a value of 15. Otherwise, assign a value of 0.

8.4 *Waste Charocteristics. Toxicity.* Assign a value as in section 3.4.

8.5 *Targets. Population within one-mile radius* is a rough indicator of the population that could be involved in direct contact incidents at an uncontrolled facility. Assign a value as follows:

Population	Assigned value
0	0
1 to 100	1
101 to 1,000	2
1,001 to 3,000	3
3,001 to 10,000	4
>10,000	5

Distance to a critical habitat (of an endangered species) is a rough measure of the probability of harm to members of an endangered species by direct contact with hazardous substance. Assign a value as follows:

Distance	Assigned value
>1 mile	0
½ to 1 mile	1
¼ to ½ mile	2
<¼ mile	3

TABLE 1

COMPREHENSIVE LIST OF RATING FACTORS

HAZARD MODE	FACTOR CATEGORY	FACTORS		
		GROUND WATER ROUTE	SURFACE WATER ROUTE	AIR ROUTE
Migration	Route Characteristics	• Depth to Aquifer of Concern • Net Precipitation • Permeability of Unsaturated Zone • Physical State	• Facility Slope and Intervening Terrain • One-Year 24-Hour Rainfall • Distance to Nearest Surface Water • Physical State	
	Containment	• Containment	• Containment	
	Waste Characteristics	• Toxicity/Persistence • Hazardous Waste Quantity	• Toxicity/Persistence • Hazardous Waste Quantity	• Reactivity/Incompatibility • Toxicity • Hazardous Waste Quantity
	Targets	• Ground Water Use • Distance to Nearest Well/ Population Served	• Surface Water Use • Distance to Sensitive Environment • Population Served/Distance to Water Intake Downstream	• Land Use • Population Within 4-Mile Radius • Distance to Sensitive Environment
Fire and Explosion	Containment	• Containment		
	Waste Characteristics	• Direct Evidence • Ignitability • Reactivity • Incompatibility • Hazardous Waste Quantity		
	Targets	• Distance to Nearest Population • Distance to Nearest Building • Distance to Nearest Sensitive Environment • Land Use • Population Within 2-Mile Radius • Number of Buildings Within 2-Mile Radius		
Direct Contact	Observed Incident	• Observed Incident		
	Accessibility	• Accessibility of Hazardous Substances		
	Containment	• Containment		
	Toxicity	• Toxicity		
	Targets	• Population Within 1-Mile Radius • Distance to Critical Habitat		

TABLE 2.— PERMEABILITY OF GEOLOGIC MATERIALS*

Type of material	Aproximate range of hydraulic conductivity	Assigned value
Clay, compact till, shale; unfractured metamorphic and igneous rocks.	$<10^{-7}$ cm/sec	0
Silt, loess, silty clays, silty loams, clay loams; less permeable limestone, dolomites, and sandstone; moderately permeable till.	$<10^{-5}>10^{-7}$ cm/sec.	1
Fine sand and silty sand; sandy loams; loamy sands; moderately permeable limestone, dolomites, and sandstone (no karst); moderately fractured igneous and metamorphic rocks, some coarse till.	$<10^{-3}>10^{-5}$ cm/sec.	2
Gravel, sand; highly fractured igneous and metamorphic rocks; permeable basalt and lavas; karst limestone and dolomite.	$>10^{-3}$ cm/sec	3

* Derived from:

Davis, S.N., *Porosity and Permeability of Natural Materials in Flow-Through Porous Media*, R.J.M. DeWest ed., Academic Press, New York, 1969.

Freeze, R.A. and J.A. Cherry, *Groundwater, Prentice-Hall, Inc., New York, 1979.*

TABLE 3.—CONTAINMENT VALUES FOR GROUND WATER ROUTE

[Assign containment a value of 0 if: (1) All the hazardous substances at the facility are underlain by an essentially non permeable surface (natural or artificial) and adequate leachate collection systems and diversion systems are present; or (2) there is no ground water in the vicinity. The value "0" does not indicate no risk. Rather, it indicates a significantly lower relative risk when compared with more serious sites on a national level. Otherwise, evaluate the containment for each of the different means of storage or disposal at the facility using the following guidance]

	Assigned value
A. Surface Impoundment	
Sound run-on diversion structure, essentially non permeable liner (natural or artificial) compatible with the waste, and adequate leachate collection system	0
Essentially non permeable compatible liner with no leachate collection system; or inadequate freeboard	1

TABLE 3.—CONTAINMENT VALUES FOR GROUND WATER ROUTE—Continued

[Assign containment a value of 0 if: (1) All the hazardous substances at the facility are underlain by an essentially non permeable surface (natural or artificial) and adequate leachate collection systems and diversion systems are present; or (2) there is no ground water in the vicinity. The value "0" does not indicate no risk. Rather, it indicates a significantly lower relative risk when compared with more serious sites on a national level. Otherwise, evaluate the containment for each of the different means of storage or disposal at the facility using the following guidance]

	Assigned value
Potentially unsound run-on diversion structure; or moderately permeable compatible liner	2
Unsound run-on diversion structure; no liner; or incompatible liner	3
B. Containers	
Containers sealed and in sound condition, adequate liner, and adequate leachate collection system	0
Containers sealed and in sound condition, no liner or moderately permeable liner	1
Containers leaking, moderately permeable liner	2

TABLE 3.—CONTAINMENT VALUES FOR GROUND WATER ROUTE—Continued

[Assign containment a value of 0 if: (1) All the hazardous substances at the facility are underlain by an essentially non permeable surface (natural or artificial) and adequate leachate collection systems and diversion systems are present; or (2) there is no ground water in the vicinity. The value "0" does not indicate no risk. Rather, it indicates a significantly lower relative risk when compared with more serious sites on a national level. Otherwise, evaluate the containment for each of the different means of storage or disposal at the facility using the following guidance.]

	Assigned value
Containers leaking and no liner or incompatible liner	3
C. Piles	
Piles uncovered and waste stabilized; or piles covered, waste unstabilized, and essentially non permeable liner	0
Piles uncovered, waste unstablized, moderately permeable liner, and leachate collection system	1
Piles uncovered, waste unstabilized, moderately permeable liner, and no leachate collection system	2
Piles uncovered, waste unstablized, and no liner	3
D. Landfill	
Essentially non permeable liner, liner compatible with waste, and adequate leachate collection system	0
Essentially non permeable compatible liner, no leachate collection system, and landfill surface precludes ponding	1
Moderately permeable, compatible liner, and landfill surface precludes ponding	2
No liner or incompatible liner; moderately permeable compatible liner; landfill surface encourages ponding; no run-on control	3

TABLE 4.—WASTE CHARACTERISTICS VALUES FOR SOME COMMON CHEMICALS

Chemical/ Compound	Toxicity [1]	Persistence [2]	Ignitability [3]	Reactivity [4]	Volatility [1]
Acetaldehyde	3	0	3	2	*3
Acetic acid	3	0	2	1	1
Acetone	2	0	3	0	3
Aldrin	3	3	1	0	*0
Ammonia, anhydrous	3	0	1	0	3
Aniline	3	1	2	0	1
Benzene	3	1	3	0	3
Carbon tetrachloride	3	3	0	0	3
Chlordane	3	3	*0	*0	*0
Chlorobenzene	2	2	3	0	1
Chloroform	3	3	0	0	3
Cresol-0	3	1	2	0	1
Cresol-M&P	3	1	1	0	1
Cyclohexane	2	2	3	0	3
Endrin	3	3	1	0	*0
Ethyl benzene	2	1	3	0	1
Formaldehyde	3	0	2	0	*3
Fromic acid	3	0	2	0	2
Hydrochloric acid	3	0	0	0	3
Isopropyl ether	3	1	3	1	3
Lindane	3	3	1	0	0
Methane	1	1	3	0	*3
Methyl ethyl ketone	2	0	3	0	2
Methyl parathion in kylene solution	3	3	3	2	*2

TABLE 4.—WASTE CHARACTERISTICS VALUES FOR SOME COMMON CHEMICALS—Continued

Chemical/ Compound	Toxicity [1]	Persistence [2]	Ignitability [3]	Reactivity [4]	Volatility [1]
Naphthalene	2	1	2	0	1
Nitric acid	3	0	0	0	*3
Parathion	3	3	1	2	*0
PCB	3	3	△0	△0	△0
Petroleum Kerosene (fuel oil No. 1)	3	1	2	0	*1
Phenol	3	1	2	0	1
Sulfuric Acid	3	0	0	2	1
Toluene	2	1	3	0	2
Trichlorobenzene	2	3	1	0	1
α-Trichloroethane	2	2	1	0	3
Xylene	2	1	3	0	1

[1] Sax, N.I., *Dangerous Properties of Industrial Materials*, Van Nostrand Rheinhold Co., New York, 4th ed., 1975. The highest rating listed under each chemical is used.

[2] JRB Associates, Inc., *Methodology for Rating the Hazard Potential of Waste Disposal Sites*, May 5, 1980.

[3] National Fire Protection Association, National Fire Codes, Vol. 13, No. 49; 1977.

[4] Professional judgment based on information contained in the U.S. Coast Guard CHRIS Hazardous Chemical Data, 1978.

△ Professional judgment based on existing literature.

TABLE 5.—PERSISTENCE (BIODEGRADABILITY) OF SOME ORGANIC COMPOUNDS *

Value—3 Highly Persistent Compounds	
aldrin	heptachlor
benzopyrene	heptachlor epoxide
benzothiazole	1,2,3,4,5,7,7-heptachloronorbornene
benzothiophene	hexachlorobenzene
benzyl butyl phthalate	hexachloror-1,3,-butadiene
bromochlorobenzene	hexachlorocyclohexane
bromoform butanal	hexachloroethane
bromophenyl phyntl ether	methyl benzothiazole
chlordane	pentachlorobiphenyl
chlorohydroxy benzaphenone	pentachlordphenol
bis-chloroisoprophyl ether	1,1,3,3-tetrachloroacentone
m-chloronitrobenzene	tetrachlorobiphenyl
DDE	thiomethylbenzothiazole
DDT	trichldrobenzene
dibromobenzene	trichlorobiphenyl
dibutyl phthalate	trichlorofluoromethane
1,4-dichlorobenzene	2,4,6-trichlorophenol
dichlorodifluoroethane	triphenyl phosphate
dieldrin	bromodichloromethane
diethyl phtalate	bromoform
di (2-ethylhexyl) phthalate	carbon tetrachloride
dihexyl phthalate	chloroform
di-isobutyl phthalate	chloromochloromethane
dimethyl phthalate	dibromodichloroethane
4,6-dinitro-2-aminophenol	tetrachloroethane
dipropyl phthalate	1,1,2-trichloroethane
endrin	
Value—2 Highly Persistent Compounds	
acenaphthylane	cis-2-ethyl-4-methyl-1,3-dioxolane
atrazine	trans-2-ehtyl-4-methyl-1,3-dioxolane
(diethyl) atrazine	guaiacol
barbital	2-hydroxyadiponitrile
borneol	isophorone
bromobenzene	indene
camphor	isoborneol
chlorobenzene	isopropenyl-r-isopropyl benzene
1,2,-bis-chloroethoxy ethane	2-methoxy biphenyl
b-chloroethyl methyl ether	methyl biphenyl
chloromethyl ether	methyl chloride
chloromethyl ethyl ether	methylidene
3-chloropyridine	methylene chloride
di-t-butyl-p-benzoquinone	nitroanisole

TABLE 5.—PERSISTENCE (BIODEGRADABILITY) OF SOME ORGANIC COMPOUNDS *—Continued

dichloroethyl ether	nitrobenzene
dihyrocarvone	1,1,2,-trichloroethylene
dimethyl sulfoxide	trimethyl-trioxo-hexahydro-traizine isomer
2,6-dinitrotoluene	
Value—1 Somewhat Persistent Compounds	
acetylene dichloride	limonene
behenic acid, methyl estar	methyl ester of lignoceric acid
benzene	methane
benzene sulfonic acid	2-methyl-5-ethyl-pyridine
butyl benzene	methyl naphtalene
butyl bromide	methyl palmitate
e-caprolactam	methyl phenyl carbinol
carbon-disulfide	methyl stearate
o-cresol	naphthalene
decane	nonane
1,2-dichloroethane	octane
1,2-dimethoxy benzene	octyl chloride
1,3-dimethyl naphthalene	pentane
1,4-dimethyl phenol	phenyl benzoate
dioctyl adipate	phtalic andhydride
n-dodecane	propylbenzene
ethyl benene	1-terpinnel
2-ethyl-n-hexane	toluene
o-ethyltoluene	vinly benzene
isodecane	xylene
isoprophyl benzene	
Value—0 Highly Nonpersistent Compounds	
acetaldehyde	methyl benzoate
acetic acid	3-methyl butanol
acetone	methyl ethyl ketone
acetophenone	2-methylpropanol
benzoic acid	octadecane
di-isobutyl carbinol	pentadecane
docosane	pentanol
eicosane	propanol
ethanol	propylamine
ethylamine	tetradecane
hexadecane	n-tridecane
methanol	n-undecane

* JRB Associates, Inc., *Methodology for Rating the Hazard Potential for Waste Disposal Sites*, May 5, 1980.

TABLE 6.—SAX TOXICITY RATINGS*

0—No Toxicity

This designation is given to materials which fall into one of the following categories:

(a) Materials which cause no harm under any conditions of normal use.

(b) Materials which produce toxic effects on humans only under the most unusual conditions or by overwhelming dosage.

1—Slight Toxicity

(a) *Acute local.* Materials which on single exposures lasting seconds, minutes, or hours cause only slight effects on the skin or mucuous membranes regardless of the extent of the exposure.

(b) *Acute systemic.* Materials which can be absorbed into the body by inhalation, ingestion, or through the skin and which produce only slight effects following single exposures lasting seconds, minutes, or hours, or following ingestion of a single dose, regardless of the quantity absorbed or the extent of exposure.

(c) *Chronic local.* Materials which on continuous or repeated exposures extending over periods of days, months, or years cause only slight and usually reversible harm to the skin or mucous membranes. The extent of exposure may be great or small.

(d) *Chronic systemic.* Materials which can be absorbed into the body by inhalation, ingestion, or through the skin and which produce only slightly usually reversible effects extending over days, months, or years. The extent of the exposure may be great or small.

In general, those substances classified as having "slight toxicity" produce changes in the human body which are readily reversible and which will disappear following termination of exposure, either with or without medical treatment.

TABLE 6.—SAX TOXICITY RATINGS*—Continued

2 = Moderate Toxicity

(a) *Acute local.* Materials which on single exposure lasting seconds, minutes, or hours cause moderate effects on the skin or mucous membranes. These effect may be the result of intense exposure for a matter of seconds or moderate exposure for a matter of hours.

(b) *Acute systemic.* Materials which can be absorbed into the body by inhalation, ingestion, or through the skin and produce moderate effects following single exposures lasting seconds, minutes, or hours, or following ingestion of a single dose.

(c) *Chronic local.* Materials which on continuous or repeated exposures extending over periods of days, months, or years cause moderate harm to the skin or mucous membranes.

(d) *Chronic systemic.* Materials which can be absorbed into the body by inhalation, ingestion, or through the skin and which produce moderate effects following continuous or repeated exposure extending over periods of days, months, or years.

Those substances classified as having "moderate toxicity" may produce irreversible as well as reversible changes in the human body. Those changes are not of such severity as to threaten life or to produce serious physical impairment.

3 = Severe Toxicity

(a) *Acute local.* Materials which on single exposure lasting seconds or minutes cause injury to skin or mucous membranes or sufficient severity to threaten life or the cause permanent physical impairment or disfigurement.

(b) *Acute systemic.* Materials which can be absorbed into the body by inhalation, ingestion, or through the skin and which can cause injury of sufficient severity to threaten life following a single exposure lasting seconds, minutes, or hours, or following ingestion of a single dose.

(c) *Chronic local.* Materials which on continuous or repeated exposures extending over periods of days, months, or years can cause injury to skin or mucous membranes of sufficient severity to threaten life or cause permanent impairment, which disfigurement, or irreversible change.

(d) *Chronic systemic.* Materials which can be absorbed into the body by inhalation, ingestion, or through the skin and which can cause death or serious physical impairment following continuous or repeated exposures to small amounts extending over periods of days, months, or years.

*Sax, N.I., *Dangerous Properties of Industrial Materials*, Van Nostrand Rheinhold Company, New York, 4th Edition, 1975.

TABLE 7.—NFPA TOXICITY RATINGS*

0	Materials which on exposure under fire conditions would offer no health hazard beyond that of ordinary combustible material.
1	Materials only slightly hazardous to health. It may be desirable to wear self-contained breathing apparatus.
2	Materials hazardous to health, but areas may be entered freely with self-contained breathing apparatus.
3	Materials extremely hazardous to health, but areas may be entered with extreme care. Full protective clothing, including self-contained breathing apparatus, rubber gloves, boots and bands around legs, arms and waist should be provided. No skin surface should be exposed.
4	A few whiffs of the gas or vapor could cause death, or the gas, vapor, or liquid could be fatal on penetrating the fire fighters' normal full protective clothing which is designed for resistance to heat. For most chemicals having a Health 4 rating, the normal full protective clothing available to the average fire department will not provide adequate protection against skin contact with these materials. Only special protective clothing designed to protect against the specific hazard should be worn.

*National Fire Protection Association. *National Fire Codes*, Vol. 13, No. 49, 1977.

TABLE 8.—VALUES FOR FACILITY SLOPE AND INTERVENING TERRAIN

Facility slope	Intervening terrain: Terrain average slope <3%; or site separated from water body by areas of higher elevation	Terrain average slope 3 to 5%	Terrain average slope 5 to 8%	Terrain average slope >8%	Site in surface water
Facility is closed basin	0	0	0	0	3
Facility has average slope <3%	0	1	1	2	3
Average slope 3 to 5%	0	1	2	2	3
Average slope 5 to 8%	0	2	2	3	3
Average slope >8%	0	2	3	3	3

TABLE 9.—CONTAINMENT VALUES FOR SURFACE WATER ROUTE

[Assign containment a value of 0 if: (1) All the waste at the site is surrounded by diversion structures that are in sound condition and adequate to contain all runoff, spills, or leaks from the waste; or (2) intervening terrain precludes runoff from entering surface water. Otherwise, evaluate the containment for each of the different means of storage of disposal at the site and assign a value as follows:]

	Assigned value
A. Surface Impoundment	
Sound diking or diversion structure, adequate freeboard, and no erosion evident	0
Sound diking or diversion structure, but inadequate freeboard	1

TABLE 9.—CONTAINMENT VALUES FOR SURFACE WATER ROUTE—Continued

[Assign containment a value of 0 if: (1) All the waste at the site is surrounded by diversion structures that are in sound condition and adequate to contain all runoff, spills, or leaks from the waste; or (2) intervening terrain precludes runoff from entering surface water. Otherwise, evaluate the containment for each of the different means of storage of disposal at the site and assign a value as follows:]

	Assigned value
Diking not leakin, but potentially unsound	2
Diking unsound, leaking, or in danger of collapse	3
B. Containers	
Containers sealed, in sound condition, and surrounded by sound diversion or containment system	0
Containers sealed and in sound condition, but not surrounded by sound diversion or containment system	1
Containers leaking and diversion or containment structures potentially unsound	2
Containers leaking, and no diversion or containment structures or diversion structures leaking or in danger of collapse	3
C. Waste Piles	
Piles are covereu and surrounded by sound diversion or containment system	0
Piles covered, wastes unconsolidated, diversion or containment system not adequate	1
Piles not covered, wastes unconsolidated, and diversion or containment system potentially unsound	2
Piles not covered, wastes unconsolidated, and no diversion or containment of diversion system leaking or in danger or collapse	3
D. Landfill	
Landfill slope precludes runoff, landfill surrounded by sound diversion system, or landfill has adequate cover material	0
Landfill not adequately covered and diversion system sound	1
Landfill not covered and diversion system potentially unsound	2
Landfill not covered and no diversion system present, or diversion system unsound	3

TABLE 10.—Values for Sensitive Environment (Surface Water)

Assigned value =	0	1	2	3
Distance to wetlands* (5 acre minimum):				
Coastal	>2 miles	1 to 2 miles	½ to 1 mile	<½ mile
Fresh Water	>1 mile	¼ to 1 mile	100 feet to ¼ mile	<100 feet
Distance to critical habitat (of endangered species)** or National Wildlife Refuge.	>1 mile	½ to 1 mile	¼ to ½ mile	<¼ mile

* Wetland is defined by EPA in the Code of Federal Regulations 40 CFR Part 230, Appendix A, 1980.
** Endangered species are designated by the U.S. Fish and Wildlife Service.

TABLE 11.—NFPA REACTIVITY RATINGS

NFPA level		Assigned value
0	Materials which are normally stable even under fire exposure conditions and which are not reactive with water	0
1	Materials which in themselves are normally stable but which may become unstable at elevated temperatures and pressures or which may react with water with some release of energy but not violently	1
2	Materials which in themselves are normally unstable and readily undergo violent chemical change but do nto detonate.	

TABLE 11.—NFPA REACTIVITY RATINGS—Continued

NFPA level	Assigned value
Includes materials which can undergo chemical change with rapid release of energy at normal temperatures and pressures or which can undergo violent chemical changed at elevated temperatures and pressures. Also includes those materials which may react violently with water or which may form potentially explosive mixtures with water	2

TABLE 11.—NFPA REACTIVITY RATINGS—Continued

NFPA level	Assigned value
3 Materials which in themselves are capable of detonation or of explosive decomposition or of explosive reaction but which requires a strong initiating source or which must be heated under confinement before initiation. Includes materials which are sensitive to thermal or mechanical shock at elevated temperatures and pressures or which react explosively with water without requiring heat or confinement	3
4 Materials which in themselves are readily capable of detonation or of explosive decomposition or explosive reaction at normal temperatures and pressures. Includes materials which are sensitive to mechanical or localized thermal shock	3

TABLE 12.—INCOMPATIBLE MATERIALS

[In the lists below, the mixing of a Group A material with a Group B material may have the potential consequence as noted]

Group 1-A	*Group 1-B*
Acetylene sludge	Acid slude
Alkaline caustic liquids	Acid and water
Alkaline cleaner	Battery acid
Alkaline corrosive liquids	Chemical cleaners
Alkaline corrosive battery fluid	Electrolyte acid
Caustic wastewater	Etching acid liquid or solvent
Lime sludge and other corrosive alkalies	Pickling liquor and other corrosive acids
Lime wastewater	Spent acid
Lime and water	Spent mixed acid
Spent caustic	Spent sulfuric acid

Potential consequences: Heat generation; violent reaction.

Group 2-A	*Group 2-B*
Aluminum	Any waste in Group 1-A or 1-B
Beryllium	
Calcium	
Lithium	
Potassium	
Sodium	
Zinc Powder	
Other reactive metals and metal hydrides	

Potential consequences: Fire or explosion; generation of flammable hydrogen gas.

Group 3-A	*Group 3-B*
Alcohols	Any concentrated waste in Groups 1-A or 1-B
Water	Caicium
	Lithium
	Metal hydrides
	Potassium
	SO_2Cl_2, $SOCl_2$, PCl_3, CH_3SiCl_3
	Other water-reactive waste

Potential consequences: Fire, explosion, or heat generation; generation of flammable or toxic gases.

TABLE 12.—INCOMPATIBLE MATERIALS—Continued

[In the lists below, the mixing of a Group A material with a Group B material may have the potential consequence as noted]

Group 4-A	*Group 4-B*
Alcohols	Concentrated Group 1-A or 1-B wastes
Aldehydes	Group 2-A wastes
Halogenated hydrocarbons	
Nitrated hydrocarbons	
Unsaturated hydrocarbons	
Other reactive organic compounds and solvents	

Potential consequences: Fire, explosion, or violent reaction.

Group 5-A	*Group 5-B*
Spent cyanide and sulfide solutions	Group 1-B wastes

Potential consequences: Generation of toxic hydrogen cyanide or hydrogen sulfide gas.

TABLE 12.—INCOMPATIBLE MATERIALS—Continued

[In the lists below, the mixing of a Group A material with a Group B material may have the potential consequence as noted]

Group 6-A	*Group 6-B*
Chlorates	Acetic acid and other organic acids
Chlorine	Concentrated mineral acids
Chlorites	Group 2-A wastes
Chromic acid	Group 4-A wastes
Hyphochlorities	Other flammable and combustible wastes
Nitrates	
Nitric acid, fuming	
Perchlorates	
Permanganates	
Peroxides	
Other strong oxidizers	

Potential consequences: Fire, explosion, or violent reaction.

Source: Hazardous Waste Management Law, Regulations and Guidelines for the Handling of Hazardous Waste. California Department of Health, Sacramento, California, February 1975.

TABLE 13.—VALUES FOR LAND USE (AIR ROUTE)

Assigned value =	0	1	2	3
Distance to Commercial-Industrial.	>1 mile	½ to 1 mile	¼ to ½ mile	<¼ mile
Distance to National/State Parks, Forests, Wildlife Reserves, and Residential Areas.	>2 miles	1 to 2 miles	¼ to 1 mile	<¼ mile
Distance to Agricultural Lands (in Production within 5 years):				
Ag Land	>1 mile	½ to 1 mile	¼ to ½ mile	<¼ mile
Prime Ag Land*	2 miles	1 to 2 miles	½ to 1 mile	<½ mile
Distance to Historic/Landmark Sites (National Register of Historic Places and National Natural Landmarks).				Within view of site or if site is subject to significant impacts

* Defined in the Code of Federal Regulations, 7 CFR 657.5, 1981.

TABLE 14.—NFPA IGNITABILITY LEVELS AND ASSIGNED VALUES

NFPA level	Assigned value
4 Very flammable gases, very volatile flammable liquids, and materials that in the form of dusts or mists readily form explosive mixtures when dispersed in air	3
3 Liquids which can be ignited under all normal temperature conditions. Any materials that ignites spontaneously at normal temperatures in air	2
2 Liquids which must be moderately heated before ignition will occur and solids that readily give off flammable vapors	1
1 Materials that must be preheated before ignition can occur. Most combustible solids have a flammability rating of 1	0
0 Materials that will not burn	

TABLE 15.—VALUES FOR SENSITIVE ENVIRONMENTS (FIRE AND EXPLOSION)

Assigned value =	0	1	2	3
Distance to Wetlands*	>100 feet			<100 feet
Distance to critical habitat**	>½ mile	1,000 feet to ½ mile	100 to 1,000 feet	<100 feet

* Wetland is defined by EPA in the Code of Federal Regulations 40 CFR Part 230, Appendix A, 1980.
** Designated by the U.S. Fish and Wildlife Service.

BILLING CODE 6560-50-M

Facility Name: _____

Location: _____

EPA Region: _____

Person(s) in Charge of the Facility: _____

_____

_____

Name of Reviewer: _____ Date: _____

General Description of the Facility:

(For example: landfill, surface impoundment, pile, container; types of hazardous substances; location of the facility; contamination route of major concern; types of information needed for rating; agency action, etc.)

_____

_____

_____

_____

_____

_____

_____

Scores: S_M = (S_{gw} = S_{sw} = S_a =)

S_{FE} =

S_{DC} =

Figure 1

HRS COVER SHEET

GROUND WATER ROUTE WORK SHEET

	Rating Factor	Assigned Value (Circle One)	Multiplier	Score	Max. Score	Ref. (Section)
1	OBSERVED RELEASE	0 45	1		45	3.1
	If observed release is given a score of 45, proceed to line 2. If observed release is given a score of 0, proceed to line 3.					
2	ROUTE CHARACTERISTICS					3.2
	Depth to Aquifer of Concern	0 1 2 3	2		6	
	Net Precipitation	0 1 2 3	1		3	
	Permeability of the Unsaturated Zone	0 1 2 3	1		3	
	Physical State	0 1 2 3	1		3	
	Total Route Characteristics Score				15	
3	CONTAINMENT	0 1 2 3	1		3	3.3
4	WASTE CHARACTERISTICS					3.4
	Toxicity/Persistence	0 3 6 9 12 15 18	1		18	
	Hazardous Waste Quantity	0 1 2 3 4 5 6 7 8	1		8	
	Total Waste Characteristics Score				26	
5	TARGETS					3.5
	Ground Water Use	0 1 2 3	3		9	
	Distance to Nearest Well/Population Served	0 4 6 8 10 12 16 18 20 24 30 32 35 40	1		40	
	Total Targets Score				49	
6	If line 1 is 45, multiply 1 x 2 x 3 x 4 x 5 If line 1 is 0, multiply 0 x 2 x 3 x 4 x 5				57,330	
7	Divide line 6 by 57,330 and multiply by 100			S_{gw} =		

Figure 2

Ground Water Route Work Sheet

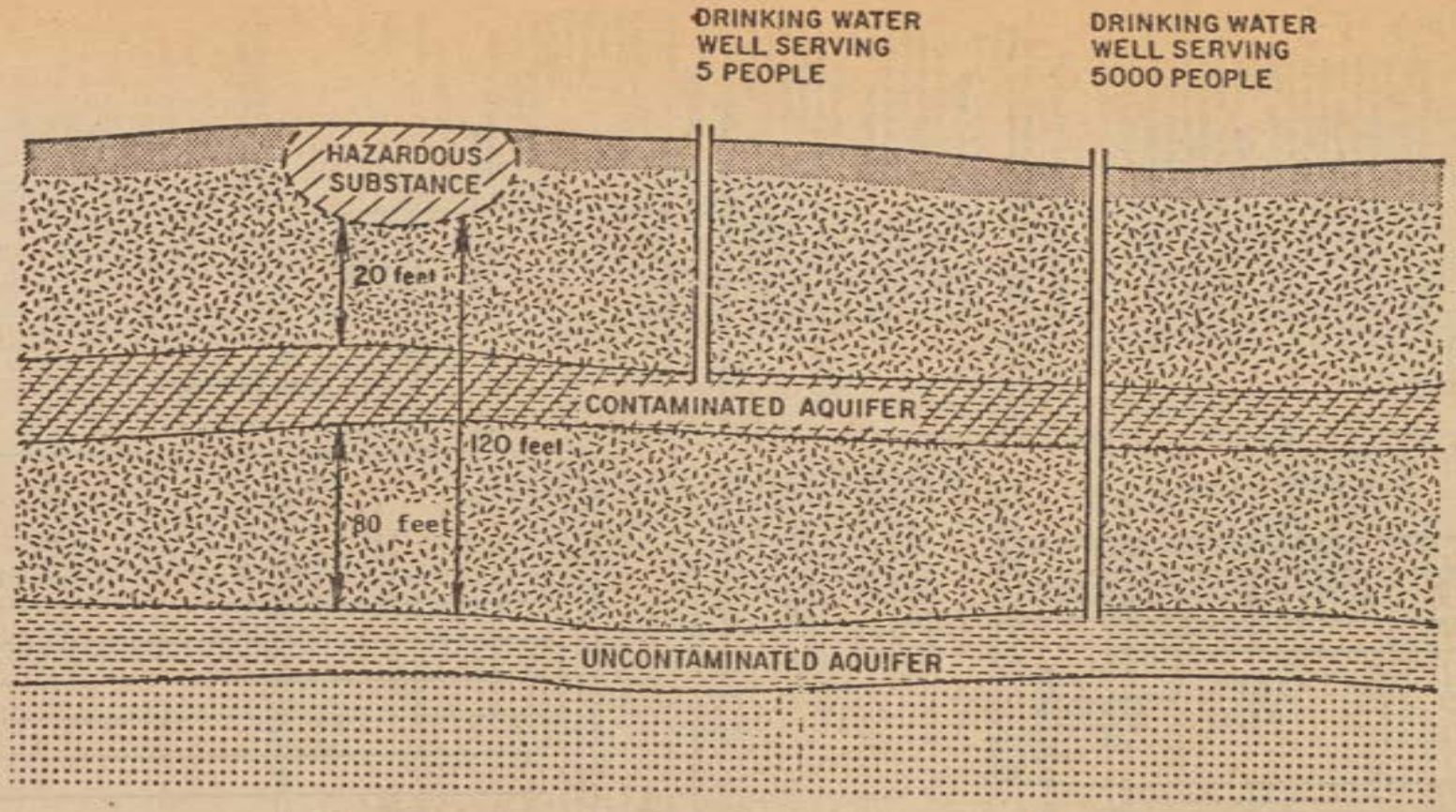
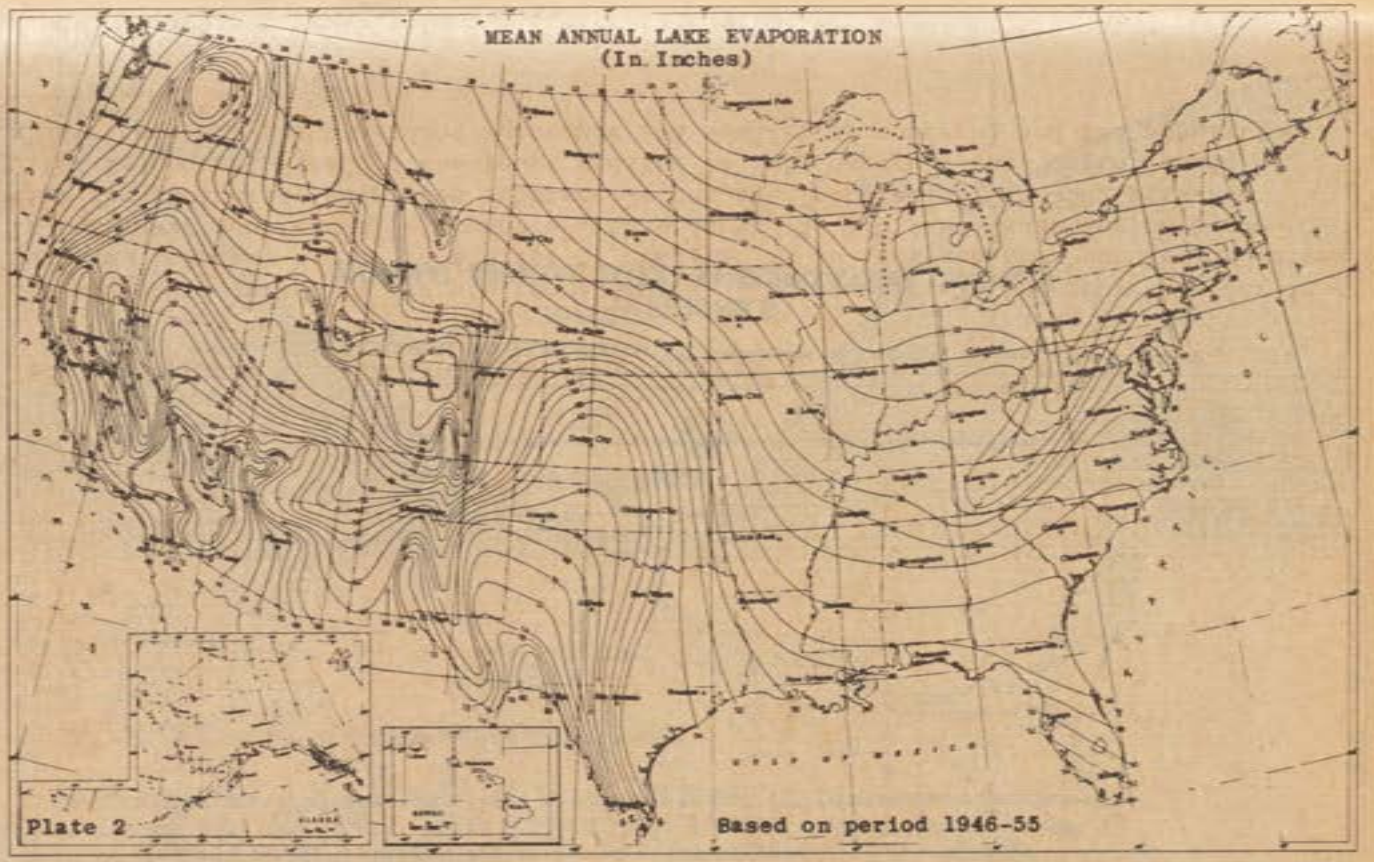


FIGURE 3. DEPTH TO AQUIFER OF CONCERN*

*Treat target and route characteristics factors consistently. For example, if the upper aquifer is the aquifer of concern, then the "depth to aquifer of concern" is 20 feet and the "population served" is 5 persons. If the lower aquifer is "of concern", the "depth" is 120 feet (assuming no known contamination below the indicated "hazardous substance") and the "population" is 5000 persons. If the upper aquifer is contaminated and the lower aquifer is "of concern", the "depth" would be 80 feet (vertical distance between hazardous substance and aquifer of concern) and the population would be 5000 persons.



Source: Climatic Atlas of the United States, U.S. Department of Commerce, National Climatic Center, Ashville, N.C., 1979.

FIGURE 4
MEAN ANNUAL LAKE EVAPORATION
(IN INCHES)

Source: Climatic Atlas of the United States, U.S. Department of Commerce, National Climatic Center, Asheville, N.C., 1979.

FIGURE 5
NORMAL ANNUAL TOTAL PRECIPITATION (INCHES)

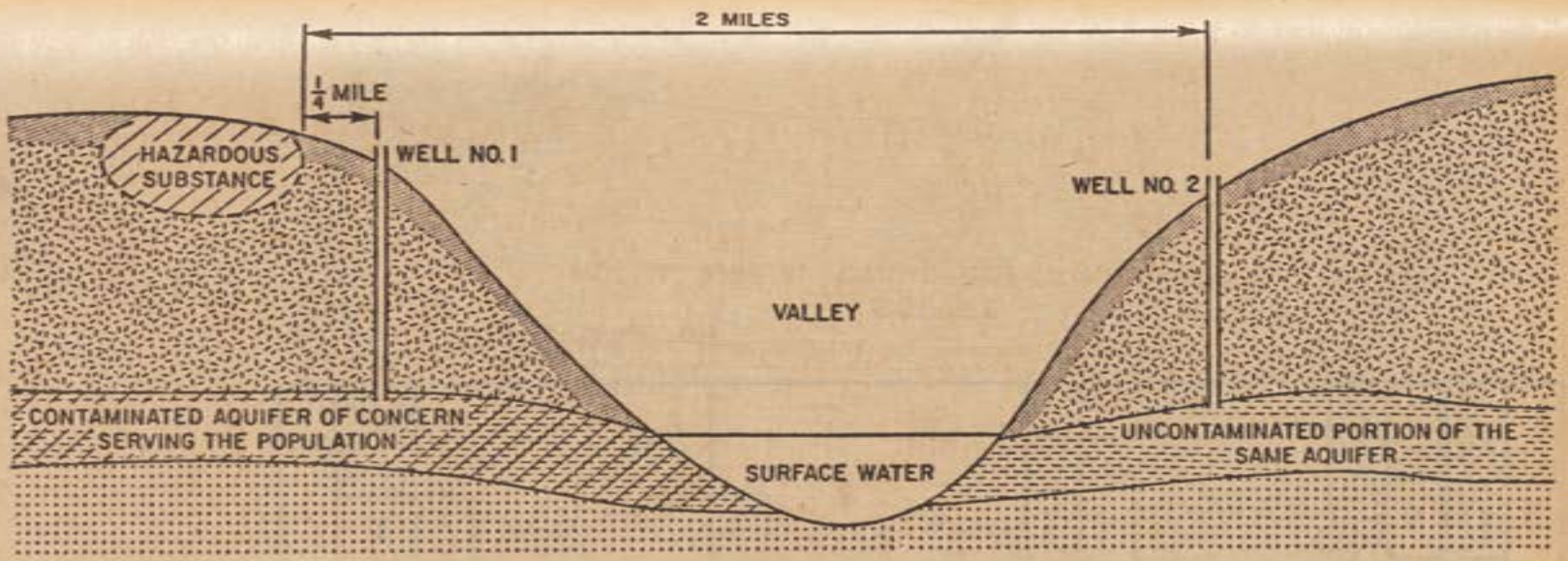


FIGURE 6

Distance to Nearest Well

In the situation depicted above, the distance between the hazardous substance and the nearest well (No. 1) is ¼ mile. If well No. 1 did not exist, the distance to well No. 2 would be immaterial since there is a discontinuity in the aquifer (surface water) between it and the hazardous substance. Under such circumstances, the factor score would be "0". However, if it could be demonstrated that the contaminant had migrated beyond the discontinuity, then the distance to the nearest well would be 2 miles (assuming well No. 1 does not exist).

SURFACE WATER ROUTE WORK SHEET						
	Rating Factor	Assigned Value (Circle One)	Multiplier	Score	Max. Score	Ref. (Section)
1	OBSERVED RELEASE	0 45	1		45	4.1
	If observed release is given a value of 45, proceed to line 4. If observed release is given a value of 0, proceed to line 2.					
2	ROUTE CHARACTERISTICS					4.2
	Facility Slope and Intervening Terrain	0 1 2 3	1		3	
	1-yr. 24-hr. Rainfall	0 1 2 3	1		3	
	Distance to Nearest Surface Water	0 1 2 3	2		6	
	Physical State	0 1 2 3	1		3	
	Total Route Characteristics Score				15	
3	CONTAINMENT	0 1 2 3	1		3	4.3
4	WASTE CHARACTERISTICS					4.4
	Toxicity/Persistence	0 3 6 9 12 15 18	1		18	
	Hazardous Waste Quantity	0 1 2 3 4 5 6 7 8	1		8	
	Total Waste Characteristics Score				26	
5	TARGETS					4.5
	Surface Water Use	0 1 2 3	3		9	
	Distance to a Sensitive Environment	0 1 2 3	2		6	
	Population Served/ Distance to Water Intake Downstream	0 4 6 8 10 12 16 18 20 24 30 32 35 40	1		40	
	Total Targets Score				55	
6	If line 1 is 45, multiply 1 x 4 x 5 If line 1 is 0, multiply 2 x 3 x 4 x 5				64,350	
7	Divide line 6 by 64,350 and multiply by 100	S_{sw} =				

Figure 7

Surface Water Route Work Sheet

Source: Rainfall Frequency Atlas of the United States, Technical Paper No. 40, U.S. Department of Commerce, U.S. Government Printing Office, Washington, D.C., 1963.

FIGURE 8
1-YEAR 24-HOUR RAINFALL
(INCHES)

AIR ROUTE WORK SHEET

Rating Factor	Assigned Value (Circle One)	Multiplier	Score	Max. Score	Ref. (Section)
1 OBSERVED RELEASE	0 45	1		45	5.1
Date and Location:					
Sampling Protocol:					
If line 1 is 0, then S = 0. Enter on line 5. If line 1 is 45, then proceed to line 2.					
2 WASTE CHARACTERISTICS					5.2
Reactivity and Incompatibility	0 1 2 3	1		3	
Toxicity	0 1 2 3	3		9	
Hazardous Waste Quantity	0 1 2 3 4 5 6 7 8	1		8	
Total Waste Characteristics Score				20	
3 TARGETS					5.3
Population Within 4-Mile Radius	0 9 12 15 18 21 24 27 30	1		30	
Distance to Sensitive Environment	0 1 2 3	2		6	
Land Use	0 1 2 3	1		3	
Total Targets Score				39	
4 Multiply 1 x 2 x 3				35,100	
5 Divide line 4 by 35,100 and multiply by 100	S_a =				

Figure 9

Air Route Work Sheet

	S	S^2
Groundwater Route Score (S_{gw})		
Surface Water Route Score (S_{sw})		
Air Route Score (S_a)		
$S_{gw}^2 + S_{sw}^2 + S_a^2$		
$\sqrt{S_{gw}^2 + S_{sw}^2 + S_a^2}$		
$\sqrt{S_{gw}^2 + S_{sw}^2 + S_a^2} / 1.73$		S_M =

Figure 10

WORKSHEET FOR COMPUTING S_M

FIRE AND EXPLOSION WORK SHEET					
Rating Factor	Assigned Value (Circle One)	Multiplier	Score	Max. Score	Ref. (Section)
1 Containment	1 3	1		3	7.1
2 Waste Characteristics					7.2
Direct Evidence	0 3	1		3	
Ignitability	0 1 2 3	1		3	
Reactivity	0 1 2 3	1		3	
Incompatibility	0 1 2 3	1		3	
Hazardous Waste Quantity	0 1 2 3 4 5 6 7 8	1		8	
Total Waste Characteristics Score				20	
3 Targets					7.3
Distance to Nearest Population	0 1 2 3 4 5	1		5	
Distance to Nearest Building	0 1 2 3	1		3	
Distance to Sensitive Environment	0 1 2 3	1		3	
Land Use	0 1 2 3	1		3	
Population Within 2-Mile Radius	0 1 2 3 4 5	1		5	
Buildings Within 2-Mile Radius	0 1 2 3 4 5	1		5	
Total Target Score				24	
5 Multiply [1] x [2] x [3] x [4]				1,440	
6 Divide line [5] by 1,440 and multiply by 100			S_{FE} =		

Figure 11

DIRECT CONTACT WORK SHEET					
Rating Factor	Assigned Value (Circle One)	Multiplier	Score	Max. Score	Ref. (Section)
1 Observed Incident	0 45	1		45	8.1
If line [1] is 45, proceed to line [4] If line [1] is 0, proceed to line [2]					
2 Accessibility	0 1 2 3	1		3	8.2
3 Containment	0 15	1		15	8.3
4 Waste Characteristics Toxicity	0 1 2 3	5		15	8.4
5 Targets					8.5
Population within a 1-mile radius	0 1 2 3 4 5	4		20	
Distance to a critical habitat	0 1 2 3	4		12	
Total Targets Score				32	
6 If line [1] is 45, multiply [1] x [4] x [5] If line [1] is 0, multiply [2] x [3] x [4] x [5]				21,600	
7 Divide line [6] by 21,600 and multiply by 100			S_{DC} =		

Figure 12

Direct Contact Work Sheet

2. 40 CFR Subpart H, § 300.84 is amended by revising paragraphs (a)–(e) as follows:

Subpart H—Use of Dispersants and Other Chemicals

§ 300.84 Authorization of use.

(a) The OSC, with the concurrence of the EPA representative to the RRT and the concurrence of the States with jurisdiction over the navigable waters polluted by the oil discharge, may authorize the use of dispersants, surface collecting agents, and biological additives on the oil discharge, provided that the dispersants, surface collecting agents, or additives are on the NCP Product Schedule. The OSC should consult with other appropriate Federal agencies as practicable when considering the use of such products.

(b) The OSC, with the concurrence of the EPA representative to the RRT and the concurrence of the States with jurisdiction over the navigable waters polluted by the oil discharge, may authorize the use of burning agents on a case-by-case basis. The OSC should consult with other appropriate Federal Agencies as practicable when considering the use of such products.

(c) The OSC may authorize the use of any dispersant, surface collecting agent, other chemical agent, burning agent, or biological additive (including products not on the NCP Product Schedule) without obtaining the concurrence of the EPA representative to the RRT or the States with jurisdiction over the navigable waters polluted by the oil discharge, when in the judgment of the OSC, the use of the product is necessary to prevent or substantially reduce a hazard to human life. The OSC is to inform the EPA RRT representative and the affected States of the use of a product as soon as possible and, pursuant to the provisions in paragraph (a) of this section, obtain their concurrence for its continued use once the threat to human life has subsided.

(d) Sinking agents shall not be authorized for application to oil discharges.

(e) RRTs should consider, as part of their planning activities, the appropriateness of using the dispersants, surface collecting agents, or biological additives listed on the NCP Products Schedule, and the appropriateness of using burning agents. Regional contingency plans should address the use of such products in specific contexts. If the RRT and the States with jurisdiction over the waters of the area to which a plan applies approve in advance the use of certain products as described in the plan, the

OSC may authorize the use of the products without obtaining the concurrence of the EPA representative to the RRT or of the States and without consultation with other appropriate Federal agencies.

Appendix

Note.—This is an Appendix to the document and will not appear in the Code of Federal Regulations.

Memorandum

Subject: CERCLA Compliance With Other Environmental Statutes

From: Lee M. Thomas, Assistant Administrator

To: Regional Administrator Regions I–X

This memorandum sets forth the Environmental Protection Agency (EPA) policy on the applicability of the standards, criteria, advisories, and guidance of other State and Federal environmental and public health statutes to actions taken pursuant to sections 104 and 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). This policy addresses considerations for on-site and off-site actions taken under CERCLA.

I. Discussion

The National Contingency Plan (NCP) establishes the process for determining appropriate removal and/or remedial actions at Superfund sites. In the course of this process, EPA will give primary consideration to the selection of those response actions that are effective in preventing or, where prevention is not practicable, minimizing the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health, welfare, or the environment. As a general rule, this can be accomplished by pursuing remedies that meet the standards of applicable or relevant Federal public health or environmental laws. However, because of the unique circumstances at particular sites, there may be alternatives that do not meet the standards of other laws, but which still provide protection of public health, welfare, and the environment.

Although response actions which prevent hazardous substances from migrating into the environment are seen as the most effective under CERCLA, actions which minimize migration must also be considered since CERCLA primarily addresses inadequate *past* disposal practices and resulting unique site conditions. At certain sites, it may be technically impracticable, environmentally unacceptable or excessively costly to implement a response action that prevents migration or restores the site to its original, uncontaminated condition.

II. Policy

Section 104 of CERCLA requires that for off-site remedial actions, storage, destruction, treatment or secure disposition be in compliance with subtitle C of Resource Conservation and Recovery Act (RCRA). CERCLA is silent, however, concerning the requirements of other laws with regard to all other response actions taken pursuant to sections 104 and 106. As a general rule, the Agency's policy is to attain or exceed applicable or relevant environmental and public health standards in CERCLA response actions unless one of the specifically enumerated situations is present. Where such a situation is present and a standard is not used, the Agency must document and explain the reasons in the decision documents. Federal criteria and advisories, and State standards also will be *considered* in fashioning CERCLA remedies and, if appropriate, relevant portions will be used. If EPA does not use a relevant part of these standards, criteria or advisories in the remedial action, the decision documents will state the reasons.

A. On-site Response Actions

(1) For removal actions, EPA's policy is to pursue actions that will meet applicable or relevant standards, and criteria of other Federal environmental and public health laws to the maximum extent practicable, considering the exigencies of the situation.

(2) For remedial actions, EPA's policy is to pursue remedies that attain or exceed applicable and relevant standards of other Federal public health and environmental laws, unless specific circumstances, identified below, exist.

CERCLA procedural and administrative requirements will be modified to provide safeguards similar to those provided under other laws. Application for and receipt of permits is not required for on-site response actions taken under the Fund-financed or enforcement authorities of CERCLA.

R. Off-Site Response Actions

CERCLA removal and remedial activities that involve the removal of hazardous substances from a CERCLA site to off-site facilities for proper storage, treatment or disposal must be in compliance with all applicable or relevant standards of Federal environmental and public health statutes.

Off-site facilities that are used for storage, treatment, or disposal of Superfund wastes must have all appropriate permits or authorizations.

If the facility or process that is being considered for receipt of the Superfund wastes has not been permitted or authorized, the State or responsible party will be required to obtain all appropriate permits. A State's responsibility for obtaining any appropriate Federal, State or local permits (e.g. RCRA, TSCA, NPDES, Clean Air, etc.) will be specified in a contract or cooperative agreement with the State as part of its assurances required under section 104(c) of CERCLA.

III. Federal and State Requirements That May Be Relevant or Applicable to Response Actions

Federal and State environmental standards, guidance and advisories fall into two categories:

- Federal standards that are relevant or applicable.
- Other standards, criteria, advisories or guidance to be considered.

A complete list of both categories of requirements is attached. This list is our initial effort. A revised and annotated list will be included in the forthcoming Guidance for Feasibility Studies.

A. Federal Standards That Are Relevant or Applicable

Applicable standards are those standards that would be specifically triggered by the circumstances associated with the proposed Superfund remedy except for the fact that the proposed action would be undertaken pursuant to CERCLA section 104 or section 106.

Relevant standards are those designed to apply to circumstances sufficiently similar to those encountered at CERCLA sites in which their application would be appropriate at a specific site although not legally required. Standards also are relevant if they would be legally applicable to CERCLA § 104 or § 106 actions but for legal technicalities such as trigger dates or definitions. For example, TSCA PCB standards would be relevant even though the PCBs were produced prior to January 1976, which triggers TSCA requirements.

B. Other Requirements, Advisories or Guidances To Be Considered

This category includes other standards, criteria, advisories and guidance that may be useful in developing Superfund remedies. These requirements, advisories and guidances were developed by EPA, other Federal Agencies and the States. The data underlying these requirements may be used at Superfund sites in an appropriate way.

IV. Implementation

A. Removal Actions

For both on and off-site removal actions, the On-Scene-Coordinator should consult with the Regional Response Team within the framework of the Regional Contingency Plan to determine the most effective action.

(1) *On-site.* For on-site removal actions, the OSC should attempt to *attain* all Federal applicable or relevant public health or environmental standards. The OSC also should *consider* other Federal criteria, guidance and advisories as well as State standards in formulating the removal action. However, because removal actions often involve situations requiring expeditous action to protect public health, welfare, or the environment, it may not always be feasible to fully meet them. In those circumstances where they cannot be attained, the decision documents, OSC reports, or other documents should specify the reasons.

(2) *Off-site.* Off-site facilities that are used for storage, treatment, or disposal of Superfund wastes must have all appropriate permits or authorizations.

B. Remedial Actions

1. *Presentation and Analysis of Alternatives.* As part of the feasibility study (FS), at least one alternative for each of the following must, at a minimum, be evaluated within the requirements of the feasibility study guidance and presented to the decision-maker.

(a) Alternatives for treatment or disposal in an off-site facility, as appropriate;[1]

(b) Alternativs which *attain* applicable and relevant Federal public health or environmental standards;

(c) As appropriate, alternatives which *exceed* applicable and relevent public health or environmental standards;

(d) Alternatives which do not attain applicable or relevant public health or environmental standards but will reduce the likelihood of present or future threat from the hazardous substances. This must include an alternative which closely approaches the level of protection provided by the applicable or relevant standards and meets CERCLA's objective of adequately protecting public health, welfare and environment;

(e) A no action alternative.

In some cases, there may be some overlap between these alternatives.

2. *Selection of Remedy.* The decision-maker will consider all of the alternatives arrayed in the feasibility study and will give primary consideration to remedies that attain or exceed applicable or relevant Federal public health and environmental standards. Where the selected remedy involves an EPA standard, criterion, or advisory, the decision-maker will ensure appropriate coordination with affected EPA programs.

In appropriate cases, the decision-maker may select a remedial action that includes both on and off-site components.

The decision-maker may select an alternative that does not attain applicable or relevant standards in one of the following circumstances, recognizing that a consideration in making this determination is the extent to which the standard was intended to apply to the specific circumstances present at the site.[2]

a. The selected alternative is not the final remedy and will become part of a more comprehensive remedy;

b. All of the alternatives which meet applicable or relevant standards fall into one or more of the following categories:

(i) *Fund-Balancing*—For Fund-financed actions only; exercise the Fund-balancing provisions of CERCLA section 104(c)(4);

(ii) *Technically impracticality*—It is technically impractical from an engineering perspective to achieve the standard at the specific site in question;

(iii) *Unacceptable environmental impacts*—All alternatives that attain or exceed standards would cause unacceptable damage to the environment; or

(c) Where the remedy is to be carried out pursuant to CERCLA section 106; the Hazardous Response Trust Fund is unavailable or would be used; there is a strong public interest in expedited clean up; and the litigation probably would not result in the desired remedy.

Where one of these situations is present, the decision-maker *may* select an alternative which does not attain or exceed applicable or relevant public health or environmental standards. The basis for not meeting the standard must be fully documented and explained in the appropriate decision documents.

The Agency anticipates that most of CERCLA remedial actions *will* attain or exceed applicable or relevant public health or environmental standards. However, where the specific circumstances discussed above preclude the selection of a remedy that attains standards, the decision-maker will select the alternative that *most closely approaches the level of protection* provided by the applicable or relevant standard, considering the reasons for not meeting that standard.

EPA also will use appropriate Federal public health and environmental criteria, advisories, and guidance and State standards in developing appropriate remedial alternatives. If the decision-maker determines that such

[1] These alternatives must be consistent with forthcoming guidance on "Procedures for Implementing CERCLA Delegations for Off-Site Response Actions." In some cases, off-site disposal or treatment may not be feasible and this alternative may be eliminated during initial screening of alternatives. The decision documents should reflect this screening.

[2] In determining whether a particular standard is applicable or relevant the decision-maker should refer to the attached list "Applicable or Relevant Requirements." For example, RCRA did not "contemplate" the regulation of the indiscriminant disposal of waste over 210 miles of roadway, or the contamination of a river bed with hazardous waste. In such situations, RCRA regulations would *not* be applicable per se, but on a case-by-case basis part of the regulation may be relevant.

standards, criteria, advisories or guideance are relevant, but are not used in the selected remedial alternative, the decision documents will indicate the basis for not using them.

For Fund-financed actions, where State standards are part of the cost-effective remedy, the Fund will pay to attain those standards. Where the cost-effective remedy does not include those State standards, the State may pay the difference to attain them.

3. *Administrative and Procedural Aspects.* The following modifications will be made to the Superfund community relations program to ensure that it provides a similar level of public involvement to that provided by the permitting programs of other environmental laws:

• A fact sheet should be included with the public notice and feasibility study which is provided to the public 2 weeks before the 3 week public comment period. The fact sheet will clearly summarize the feasibility study response alternatives and other issues, including which alternatives attain or exceed public health and environmental standards and criteria. For those alternatives that do not attain applicable and relevant standards of other public health and environmental laws, the fact sheet shall identify how they fail to attain the standards and explain how they nonetheless meet the goals of CERCLA. The public notice should include a timetable in which a decision will be reached, any tentative determinations which the Agency has made, the location where relevant documents can be obtained, identification of community involvement opportunities, the name of an Agency contact and other appropriate information.

• A public notice and updated fact sheet should be prepared upon (1) Agency selection of the final response action and (2) upon completion of the final engineering design. Prior to selecting the final engineering design, the Agency may hold a public meeting to inform the public of the design alternatives and solicit comments.

• If a remedy is identified that is different from those proposed during the feasibility study public comment period, a new 3 week public comment period may be required prior to amending the record of decision, taking into consideration the features of the alternatives addressed in the public comment period.

In addition, certain aspects of the CERCLA administrative process may be modified to assure comparability with the administrative requirements (i.e. recordkeeping, monitoring) of the other environmental programs.

The CERCLA enforcement community relations program will also be modified to provide for an enhanced public participation program for both consent decrees and administrative orders. This program will be substantially equivalent to the revised program for Fund-financed actions. Furthermore, consent decrees and administrative orders will incorporate administrative requirements (i.e. recordkeeping, monitoring) similar to those mandated by other environmental programs.

V. Applicability of Policy

This policy applies to three different situations:

• A site specific FS has not yet been initiated.

• The FS has been initiated, but the remedy has not yet been selected.

• The FS is completed and the remedy has been selected.

All sites where the FS has not yet been initiated must meet all of the requirements of this policy.

Where the FS has been initiated and the remedy has not yet been selected, the requirements of this policy do not apply to Record of Decisions (RODs) signed before March 1, 1985. RODs signed before March 1, 1985, should present to the decision-maker at least one alternative that attains or exceeds applicable or relevant standards and, if it is not selected should indicate the reasons why it was not selected.

Where the FS is complete and the remedy has been selected, the decision-maker may on a case-by-case basis revise the selected remedy.

If you have any questions or comments, please contact William N. Hedeman, Director, Office of Emergency and Remedial Response (FTS 382-2180) or Douglas Cohen of his Policy Analysis Staff (FTS 382-3044).

Attachment

Applicable or Relevant Requirements

1. Office of Solid Waste

• Open Dump Criteria (RCRA Subtitle D, 40 CFR Part 257)

Note.—Only relevant to nonhazardous wastes. In most situations Superfund wastes will be handled in accordance with RCRA Subtitle C requirements.

• Hazardous Waste Regulations (RCRA Subtitle C, 40 CFR Part 264) including liner, cap, groundwater, and closure requirements under the following subparts:

F. Ground-Water Protection
G. Closure and Post Closure
H. Containers
I. Tanks
J. Surface Impoundments
K. Waste Piles
L. Land Treatment
M. Landfills
N. Incinerators

2. Office of Water

• Maximum Contaminant Levels (for *all* sources of drinking water exposure).

• Underground Injection Control Regulations.

• State Water Quality Standards (apply for surface water discharge).

• Requirements established pursuant to section 301 and section 403(c) of the Clean Water Act.

• Ocean Dumping Requirements including incineration at sea.

• Pretreatment standards for discharge into a publicly owned treatment works.

3. Office of Pesticides and Toxic Substances

• "PCB Requirements including Disposal and Marking Rule (43 FR 7150, 2-17-78); PCB Ban Rule (44 FR 31514, 5-31-79) PCB Electrical Equipment Rule (47 FR 37342, August 25, 1982); Uncontrolled PCBs Rule (49 FR 28172, July 10, 1984) and other related rulemakings."

• 40 CFR 775 Subpart J—Disposal of Waste Material Containing TCDD.

4. Office of External Affairs

• Guidelines for Specification of Disposal Sites for Dredged or Fill Material (section 404(b)(1) Guidelines, 40 CFR Part 230).

• Denial or Restriction of Disposal Site for Dredged Material: Final rule (section 404(c)).

5. Office of Air and Radiation

• Uranium mill tailing rules.

• National Ambient Air Quality Standards.

• High and low level radioactive waste rule.

• Asbestos disposal rules.

6. Other Federal Requirements

• OSHA requirements.

• Preservation of scientific, historical or archaeological data.

• D.O.T. Hazardous Materials Transport Rules.

• Regulation of activities in or affecting waters of the United States pursuant to 33 CFR 320-329.

• The following requirements are triggered by fund-financed actions:

—Preservation of rivers on the national inventory, Wild and Scenic Rivers Act, section 40 CFR 6.302(e).

—Protection of threatened or endangered species and their habitats

—Conservation or Wildlife Resources.
—Executive Orders related to Floodplains (11988) and Wetlands (11990).
—Coastal Zone Management Act.

Other Requirements, Advisories and Guidance To Be Considered

1. Federal Requirements, Advisories and Procedures

• Recommended Maximum Concentration Limits (RMCLs).
• Health Advisories, EPA, Office of Water.
• Federal Water Quality Criteria.

Note.—Federal water quality criteria are not legally enforceable. State water quality standards, developed using appropriate aspects of Federal water quality criteria, are legally enforceable. In many cases, States water quality standards do not include specific numerical limitations on a large number of priority pollutants. When there are no numerical state standards for a given pollutant, Federal water quality criteria should be considered.

• Pesticide and Food additive tolerances and action levels data.

Note.—Germane portions of tolerances and action levels may be relevant in certain situations.

• Waste load allocation procedures, EPA Office of Water.
• Federal Sole Source Aquifer requirements.
• Public health basis in listing decisions under sec. 112 of the Clean Air Act.
• EPA's groundwater protection strategy.
• New Source Performance Standards for Storage Vessels for Petroleum Liquids.
• TSCA health data.
• Pesticide registration data.
• TSCA chemical advisories (2 or 3 issued to date).
• Advisories issued by FWS and NWFS under the Fish and Wildlife Coordination Act.
• National Environmental Policy Act.
• Floodplain and Wetlands Executive Orders.
• TSCA Compliance Program Policy.

2. State Requirements

• State Requirements on Disposal and Transport of Radioactive wastes.
• State Approval of Water Supply System Additions or Developments.
• State Ground Water Withdrawal Approvals.
• Requirements of authorized (Subtitle C of RCRA) State hazardous waste programs.
• State Implementation Plans and Delegated Programs Under Clean Air Act.
• All other State requirements, not delegated through EPA authority.

Note.—Many other State and local requirements could be relevant. The guidance for feasibility studies will include a more comprehensive list.

3. USEPA RCRA Guidance Documents

A. EPA's RCRA Design Guidelines

(1) Surface Impoundments, Liners Systems, Final Cover and Freeboard Control.
(2) Waste Pile Design—Liner Systems.
(3) Land Treatment Units.
(4) Landfill Design—Liner Systems and Final Cover.

B. Permitting Guidance Manuals

(1) Permit Applicant's Guidance Manual of Hazardous Waste Land Treatment, Storage, Disposal Facilities.
(2) Permit Writer's Guidance Manual for Hazardous Waste Land Treatment, Storage, Disposal Facilities.
(3) Permit Writer's Guidance Manual for Subpart F.
(4) Permit Applicants Guidance Manual for the General Facility Standards.
(5) Waste Analysis Plan Guidance Manual.
(6) Permit Writer's Guidance Manual for Hazardous Waste Tanks.
(7) Model Permit Application for Existing Incinerators.
(8) Guidance Manual for Evaluating Permit Applications for the Operation of Hazardous Waste Incinerator Units.
(9) A Guide for Preparing RCRA Permit Applications for Existing Storage Facilities.
(10) Guidance Manual on closure and post-closure Interim Status Standards.

C. Technical Resource Documents (TRDs)

(1) Evaluating Cover Systems for Solid and Hazardous Waste.
(2) Hydrologic Simulation of Solid Waste Disposal Sites.
(3) Landfill and Surface Impoundment Performance Evaluation.
(4) Lining of Water Impoundment and Disposal Facilities.
(5) Management of Hazardous Waste Leachate.
(6) Guide to the Disposal of Chemically Stabilized and Solidified Waste.
(7) Closure of Hazardous Waste Surface Impoundments.
(8) Hazardous Waste Land Treatment.
(9) Soil Properties, Classification, and Hydraulic Conductivity Testing.

D. Test Methods for Evaluating Solid Waste

(1) Solid Waste Leaching Procedure Manual.
(2) Methods for the Prediction of Leachate Plume Migration and Mixing.
(3) Hydrologic Evaluation of Landfill Performance (HELP) Model Hydrologic Simulation on Solid Waste Disposal Sites.
(4) Procedures for Modeling Flow Through Clay Liners.
(5) Test Methods for Evaluating Solid Wastes.
(6) A Method for Determining the Compatibility of Hazardous Wastes.
(7) Guidance Manual on Hazardous Waste Compatibility.

4. USEPA Office of Water Guidance Documents

A. Pretreatment Guidance Documents

(1) 304(g) Guidance Document Revised Pretreatment Guidelines (3 Volumes).
Provides technical data describing priority pollutants and their effects on wastewater treatment processes to be used in developing local limits; describes technologies applicable to categorical industries.

B. Water Quality Guidance Documents

(1) Ecological Evaluation of Proposed Discharge of Dredged Material into Ocean Waters (1977).
(2) Technical Support Manual: Waterbody Surveys and Assessments for Conducting Use Attainability Analyses (1983).
Outlines methods for conducting use attainability analyses under the Clean Water Act.
(3) Water-Related Environmental Fate of 129 Priority Pollutants (1979).
Describe the transformation and transportation of priority pollutants.
(4) Water Quality Standards Handbook (1983).
Provides an overview of the Criteria Standards Program under the Clean Water Act and outlines methods for conducting criteria standards modification.
(5) Technical Support Document for Water Quality-based Toxics Control.

C. NPDES Guidance Documents

(1) NPDES Best Management Practices Guidance Manual (June 1981).
Provides a protocol for evaluating BMPs for controlling discharges of toxic and hazardous substances to receiving waters.
(2) Biomonitoring Guidance, July 1983, subsequent biomonitoring policy statements, and case studies on toxicity reduction evaluation (May 1983).

D. Ground Water/UIC Guidance Document

(1) Designation of a USDW.
(2) Elements of Aquifer Identification.

(3) Interim guidance for public participation.

(4) Definition of major facilities.

(5) Corrective action requirements.

(6) Requirements applicable to wells injecting into, through or above an aquifer which has been exempted pursuant to § 146.104(b)(4).

(7) Guidance for UIC implementation on Indian lands.

5. USEPA Manuals From the Office of Research and Development

(1) EW 846 methods—laboratory analytic methods.

(2) Lab protocols developed pursuant to Clean Water Act section 304(h).

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Part III

Department of the Interior

Office of the Secretary

Bureau of Reclamation

Proposal for Implementation of Operating Criteria and Procedures for Newlands Project—Nevada and California

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Bureau of Reclamation

Availability of an Environmental Assessment; Promulgation and Implementation of Operating Criteria and Procedures for Newlands Project—Nevada and California

AGENCY: Office of the Secretary, Bureau of Reclamation, Interior.

ACTION: Proposed revised criteria and procedures.

SUMMARY: The Department of the Interior is proposing to implement revised operating criteria and procedures (OCAP) for the operation of the Newlands Project and the Truckee and Carson River Basins in 1985. The OCAP are needed to achieve efficient water management techniques, to ensure that irrigation and other water users receive the water to which those users are legally entitled, and to ensure that water in excess of such entitlements is not diverted from the Truckee River at Derby Dam or released from Lahontan Dam.

DATES: Comments should be received no later than March 14, 1985. Public meetings will be held on February 20, 1985 in Fallon, Nevada and on February 21, 1985 in Reno, Nevada.

ADDRESSES: Send comments to David G. Houston, Regional Director, Bureau of Reclamation, Mid-Pacific Region, 2800 Cottage Way, Sacramento, California 95825.

The public meetings will be held as follows:

February 20, 1985—7:30 p.m. at the Fallon Community Convention Center, 100 Campus Way, Fallon, Nevada 89406

February 21, 1985—7:30 p.m. at the Reno-Sparks Convention Center, South Meeting Room A1, 4590 South Virginia, Reno, Nevada 59502

FOR FURTHER INFORMATION CONTACT: Mr. James Moore, Regional Supervisor of Water and Power Resources Management, Mid-Pacific Regional Office, Telephone: (916) 484–4201.

SUPPLEMENTARY INFORMATION: In compliance with the National Environmental Policy Act of 1969 (NEPA), the Endangered Species Act, the National Historic Preservation Act, the Executive Orders on Floodplain Management (E.O. 11990) and Protection of Wetlands (E.O. 11988), and related Federal guidelines (40 CFR Part 1500–1508, 516DM1–7, 50 CFR Part 402) the Bureau of Reclamation (Reclamation) is notifying the public that an environmental assessment has been prepared to evaluate the impacts of promulgating and implementing Operating Criteria and Procedures (OCAP) for the Newlands Project, Nevada and California.

The Newlands Project is located primarily in West-Central Nevada, and diverts flows from the Carson and Truckee Rivers for irrigation and other uses. The project was completed by Reclamation in 1915 and has been operated and maintained by Truckee-Carson Irrigation District since 1926. Reclamation's objectives in implementing OCAP are to minimize Newlands Project diversions from the Truckee River while providing the legal water entitlement to each water right holder on the Newlands Project. Reclamation has no discretion in accepting the mandated annual water duties (3.5 acre-feet per acre per year of irrigated bottom land and 4.5 acre-feet per year of irrigated bench land).

Some discretion, however, is allowed in translating water duties into a total annual diversion for the project and developing operating criteria. Reclamation has considered reasonable alternatives in this environmental assessment.

Operating Criteria and Procedures for the Newlands Project, Carson and Truckee River Basins, Nevada and California

I. Objectives

The Secretary of the Interior is proposing these Operating Criteria and Procedures (OCAP) for the Newlands Project (Project) for water year 1985. Their purposes are: To achieve efficient water management techniques; to implement equitable operating procedures for the Project, including the Fallon Reservation (FIR) land; and to ensure that irrigation and other water uses receive the water to which these uses are entitled under applicable court decrees, and that water in excess of such entitlements is not diverted at Derby Dam or released from Lahontan Dam.

These OCAP supersede prior regulations, operating criteria and procedures, and instructions regarding operations of the Newlands Project (June 27, 1979; 44 FR 37561).

II. Definitions

Agriculture uses (of water)—Irrigation of eligible land for crop production.

Allowable diversion—The total diversion quantity of water, including conveyance losses, necessary in any year to provide the water duty to all eligible lands and all eligible users in the Newlands Project.

Bench land—Land consisting generally of coarse textured soils which are well drained. Such land is entitled to receive up to 4.5 acre-feet of water per acre per year under the provisions of the Alpine and Orr Ditch Decrees.

Bottom land—Land consisting generally of fine textured soils which are poorly drained. Such land is entitled to receive up to 3.5 acre-feet of water per acre per year under the provisions of the Alpine and Orr Ditch Decrees.

Carson Division—The portion of Project lands that receives water released from Rock Dam Ditch or Lahontan Reservoir.

Domestic and other uses—Nonagricultural uses of water such as landscape irrigation, livestock water, human consumption, and municipal and industrial uses, pursuant to the Alpine and Orr Ditch Decrees.

Eligible land—Land within the Newlands Project that: (1) Is entitled to water pursuant to the Alpine and Orr Ditch Decrees and has a valid right to water; (2) has been classified as irrigable utilizing the Bureau of Reclamation (Bureau) land classification standards; and (3) is acutally irrigated with Project water or with nonproject water pursuant to a Warren Act contract or applicable decrees.

Eligible users—Water users within the Newlands Project who have permits for domestic and other uses.

Federal form—The 1985 form (No. MP–900) on which the District will submit changes since 1984 in eligible lands to be irrigated. This form will be used as documentation in calculating the initial 1985 entitlement.

Irrigable land—Land designated class 1 to 4, inclusive, according to the Bureau land classification system (Reclamation Instruction Series 510).

Irrigated land—Land to which Project water is applied.

Miscellaneous deliveries—Water delivered for domestic and other uses.

Prime water—First-use Project water that is not commingled with return flows or drainage.

Privately owned water—Water, the right to which was purchased by the District, which is stored in Donner Lake.

Project facilities—Facilities of the Project, including Lake Tahoe Dam, Derby Dam, Lahontan Dam, Truckee Canal, Carson Diversion Dam, and all canals, drains, regulating reservoirs used in distribution and drainage of water, as well as the powerplants at Lahontan Dam and on the V-Canal.

Project irrigation questionnaire—The 1984 questionnaire on which users verified or corrected their records of

water right land and the number of those acres to be irrigated.

System efficiency—The ratio of the water delivered from a system to the water diverted into that system. For example, a system from which 600 acre-feet was delivered and into which 1,000 acre-feet was diverted has a 60 percent system efficiency. In the Newlands Project this definition means the sum of water delivered to farm headgates divided by the water diverted into the canal delivery systems.

Total eligible acres—The total acres of all eligible land.

Truckee Division—Project lands that can be served only from the Truckee Canal.

Vested water right—Water rights that existed prior to authorization and construction of the Project.

Waste—Nonbeneficial use of Project water as defined by Nevada State law.

Water duty—The quantity of water in acre-feet per acre per year that the Orr Ditch and Alpine Decrees established as maximum allowances for delivery to the land or such lesser amount that may be established pursuant to the Nevada laws relating to beneficial use.

Water right—A right to the use of water; in this instance, it is appurtenant to a parcel of land and provides for beneficial agricultural use on that land.

Water right land (water righted)—Land that has a right to the use of water.

III. Summary of OCAP Requirements

The following conditions, discussed in more detail in this document, must be observed by the Truckee-Carson Irrigation District (District).

1. The District shall deliver water only to eligible land and eligible users.

2. The District shall not deliver, or allow the delivery of, water to eligible land in excess of the water duty specified in the Alpine and Orr Ditch Decrees.

3. The District shall not exceed the Project's allowable diversion as specified herein.

4. The District shall operate Derby Diversion Dam, Lahontan Dam, and the Truckee Canal as specified.

5. All releases of water for power generation shall be incidental to releases for irrigation and domestic purposes, or authorized precautionary drawdowns.

6. All Project water delivered using Project facilities including the FIR lands shall be subject to the regulations contained in these OCAP.

7. Project facilities shall not be used for the transportation or delivery of other than Project water (including privately owned water) unless such transportation or delivery is the subject of a contract with the Bureau executed pursuant to the terms of the Warren Act.

8. The District shall release water from Lahontan Dam only: (a) To provide water to eligible lands within the Carson Division and to eligible users as provided for herein; (b) to meet the water rights below Sagouspe Dam decreed in the Alpine decision; and (c) as precautionary drawdowns and as spills to the extent allowed herein.

9. The District shall implement a pricing system for repayment and O&M charges as specified herein.

10. The District shall comply with all reporting procedures provided for herein.

11. The District shall implement the water measurement program as described, and water flow shall be measured as specified by the District.

12. The District shall not deliver water or permit its use except as provided for herein, and it shall prohibit any water use that does not meet the conditions specified herein, including irrigation of ineligible land and domestic and other uses of water made without permit. Such deliveries shall not resume without the prior approval of the Secretary or his designee.

IV. Conditions for Water Delivery

For the purpose of these OCAP, water delivery is categorized as irrigation or miscellaneous. Irrigation delivery is water used for irrigation on eligible land. Miscellaneous delivery is water used for domestic and other uses. This section of the OCAP reviews the conditions under which these two types of water deliveries may be made, and when delivery is prohibited.

A. Irrigation Deliveries

Project irrigation deliveries may be made ony to eligible land. Eligible land is that land within the Newlands Project which: (i) has a valid water right; (ii) has been classified as irrigable utilizing Bureau land classification standards; (iii) is actually irrigated with water from the Project delivery system. Eligible land may receive the quantity of water which may be beneficially used on it, but not more than the amount in acre-feet per acre per year established as maximum farm headgate delivery allowances by the Orr Ditch and Alpine Decrees.

1. Valid Water Rights

In order to be eligible for irrigation deliveries from the Project, the land to be irrigated must have a valid water right. The location and acreage of valid water rights are documented in various sources. A study of valid water rights was conducted in 1984; an improved method will be used in 1985 to determine specifically the valid water rights.

a. *1984 Study of Valid Water Rights.* In 1984, a study of valid water rights was made. A Newlands Project Irrigation Questionnaire (questionnaire) was mailed to each user with a District ledger card. The user was requested to verify, or correct the record as needed, to indicate the number of acres of water right land the user intended to irrigate in 1984, and to sign and return the questionnaire. Each questionnaire received by the Bureau was then reviewed to make certain that the indicated water right locations were within the District boundaries and that other information on the questionnaire was completed correctly. The data from all of these questionnaires were then entered into a computer for later use by the Bureau.

Also, in 1984, a set of mylar maps supplied to the Bureau by the District was reviewed and analyzed. This map set included one sheet for each section of land in the District, which indicated the location of the water right acres, and included a table summarizing the water right acres in each quarter-quarter section. Information on this map set was then entered into the Bureau's verification system, which will permit the comparison of land actually irrigated with the location and acreage of water rights.

The 1984 study also considered water right transfers filed by July 15, 1984 with the Nevada State Engineer for all Newlands Project lands except those within the FIR. If a water right transfer had been filed and all other eligibility criteria were met, then water was made temporarily available to the land in 1984.

b. *1985 Determination of Valid Water Rights.* During the summer of 1984, the Bureau awarded two contracts to review the chain of title for water right lands in the Project, and to compare existing water right information to improve the water right data base. The Bureau also has requested the Nevada State Engineer to determine the validity and location of water rights within the Project. Applications for water right transfers on file with the Nevada State Engineer must be approved and permits issued prior to water delivery in 1985 for all lands in the Newlands Project except those lands within the FIR. Water will be made temporarily available to FIR lands for irrigation in 1985 if applications for water right transfers are filed by July 15, 1985, and the lands meet all of the eligibility criteria. Attachment A contains additional information regarding water right land.

C. *Transfer of Water Rights.* Water rights may be transferred pursuant to Nevada State law. An application must be filed with the State Engineer for a change in point of diversion, place of use, or manner of use, pursuant to the Alpine and Orr Ditch Decrees. When a transfer application is approved, and a permit issued, the Bureau will correct the data base for valid water right locations accordingly.

2. Irrigable Classification

In order to be eligible for irrigation deliveries, land must also be classified as irrigable according to Reclamation Instructions Series 510. Much of the land for the Project was classified in the 1920's; several subsequent classifications were made in the 1940's and 1960's. Most recently, by Letter of Agreement dated February 2, 1984, the District requested the Bureau to classify 8,000 acres. Land will be considered irrigable only if it has received a final determination of irrigability by the Secretary of the Interior, except in the case of the FIR which must receive an initial determination of irrigability by June 15, 1985, for deliveries during 1985.

3. Land Scheduled for Irrigation and Actually Irrigated

Acreages of eligible water right lands scheduled to be irrigated where estimated, in the 1984 study, from the responses on the questionaires. The questionnaires identified the acres of water right land that the water users expected to irrigate during the 1984 season. The questionnaires, after being reviewed for completeness, were used to compute the 1984 allowable diversion.

The acreage actually irrigated was determined from infrared aerial photography taken on June 19 and 20, 1984. The Bureau then conducted a field inspection on the Project during June 25–27, 1984, to ensure an accurate interpretation of the photographs. The total acreage of the water right land actually irrigated was determined during July 1984.

Before February 1, 1985, the District is to provide the Bureau any anticipated changes in irrigated acreage from that actually irrigated in 1984. The District will determine these changes from information provided by the water users on the revised Federal form No. MP–900. That information will be used to make the initial calculation of the 1985 allowable diversion.

The acreage actually irrigated in 1985 will be determined from a Landsat 5 satellite image of the Project to be acquired and processed by the Bureau. In processing the Landsat 5 image, the location and acreage of land actually irrigated in the Project will be identified. Those results will be used to make the midseason adjustment to the 1985 Project entitlement. The revised maps and tables will be provided to the District for its review. The District will be given time to review the results; the Bureau can then make any necessary adjustments resulting from the review and discussion of findings.

4. Water Duty

The water duty as assigned by the Orr Ditch and Alpine Decrees is a maximum of 4.5 acre-feet per acre per year for bench lands, and 3.5 acre-feet per acre per year for bottom lands. All water use is also subject to the test of beneficial use pursuant to Nevada State law. It therefore is necessary to differentiate between the bench and bottom lands.

The bench and bottom lands were determined in the 1984 study by using the SCS publication "Soil Survey, Fallon-Fernley Area, Nevada, Parts of Churchill, Lyon, Storey, and Washoe Counties." The bottom lands characteristically are fine textured and poorly drained soils, while the bench lands characteristically are coarse textured and well-drained soils. This general definition is found in court records of the Alpine and other cases and is used by the Bureau. While this is not a SCS definition, the information contained in the SCS survey can be used to separate the Newlands Project soils into bench and bottom lands as so defined.

The specific criteria used by the Bureau to differentiate between bench and bottom soils are water-table depths, and available water-holding capacities for the 5-foot spoil profile. The water-table depth is an indication of how well a soil is drained; the available water holding capacity is determined by the soil texture and depth. Soil is considered bottom land if the water table depth is 5 feet or less below the soil surface for 5 consecutive days during the irrigation season and/or has an available water-holding capacity of 8 inches or greater for the first 5 feet of the soil profile. If the water table during the irrigation season is deeper than 5 feet below the soil surface and the available water-holding capacity is less than 8 inches in the first 5 feet of the soil profile, then that soil is considered bench land. The SCS soil survey provides the information on water-table depths and available water-holding capacity. The onsite investigations by the Bureau will provide additional information on the water-table depths.

These two criteria of available water-holding capacity and water-table depth also related to crop irrigation requirements. The literature shows that a crop like alfalfa can be expected to derive approximately 25 to 50 percent of its seasonal water requirements from high water tables.

The available water-holding capacity of the soil is important because of its effect on irrigation efficiencies. This effect is most important with the surface irrigation systems commonly used in the Newlands Project; however, if sprinkler systems were used where appropriate, the effect would be less pronounced. Three main factors related to irrigation efficiencies affected by available water-holding capacity are deep percolation, uniformity of application, and frequency of irrigation. Soils with low available water-holding capacities can be expected to have greater deep percolation losses, less uniformity of application, and higher evaporation losses with more frequent irrigations than soils with a higher available water-holding capacity. Consequently, water losses are expected to be greater when irrigating soils with low water-holding capacities.

The Bureau used the SCS soil survey detailed maps to produce a composite bench and bottom land map of the District. While the detailed soil maps are based on years of field work, the soil types may not always be precise for every parcel of land. Therefore, onsite investigations are required to distinguish between bench and bottom lands on those parcels. Such investigations will be made in an annual field survey at the request of water users through the District.

Some irrigated fields have a mixture of both bench and bottom lands. Because it may be impractical to deliver 3.5 acre-feet per acre per year to that portion of a field that is bottom land and 4.5 acre-feet per acre per year to the bench portion, an alternate procedure is required. Two alternative methods of handling this situation are suggested, one of which will be selected for the final OCAP:

Option 1—The total annual water duty to fields with a mixture of bench and bottom lands shall be a weighted average calculated as 3.5 acre-feet per acre, multiplied by the acreage of bottom lands, plus 4.5 acre-feet per acre multiplied by the acreage of bench lands.

Option 2—Those fields with more bench land than bottom land shall be designated as bench land and receive 4.5 acre-feet per acre per year. Those fields with more bottom land than bench will receive 3.5 acre-feet per acre per year.

The soil mapping units in the SCS Fallon-Fernley Soil Survey were used to produce a bench and bottom land map of the Project which was used to calculate the 1984 allowable diversion. A copy of this map was provided to the District; additional copies can be obtained by interested parties from the Bureau office in Sacramento.

While the 1984 bench and bottom land map was based on the best information available, some areas of land may not be accurately represented because of the scale of the soil mapping. Therefore, at the District's request, the Bureau is presently conducting onsite reviews of the soils. That field review will be completed during the spring of 1985, and any required changes to the bench and bottom land map will then be made by May 15, 1985.

An alternative to the above method of determining water duties on individual parcels of land would be to utilize the District's present classification system. The data from the District's bench and bottom lands map would be entered into the Bureau's verification system and used to calculate the allowable diversion for the Newland's Project.

B. Miscellaneous Delivery

Miscellaneous deliveries of Project water are the approved uses of water for domestic and other uses.

1. Domestic and Other Uses

The District shall issue permits for all domestic and other uses. In order for those uses to be included in the calculation of the allowable diversion, the District must submit a record of those permits to the Bureau, showing the purpose and amount of water usage the District proposes to allow under each permit. The permit will then be subject to Bureau review and approval.

2. Adjustments to Domestic and Other Uses

When the District issues new permits, modifies existing permits, or cancels old permits for domestic and other uses, the Bureau shall be notified promptly in writing. When appropriate documentation is received by the Bureau, the allowable diversion will be adjusted accordingly. The Bureau may be notified of requested changes in domestic and other uses at any time during the year.

C. Prohibited Delivery

The District shall not deliver water or permit its uses except as provided for herein, and it shall prohibit any water use that does not meet the conditions specified herein, including irrigation of ineligible land, and domestic and other uses of water made without a permit.

V. Allowable Diversion

The calculation to determine the allowable diversion is represented by the following formula:

$$AD = \sum_{i=1}^{N} \frac{EA_i\ (WD_i) + DU_i}{SE_i}$$

with

N = Number of Project subareas
AD = Allowable diversion, acre-feet
EA = Eligible acreage, acres
WD = Water duty, acre-feet per acre per year
DU = Domestic and other use, acre-feet per year
SE = System efficiency, percent
i = Project subarea subscript

In this equation, eligible acres are related to water rights, irrigability, and irrigated land status. Eligible acres have been discussed in Section IV. The allowable diversion is equal to the sum of each eligible acre times the appropriate water duty plus any domestic and other uses, divided by the corresponding system efficiency.

A. 1984 Allowable Diversion

The 1984 allowable diversion of water from the Carson and Truckee Rivers for use on the Project is 386,500 acre-feet (Table 1.A) for the period between November 15, 1983, and November 15, 1984.

The 1984 allowable diversion was calculated using:

1. Eligible acres as determined from the questionnaires; water right transfer applications on file as of July 15, 1984; and Phase I land classification records of the February 2, 1984 Agreement.

2. Water duties as established by the Orr Ditch and Alpine Decrees (i.e., 3.5 acre-feet per acre of bottom land and 4.5 acre-feet per acre of bench land), and the Bureau's bench and bottom land map.

TABLE 1.A.—NEWLANDS PROJECT 1984 ALLOWABLE DIVERSION BASED ON THE MARCH 15, 1984, INTERIM INSTRUCTION

	Acres	× Water duty (feet)	= Acre-feet
I. Truckee Division			
A. Bench lands	4,588	4.5	20,641
B. Bottom lands	0	3.5	0
C. Water right transfers bench [1]	29	4.5	130
D. Water right transfers bottom [1]	0	3.5	0
E. Domestic and other uses			[2] 0
Truckee acres	4,617		
Total Truckee Division water duty			20,771
Total Truckee Division diversion requirement at 75 percent distribution system efficiency			27,695
II. Carson Division			
A. Bench lands	6,414	4.5	28,863
B. Bottom lands	51,894	3.5	181,629
C. Water right transfers bench [1]	579	4.5	2,606
D. Water right transfers bottom [1]	627	3.5	2,195
E. Domestic and other uses			[2] 0
Carson acres	59,514		
Total eligible acres	64,131		
Total Carson Division water duty			215,293
Total Carson Division diversion requirement at 60 percent distribution system efficiency			358,822
1984 Total Newlands Project allowable diversion			386,517

[1] Total water right transfers only include Phase I land class areas on which TCID has provided water right transfer maps.
[2] Domestic and other uses are not included as TCID has not provided documentation to the Bureau at this time.

3. Domestic and other uses were not addressed.

4. System efficiencies of 75 percent on the Truckee Division and 60 percent on the Carson Division were used to calculate the allowable diversion. These values are based on previous studies and estimates as described in a July 9, 1981, letter to the Regional Director from the Project Manager in Carson City.

The District has argued that the 1984 system efficiencies of 75 percent for the Truckee Division and 60 percent for the Carson Division are too high to be achievable with existing water management controls and practices. Prior to the 1985 irrigation season, Bureau personnel from the Lahontan Basin Projects Office will work closely with the District to determine efficiencies that would be achievable. It is anticipated that the efficiencies will be in the range of 70 to 80 percent for the Truckee Division and 56 to 60 percent for the Carson Division. In subsequent years, these efficiencies will be determined more precisely with the implementation of the water measurement program. When more precise values of distribution system efficiencies are established with the water measurement program, these values will be used to calculate allowable project diversions.

B. 1985 Allowable Diversion

The initial calculation of the 1985 allowable diversion will be based on the

1984 verification of eligible acres (Table 1.B) and modified as stated below:

1. Eligible acres will be modified according to the results of the water right acreage analysis (Attachment A); transfers of water rights as documented by the District and approved by the State Engineer or transfers on file for the FIR lands; Federal forms filed with the Bureau; and Bureau land classsification results.

TABLE 1.B.—NEWLANDS PROJECT 1984 ALLOWABLE DIVERSION BASED ON THE MIDSEASON VERIFICATION

	Acres	× Water duty (feet)	= Acre-feet
I. Truckee Division			
A. Bench lands	3,955	4.5	17,798
B. Bottom lands	185	3.5	648
C. Water right transfers bench [1]	25	4.5	113
D. Water right transfers bottom [1]	0	3.5	0
E. Domestic and other uses			[2] 0
Truckee acres	4,165		
Total Truckee Division water duty			18,559
Total Truckee Division diversion requirement at 75 percent distribution system efficiency			24,745
II. Carson Division			
A. Bench lands	4,876	4.5	21,942
B. Bottom lands	[3] 45,487	3.5	159,205
C. Water right transfers bench [1]	543	4.5	2,444
D. Water right transfers bottom [1]	598	3.5	2,093
E. Domestic and other uses			[2] 0
Carson acres	51,504		
Total eligible acres	55,669		
Total Carson Division water duty			185,684
Total Carson Division diversion requirement at 60 percent distribution system efficiency			309,473
1984 Total Newlands Project allowable diversion			334,218

[1] Total water right transfers only include Phase I land class areas on which TCID has provided water right transfer maps.
[2] Domestic and other uses are not included as TCID has not provided documentation to the Bureau at this time.
[3] Includes 82.6 acres in T. 21 N, R. 30 E., Sec. 31 not in the study area but in TCID.

2. Water duties will be modified according to adjustments in the bench and bottom lands map as warranted by a Bureau field investigation requested by the District.

3. Domestic and other uses will be adjusted as documented by the District and approved by the Bureau.

The 1985 midseason adjustment to the allowable diversion will modify the initial 1985 calculation. It will be based on the Landsat 5 satellite images which will show the actual location and acreage of irrigated eligible land (Attachment B).

The satellite imagery used for the 1985 midseason allowable diversion is utilized as a tool to determine which land within the Project is actually irrigated during the water year. The District will be provided with the resulting tables and maps of the Bureau's verification system. The District may review and challenge the results if errors are discovered.

C. Monitoring of the Allowable Diversion

The allowable diversion will be monitored by measuring flows at key locations and at selected monitoring sites (Attachment C). Specifically, the monitoring of the 1985 allowable diversion will consist of adding flows measured at:

1. Truckee Canal near Wadsworth—U.S. Geological Survey (USGS) gage number 10351300;

2. Carson River below Lahontan—USGS gage number 10312150; and

3. Rock Dam Ditch near the end of the concrete lining; and substracting:

1. Truckee Canal near Hazen—USGS gage number 10351400;

2. Carson River below Fallon and Sagouspe Dams for satisfying water rights outside of the TCID boundaries—USGS gage number 10312280;

3. Seepage losses in the Truckee Canal; and

4. Spills and precautionary releases at Lahontan Dam that are made in conformance with approved criteria.

VI. Operations and Management

A. Diversions at Derby Dam

In order to minimize the rate of flow reduction in the Truckee River below Derby Diversion Dam, increases in canal diversions which would reduce riverflow below Derby Diversion Dam by more than 20 percent in a 24-hour period shall not be allowed when Truckee River flow above Derby Dam as measured by the gage at Vista, Nevada, is less than or equal to 100 cubic feet per second (ft ^{3}/s).

B. Truckee Canal Deliveries to Lahontan Reservoir

Recognizing that the Truckee Canal is 31 miles long, and that it would be impractical to totally eliminate inflow to Lahontan Reservoir during periods when diversions are not allowed by this OCAP, the District shall operate the Truckee Canal to hold the average terminal flow to 20 ft ^{3}/s or less during times when diversions are not allowed. The District may serve the Rock Dam Ditch for the Truckee Canal only with prior approval of the Project Manager, Lahontan Basin Projects Office.

C. Diversions From the Truckee Canal to Lahontan Reservoir or to the Carson River

In this section even different sets of criteria of allowing water to be diverted from the Truckee River to the Carson River (or Lahontan Reservoir) are presented.

These criteria encompass all foreseeable ranges of target end-of-month contents in Lahontan Reservoir with resulting allowable diversions from the Truckee River. These criteria result from the efforts of a technical work group which has been meeting frequently since mid-August 1984. Numerous diversion and target end-of-month contents for Lahontan Reservoir had been suggested and evaluated by the work group. The work group is comprised of technical representatives of TCID, Pyramid Lake Paiute Indian Tribe, U.S. Fish and Wildlife Service, Sierra Pacific Power Company, the State of Nevada, and the Bureau of Reclamation.

Under any criteria selected, the following are required:

1. The District shall coordinate the operation of Derby Dam, Truckee Canal, and Lahontan Reservoir, as directed, to stay within the allowable diversion as outlined in Section V.

2. Sufficient water, if available, shall be diverted into the Truckee Canal to meet the direct irrigation requirements of the Truckee Division.

The seven criteria presented below fall into two different classifications—firm target end-of-month contents for Lahontan Reservoir (represented by 1967 and 1973 criteria), and a modified forecasting method with five sets of criteria that was developed by the work group. Any of the seven criteria, or a combination of them, could be selected for the final OCAP. However, the modified forecasting method is the procedure more likely to be selected than the 1967 or 1973 criteria.

All elevation-capacity relationships shown in the following sections are based on BOR's elevation-capacity table dated February 1972.

1. Firm End-of-Month Contents

The 1967 and 1973 criteria utilize firm end-of-month Lahontan Reservoir target contents in conjunction with accumulated precipitation at Tahoe City, California. On Table 2, firm contents for both criteria are shown to facilitate comparision. (CR67 refers to the 1967 criteria and CR73 refers to the 1973 criteria.)

TABLE 2.—LAHONTAN RESERVOIR STORAGE LIMITATIONS FOR 1967 AND 1973 CRITERION

Operating month	Criteria	If accumulated precipitation from October 1 to date at Tahoe City (TC), California (inches)	Lower limit [1]		Upper limit	
			Elevation	1,000 acre-feet	Elevation	1,000 acre-feet
November	CR67	TC<6.0	4150.1	187.4	4150.5	190.3
		TC>6.0	4143.7	147.8	4144.1	149.9
	CR73	TC>5.0	4123.3	60.0	4124.3	63.0
		TC>5.0	4103.6	20.0	4105.8	23.0
December	CR67	TC<6.0	4153.1	209.8	4153.5	212.9
		6.0<TC<8.0	4147.0	167.4	4147.4	169.9
		6.0<TC<8.0	4131.4	88.0	4131.8	89.7
	CR73	TC<5.0	4129.3	80.0	4130.1	83.0
		5.0<TC<10.7	4123.3	60.0	4124.3	63.0
		TC>10.7	4115.4	40.0	4116.8	43.0
January	CR67	TC<8.0	4155.7	231.9	14156.1	235.3
		8.0<TC<14.0	4150.8	192.5	4151.2	195.4
		TC>14.0	4138.1	118.2	4138.5	120.1
	CR73	TC<10.7	4138.5	120.0	4139.1	123.0
		10.7<TC<16.8	4131.8	90.0	4132.6	93.0
		TC>16.8	4123.3	60.0	4124.3	63.0
February	CR67	TC<14.0	4158.2	254.3	4158.6	258.1
		14.0<TC<18.0	4154.0	216.9	4154.3	220.1
		18.0<TC<24.0	4143.7	147.8	4144.0	149.9
		TC>24.0	4133.8	98.2	4134.2	100.0
	CR73	TC<16.8	4145.8	160.0	4146.3	163.0
		16.8<TC<22.1	4138.5	120.0	4139.1	123.0
		TC>22.1	4129.3	80.0	4130.1	83.0
March	CR67	TC<18.0	4159.7	269.7	14160.1	273.6
		18.0<TC<24.0	4157.3	246.0	4157.7	249.7
		24.0<TC<30.0	4150.0	187.4	4150.5	190.3
		TC<30.0	4133.8	98.2	4134.2	100.0
	CR73	TC>22.1	4151.8	200.0	4152.2	203.0
		22.1<TC<26.1	4144.1	150.0	4144.8	153.0
		TC<26.1	4134.2	100.0	4134.9	103.0

[1]Truckee Canal Diversion to Lahontan Reservoir should be started only when water surface elevation falls below lower limit.

During the months of November through March, diversion of Truckee River water into Lahontan Reservoir via the Truckee Canal shall be made in accordance with Table 2.

For the months of April through October, the 1967 and 1973 criteria differ. The 1967 criteria are based on forecasted runoff of the Carson River for April and May, and fixed target levels for Lahontan Reservoir for the rest of the year. The 1973 criteria uses forecasted runoff plus existing storage in Lahontan Reservoir to select target levels.

a. *1967 criteria.* During the months of April and May, operation of the Truckee Canal will be based on forecasts of the April through July runoff made by the Soil Conservation Service for Carson River at Fort Churchill (Lahontan Reservoir inflow), as follows:

1. If the forecast of April through July runoff for Carson River at Fort Churchill exceeds 250,000 acre-feet, Truckee Canal diversions from Truckee River will be restricted to irrigation diversions from the Truckee Canal as described in Section VI.B.

2. If the April through July forecast of runoff is less than 200,000 acre-feet, available Truckee River water may be diverted to Lahontan Reservoir, with the objective of filling the reservoir but not causing the reservoir to spill.

3. For forecasts of between 200,000 to 250,000 acre-feet, Truckee Canal diversions to Lahontan Reservoir will be permitted only if Lahontan Reservoir storage during April or May is less than the index storage levels defined as follows. The index storage levels in Lahontan Reservoir, for the April through May period will be adjusted daily on a straight-line interpolation, beginning with an index water surface elevation of 4,150.4 ft. m.s.l. (190,000 acre-feet) on April 1, with a constant daily increase to a May 1 elevation of 4,155.5 ft. m.s.l. (229,900 acre-feet). During May, the index elevation will increase at a constant daily rate to 4,159.2 ft. m.s.l. (264,200 acre-feet) on June 1. To avoid undue fluctuations in Truckee Canal diversions, the diversion to Lahontan Reservoir may continue until the reservoir water surface elevation is 0.1 foot above the index storage level. The diversion to Lahontan Reservoir through the Truckee Canal may be resumed if the reservoir water surface elevation falls 0.2 foot below the index storage level.

During the month of June, Truckee Canal water will be released into Lahontan Reservoir, or the Carson River, to fill Lahontan Reservoir, insofar as possible without spilling.

During July through October, the Truckee Canal diversions to Lahontan Reservoir or Carson River will be restricted based on the water surface elevation of Lahontan Reservoir, as shown on the following tabulation:

TRUCKEE CANAL DIVERSION TO LAHONTAN RESERVOIR WHEN WATER SURFACE ELEVATION IS LESS THAN UPPER LIMIT

Operating month	Lower limit[1]		Upper limit	
	Elevation	Acre-feet	Elevation	Acre-feet
July	4157.3	245,900	4157.7	249,600
August	4152.7	207,000	4153.1	210,000
September	4147.0	167,500	4147.4	170,000
October	4147.8	172,500	4148.2	175,000

[1]Diversion commences only when water surface elevation falls below lower limit.

b. *1973 criteria.* During the months of April through October, the Truckee Canal will be operated in accordance with the following tabulation:

If forecasted runoff plus existing storage on April 1 is—	Continue Truckee Canal diversion to Lahontan Reservoir if storage is less than upper limit			
	Lower limit [1]		Upper limit	
	Elevation	Acre-feet	Elevation	Acre-feet
April 1:		Acre-feet		
Greater than 350,000				
Between 250,000 and 350,000	4154.3	220,000	4154.7	223,000
Less than 250,000	4159.8	270,000	4160.1	273,000
May 1:				
Between 250,000 and 350,000	4151.8	200,000	4152.2	203,000
Less than 250,000	4162.4	300,000	4162.6	303,000
June 1:				
Between 250,000 and 350,000	4144.1	150,000	4144.6	153,000
Less than 250,000	4157.7	250,000	4158.1	253,000
July 1:				
Between 250,000 and 350,000	4134.2	100,000	4134.9	103,000
Less than 250,000	4145.8	160,000	4146.3	163,000
August 1:				
Between 250,000 and 350,000	4129.3	80,000	4130.1	83,000
Less than 250,000	4131.8	90,000	4132.6	93,000
September 1:				
Less than 350,000	4119.5	50,000	4120.8	53,000
October 1:				
Less than 350,000	4115.4	40,000	4116.8	43,000

[1] Truckee Canal diversion to Lahontan Reservoir should be started only when storage recedes below lower limit.
[2] No diversion to Lahontan through October. As described in Section VI.B.

2. Modified Forecasting Criteria

The modified forecasting approach computes a monthly target end-of-month content for Lahontan Reservoir for the months of January through June. This target end-of-month content is dependent on the current month end-of-month content, remaining forecasted runoff, the irrigation demand remaining during the rest of the forecasted runoff period, and projected losses. During the rest of the year, firm end-of-month content targets are used. Five different sets of criteria have been examined. These are designated HALL1, FCST4, CHET4, ALI6, BURNS1. The precipitation and target storage parameters used in each set of criteria are shown on Tables 3, 4, and 5. The approach used is described in the following paragraphs:

The Truckee-Carson Irrigation District shall control diversions of water from the Truckee River into and through the Truckee Canal in accordance with the following criteria:

1. During the months of November and December, the District will make diversions through the Truckee Canal into Lahontan Reservoir or into the Carson River, in accordance with Table 3.

2. During the months of January through June, the District will operate Derby and Lahontan Dams based on forecasts of April through July runoff made by the Soil Conservation Service (SCS) for the Carson River at Fort Churchill as follows:

a. On the first of each month (or as near as possible) during the period, a target Lahontan Reservoir end-of-month storage will be calculated using the following relationship:

$$TS_{CM} = TS_{M/J} - (C_i * AK) + L + (C_e * CDE)$$

where:

TS_{CM} = Current month end-of-month target storage for Lahontan Reservoir

$TS_{M/J}$ = Current month end of May/June Lahontan Reservoir target storage

$C_i * A]$ = Forecasted inflow for the period, currrent month through May or June; with AJ being the SCS April through July runoff forecast for the Carson River at Fort Churchill and C_i being an adjustment coefficient.

L = Average loss from current month through May or June

TABLE 3.—LAHONTAN RESERVOIR STORAGE LIMITATIONS FOR MODIFIED FORECASTING CRITERIA

Operating month	If accumulated precipitation from October 1 to date at Tahoe City (TC), California, is:	Criteria	Continue Truckee Canal diversion to Lahontan Reservoir when water surface elevation is less than upper limit			
			Lower limit[1]		Upper limit	
			Elevation (m.s.l. (feet))[1]	Storage (1,000 acre-feet)	Elevation (m.s.l. (feet))	Storage (1,000 acre-feet)
	(inches)					
November	TC<4.5	HALL1	4147.6	171.0	4147.7	172.1
		FCST4	4141.4	135.2	4141.6	136.3
		CHET4	4141.4	135.2	4141.6	136.3
		ALI6	4134.2	100.0	4134.5	101.1
		BURNS1	4145.0	155.4	4145.1	156.0
	4.5<TC<9.0	HALL1	4144.0	149.9	4144.4	151.6
		FCST4	4134.2	100.0	4134.6	101.7
		CHET4	4134.2	100.0	4134.6	101.7
		ALI6	4126.4	70.0	4127.0	71.7
		BURNS1	4134.2	100.0	4134.6	101.7
	TC>9.0	HALL1	4139.8	126.8	4140.1	128.2
		FCST4	4127.9	75.0	4128.3	76.4
		CHET4	4127.9	75.0	4128.3	76.4
		ALI6	4115.4	40.0	4116.1	41.4
		BURNS1	4127.9	75.0	4128.3	76.4
December	TC<6.0	HALL1	4153.5	213.3	4153.9	216.5
		FCST4	4153.4	212.5	4153.8	215.7
		CHET4	4153.5	213.3	4153.9	216.5
		ALI6	4141.4	135.0	4142.0	138.2
		BURNS1	4151.1	195.0	4151.5	197.9
	6.0<TC<9.0	HALL1	4147.4	170.0	4147.8	172.5
		FCST4	4147.4	170.0	4147.8	172.5
		CHET4	4147.4	170.0	4147.8	172.5
		ALI6	4135.3	105.0	4135.9	107.5
		BURNS1	4147.4	170.0	4147.8	172.5
	TC>9.0	HALL1	4131.8	89.8	4132.2	91.4
		FCST4	4131.8	89.8	4132.2	91.4
		CHET4	4131.9	90.0	4132.2	91.8
		ALI6	4127.9	75.0	4128.4	76.6
		BURNS1	4131.6	89.8	4132.2	91.4

[1] Diversion started only when water surface elevation falls below the lower limit and shall cease when storage matches the upper limit.

TABLE 4.—MONTHLY VALUES FOR TARGET STORAGE COMPUTATIONS

	Criteria	January	February	March	April	May	June
$TS_{M/J}$	HALL1	220.0	245.0	275.0	290.0	305.0	317.3
	FCST4	180.0	230.0	260.0	290.0	300.0	317.3
	CHET4	230.0	230.0	245.0	260.0	260.0	260.0
	ALI6	160.0	180.0	200.0	215.0	230.0	240.0
	BURNS1	220.0	230.0	280.0	290.0	300.0	317.3
C_i/MAY		0.836	0.716	0.584	0.392		
C_i/JUNE		1.166	1.046	0.915	0.723	0.330	
L/MAY		22.8	21.8	17.6	10.4		
L/JUNE		33.5	32.5	28.3	21.1	10.7	
C_e/MAY		.27	.27	.23	.14		
C_e/JUNE		.44	.44	.40	.30	.16	

$TS_{M/J}$ = Current month end of May/June Lahontan Reservoir target storage (1,000 acre-feet)
C_i = An *adjustment coefficient* for forecasted inflow
L = Average loss from current month through May or June (1,000 acre-feet)
C_e = An adjustment coefficient for projected Carson Division demand from current month through May or June

TABLE 5.—LIMITS OF DIVERSION FROM TRUCKEE CANAL TO LAHONTAN RESERVOIR OR CARSON RIVER

Operating month and criteria	Lower limit [1]		Upper limit	
	Elevation m.s.l. (feet)	Storage (1,000 acre-feet)	Elevation m.s.l. (feet)	Storage (1,000 acre-feet)
July:				
HALL1	4158.6	258.0	4159.0	262.2
FCST4	4158.3	255.3	4158.7	259.2
CHET4	4151.8	200.0	4152.3	203.9
ALI6	4149.0	180.0	4149.5	183.7
BURNS1	4158.8	260.2	4159.2	264.2
August:				
HALL1	4151.8	200.0	4152.2	203.1
FCST4	4151.7	199.4	4152.1	202.4
CHET4	4144.1	150.0	4144.6	153.1
ALI6	4138.5	120.0	4139.1	123.2
BURNS1	4153.1	210.1	4153.5	213.3
September:				
HALL1	4148.2	175.0	4148.6	177.7
FCST4	4146.3	163.2	4146.7	165.6
CHET4	4141.4	135.0	4141.8	137.3
ALI6	4129.3	80.0	4129.9	82.3
BURNS1	4149.0	180.3	4149.3	182.3
October:				
HALL1	4145.8	160.0	4146.1	162.0
FCST4	4141.4	135.2	4141.8	137.3
CHET4	4141.4	135.2	4141.8	137.3
ALI6	4123.3	60.0	4124.0	62.2
BURNS1	4144.1	150.2	4144.4	151.9

[1] Diversion started only when water surface elevation falls below the lower limit, and shall cease when storage matches the upper limit.

C_2*CDE = Projected Carson Division demand from current month through May or June; with CDE being the Carson Division entitlement and C_2 being the estimate of the portion of the entitlement to be delivered during this period

Values for $TS_{M/J}$, C_1, C_2, and L are defined n Table 4.

b. The Lahontan Reservoir target storage for that month shall be the lowest of the May calculation, the June calculation, or full reservoir. (See example at the end of this section.)

3. During July through October, the District will divert only from the Truckee Canal to Lahontan Reservoir or into the Carson River as allowed, based on Table 5. Diversion from Truckee Canal to Lahontan Reservoir is to commence when the reservoir drops below the lower limit.

An example of the target storage determination is below:

Date —February 1

SCS forecast April–July—200,000 acre-feet

Carson Division entitlement—380,000 acre-feet

	In 1,000's acre-feet
May computation:	
February criteria for storage in May (FCST4)	230.0
Minus forecast inflow end of this month to May 31 (.716×200,000 acre-feet)	−143.2
Plus expected loss end of this month to May 31	+21.8
Plus expected Carson Division demand end of this month to May 31 (.27×380,000 acre-feet)	+102.6
Storage required at end of this month to reach 230,000 acre-feet storage May 31	211.2
June computation:	
February criteria for storage in June (FCST4)	230.0
Minus forecasted inflow (1.046×200,000 acre-feet)	−209.2
Plus expected loss	+32.5
Plus projected demand (.44×380,000 acre-feet)	+167.2
Storage required at end of this month to reach 230,000 acre-feet storage June 30	220.5
Therefore, February target storage (acre feet)	−211,200

3. Stampede Storage Credit

In the process of evaluating criteria, the technical work group also looked at the use of a storage credit at Stampede Reservoir for TCID water. This credit would be used to minimize the diversion from the Truckee River to the Carson River drainage while still meeting the Newlands Project water requirements. For the final OCAP a decision will be made as to whether or not credit storage in Stampede Reservoir will be included. The following paragraphs describe how the credit would operate.

As near as possible, the Newlands Project would receive exactly the same total amount of water as it would without the credit. The following modifications shall be applied to the criteria for diversion of Truckee River water to Lahontan Reservoir, or into the Carson River, as described in the previous section (VI. C.).

The storage levels in Lahontan Reservoir specified as limits for starting and stopping diversions of water for storage in Lahontan, or use on the Carson Division, would be applied to the sum of water in storage at Lahontan Reservoir and water in Stampede Reservoir credited to the Truckee-Carson Irrigation District.

Whenever there is an adequate amount of uncommitted water in Stampede Reservoir, the Truckee-Carson Irrigation District would forego the diversion of water into the Truckee Canal for storage in Lahontan Reservoir or for use on the Carson Division and would accept credit in Stampede Reservoir for the amount of water it otherwise would have diverted.

The sum of the amount of water stored in Lahontan Reservoir plus the amount of water stored in Stampede Reservoir and credited to the Truckee-Carson Irrigation District would not be allowed to exceed the storage capacity of Lahontan Reservoir, which is 317,300 acre-feet; this limit would be preserved, if necessary, by the reduction of its credit in Stampede Reservoir.

Whenever the water surface elevation of Lahontan Reservoir is at or below a content of 80,000 acre-feet (4,129.3 feet m.s.l) during the irrigation season, water will be released from Stampede Reservoir to be diverted into and through the Truckee Canal for agricultural use by the Truckee-Carson Irrigation District in either or both the Truckee and Carson Divisions. The total amount of the release will be limited to the lesser of the amount credited to the Truckee-Carson Irrigation District or the amount needed to supplement the 80,000 acre-feet of water in Lahontan Reservoir.

Any unused storage credit water, as described above, may be carried over from one year to the following year. At the present time the maximum allowable credit storage has not been established.

Nothing in this OCAP shall in any way infringe on or interfere with the flood control function of Stampede Reservoir.

D. Releases for Other Than Newlands Project Purposes

1. All use of water for power generation shall be incidental to diversions or deliveries made for irrigation or domestic and other purposes; except for authorized precautionary releases from Lahontan Dam when power generation using such water is allowed.

2. The District shall release sufficient water to meet the vested water rights below Sagouspe Dam decreed in the *Alpine* Decision. This release will not be considered part of the District's total entitlement since these water right lands are not part of the Project.

3. Precautionary releases from Lahontan Reservoir for flood control are no longer required for dam safety purposes. TCID shall write the Bureau's Lahontan Basin Projects Office requesting authority for precautionary drawdown to limit potential flooding along the Carson River. Such requests shall include all data necessary for the Bureau to make a decision on granting of such authority. Any uncontrolled spill or authorized precautionary drawdown from Lahontan Reservoir will not be charged to the entitlement.

4. Project facilities shall not be used for conveyance of non-Project water without a Warren Act contract (36 Stat. 925, 43 U.S.C., 523) except for water rights specifically referenced in the Truckee River Agreement of 1935, incorporated into the Orr Ditch Decree.

E. Water Measurement

The District shall implement the Newlands Project Water Measurement

Program (Attachment C). The overall goal of this program is to promote efficient water management on the Project. This goal will be accomplished by evaluating and documenting existing techniques, and by implementing improvements to the water management practices presently in use on the Project.

The primary tasks of the Water Measurement Program are:

1. To measure Project entitlement.

2. To evaluate and document current water management practices by irrigation block to improve the Project data base.

3. To determine the system efficiency of the Project facilities by comparison of diversions into the Project area and outflows from the area.

4. To determine actual annual delivery rate on the L1–7 Lateral on a per-acre basis.

5. To improve existing measurement sites and install new sites, as necessary. (Approximately 40 measurement sites have been identified as key locations.)

6. To monitor shallow ground water levels.

F. Repayment and O&M Charges

The District shall provide for: (1) Repayment of the construction charges of the Project consistent with the individual water right agreements and appropriate repayment contracts; and (2) Payment of the operation and maintenance (O&M) and drainage charges consistent with Section 5 of the Act of August 13, 1914, and the Act of December 5, 1924.

O&M assessments shall be based upon the total O&M costs of the Project and collected in advance of delivery of water. A minimum O&M rate shall be assessed for the delivery of not less than 1 acre-foot of water per water-righted acre, whether irrigated or not. In addition to the minimum O&M rate, a charge shall be assessed for each acre-foot of water scheduled for delivery. Adjustments shall be made each irrigation season for credits or deficits due on O&M charges during the previous irrigation season.

VII. Reporting Procedures

A. Water Right Transfers

The District shall provide the Bureau, concurrently with filing with the Nevada State Engineer, copies of all water rights transfer applications and all other related documents.

Any requests for adjustments of the allowable diversion due to changes in water rights shall be reported to the Bureau's Lahontan Basin Projects Office by the District. The requests shall include maps of the water right land locations before and after the transfer. Requests for adjustments may be made at any time during the year as long as the water rights transfers have been approved by the Nevada State Engineer.

B. Changes in Irrigated Acreage

Any requests for adjustments in the allowable diversion due to changes in irrigated acreage shall be reported to the Bureau's Lahontan Basin Projects Office by the District by February 1, 1985. The requests shall be reported on the Federal Form No. MP–900 as revised.

C. Changes in Miscellaneous Deliveries

By January 30, 1985, the District shall notify the Bureau of all domestic water permits that they have allowed. This notification shall include a detailed explanation of the criteria utilized in issuing the permits and sufficient documentation to demonstrate how each water user is in accordance with the criteria. With adequate documentation, the District may notify the Bureau of any changes in domestic water requirements at any time during the year and the allowable diversion shall be changed accordingly.

D. Operations Reporting

In 1985, by the end of each month, the District shall submit to the Bureau's Lahontan Basin Projects Office monthly reports for the previous month documenting the total monthly inflow and outflow in acre-feet from the Truckee and Carson Divisions for that month. The report shall include records for the gages listed in Section V.C.

VIII. Effect of Noncompliance With OCAP

A. Introduction

Of particular interest to the Department are comments on the following proposed penalty provisions, because there is some question as to whether such provisions or any penalty provisions should be imposed or lawfully may be imposed. Some specific issues of particular interest are: (1) What constitutes "waste" and who should make this determination (Consistency with the provisions of the *Alpine* decree may require that the Nevada State Engineer make the initial decision in this matter), (2) whether any penalty should or may be exacted against the District unless there is a showing of a connection between the occurrence of the excessive diversions, releases, spills or waste and a decrease in flows to Pyramid Lake, and (3) whether there should or must be a direct correlation between the person who commits the infraction and the person who bears the penalty.

What follows in Part B is a list of possible events which would trigger imposition of a penalty, and possible penalties are listed in Part C. They are designed to: (1) Replace water which would otherwise remain in the Truckee River (because use of the water in the Truckee Division or augmentation of Carson River flows is not required at all or not required beyond a certain quantity), so that other uses may be satisfied (as a replacement mechanism); and (2) extract the costs of noncompliance from the violators in the form of either water or money (as an enforcement mechanism). The Department requests comment on which of the triggering events listed in Part 3 and which of the penalty provisions listed in Part C should be adopted.

B. OCAP Violations

The District shall ensure (a) that its actions do not result in: (1) Diversions, releases, or spills of water in excess of those allowed in the final OCAP promulgated by the Secretary, or (2) any waste of water, and (b) that use of water or the Newlands Project does not result in waste. Any such diversion, release, spill or waste will be considered a violation of the OCAP and will trigger a sanction (the sanctions being considered are listed in Part C) imposed upon the District or by the District of the violator. The District shall, as necessary correct its own violations and those of individual water users who fail to comply with the Secretary's final OCAP. There are 2 options for penalty triggering events:

1. Penalty triggered without regard to specific effect on Truckee River (Enforcement Mechanism).

a. Waste (3 options) which will trigger penalty:

(1) A determination by the Secretary that waste has occurred through negligence or inattention, after written notice to the District.

(2) A determination by the Secretary pursuant to Nevada Law that waste has occurred, after written notice to the District.

(3) A determination by the State Engineer pursuant to Nevada Law that waste has occurred, after written notice to the District.

b. Diversions, Releases, Precautionary Releases, or Deliveries Contrary to OCAP, any of which will trigger penalty.

(1) Diversions from the Truckee River to Lahontan Reservoir at times when not allowed by Derby Dam diversion criteria or in excess of permitted quantities;

(2) Diversions to the Truckee Division via the Truckee Canal in excess of the

allowable diversions for the Truckee Division;

(3) Releases from Lahontan Reservoir in excess of the allowable diversions for the Carson Division;

(4) Unauthorized wintertime precautionary releases; and,

(5) Delivery of water to individual farmers in excess of their entitlements under the Orr Ditch or Alpine Decrees, whether caused by the actions of the District or individual farmers.

2. Penalty triggered only if the event resulted in an increased diversion from the Truckee River (Replacement and Enforcement Mechanism)

a. Waste (3 options):

(1) If the Secretary determines that waste has occurred through negligence or inattention, after written notice to the District;

(2) If the Secretary determines pursuant to Nevada Law that waste has occurred, after written notice to the District; or,

(3) If the State Engineer determines pursuant to Nevada Law that waste has occurred, after written notice to the District.

b. Diversions, Releases, Precautionary Releases, or Deliveries Contrary to OCAP, any of which will trigger penalty.

(1) Diversions from the Truckee River to Lahontan Reservoir at times when not allowed by Derby Dam diversion criteria or in excess of permitted quantities;

(2) Diversions to the Truckee Division via the Truckee Canal in excess of the allowable diversions for the Truckee Division;

(3) Releases from Lahontan Reservoir in excess of the allowable diversions for the Carson Division;

(4) Unauthorized wintertime precautionary releases; and,

(5) Delivery of water to individual farmers in excess of their entitlements under the Orr Ditch or Alpine Decrees, whether caused by the actions of the District or individual farmers.

C. Penalties

(Options or combinations), to be imposed if an event listed in Part B (above) occurs.

1. Replacement by reduction of future diversions to the extent of the excess diversion, release, delivery, or waste which triggered the penalty.

a. Reduce maximum allowable total diversion for the entire project.

b. Reduce maximum allowable diversion entitlement for individual violators.

c. Reduce diversions from Truckees River which would benefit Carson Division in the next year in which such diversions would otherwise occur.

d. Reduce diversons from Truckee River which would benefit Truckee Division in the next year in which such diversions would otherwise occur.

2. Monetary—The District may elect to pay a monetary penalty which equals the cost of each acre foot of water (a) diverted, released, or spilled in excess of the amount authorized by final OCAP, or (b) for the amount of water cited as waste. Upon election of the monetary penalty, the District shall pay the fair market value of each acre foot of water the Secretary must purchase to replace the excess or wasted water which resulted in a direct failure or inability to supply water to Pyramid Lake that it would otherwise have received.

The replacement water purchased hereunder will either be stored in Stampede Reservoir for timely release into the Truckee River, or it will be delivered to Pyramid Lake immediately, as operations may require. The monetary penalty shall be paid by the District during the year in which the excess or waste occurs. The District shall charge the individual water user or users who created the excess or waste condition when such individual violations can be determined, or the monetary penalty shall be prorated among all Newlands Project water users in the District.

D. Monitoring and Reporting Violations

All of the water delivery operations of the Truckee-Carson Irrigation District shall be monitored closely by the Bureau of Reclamation. Any and all violations of the terms and provisions of these Operating Criteria and Procedures shall be reported immediately by the District to the Lahontan Basin Project Office of the Bureau of Reclamation.

Attachment A—Water Right Acreage Analysis

The total acres and the exact location of water right acres in the Project have been debated over the years by various parties.

One tabulation of the water right acres and locations on the Project was prepared by the Bureau in the late 1960's. That set of tables utilized nine different sources of information regarding water right acres. However, maps showing locations of water right land are not included in that work.

The District provided the Bureau with a set of mylar maps in 1984 which indicates the water right acres and locations in both tabular and map form. The table from the Bureau's information described above was compared to the tables on the District mylar maps. Close agreement between the Bureau's and the District's records exists.

A complicating factor in the records of the total water right acres is that neither the District nor the Bureau has documents indicating the locations of all of the water right land on the Fallon Indian Reservation. However, the Bureau of Indian Affairs (BIA) in Phoenix, Arizona, recently provided the Bureau with information that documents most of the water right locations on the Fallon Indian Reservation.

A third source of information regarding water right acreage in the District is the "Criddle Report." The consulting company, Clyde-Criddle-Woodward, Inc., was retained by the BIA in 1975 to review the water right records on the Project. The results of that report indicates the existence of less than 70,000 acres of water right land. The Criddle study utilized aerial photography to determine land use; however, the locations of water right lands were neither plotted on maps nor on the photographs.

In order to determine the locations of irrigated water right land in the District, a map base suitable for computer use is required. This map base will be used as part of the verification system in determining midseason allowable diversions. At present, the only map base of water right acres suitable for this use is the mylar set provided to the Bureau by the District. Therefore the District's water right map set was used for the 1984 study and will be corrected as new information becomes available from further studies.

With the input of the Nevada State Engineer and the information from other sources, a determination of the amount and location of water right lands will be made prior to the 1985 irrigation season.

Attachment B—Annual Verification of Eligible Acres

A systematic approach to verify the actual acreage of irrigated land in the Project has been established by the Bureau. This system is necessary in order to confirm the eligible water right acreage of bench and bottom lands being irrigated in any given year.

This verification system will allow the Bureau to adjust the initial 1985 Project allowable diversion based on the actual irrigation practices during June.

Although some of the input data such as water right acreage and bench and bottom land acreage is being modified, the verification system was operational in July 1984. The data base includes the district boundary, land surveying information, bench and bottom lands locations, water right acreage, and irrigated acreage. The actual irrigated acreage was determined in the 1984

study by interpreting aerial photography of the Newlands Project flown June 19–20, 1984. Landsat 5 satellite imagery will be used in 1985 to determine the actual irrigated acreage.

After the satellite images are acquired during June 1985, the Bureau's verification system will identify and delineate the total acreage being irrigated in each section of land. The system will also identify whether or not the land being irrigated is water righted and the amount of bench and bottom land. These results will then be reported in both map and tabular form. This information will enable the Bureau to accurately calculate the 1985 Project midseason allowable diversion, and will allow the District to adjust water deliveries to the appropriate quantities. Any use of water on nonwater right land will also be evident. After field investigations to determine if the source of irrigation water is surface or ground water, action will be taken to stop any illegal irrigation with surface water.

The verification system will allow corrections to be made, as needed, to the water right acres, and the bench and bottom land locations. The maps and tables generated each year from this system will be available to all concerned parties. Based on a ground survey of the Newlands Project on June 25–27, 1984, and the correlation of the aerial photos with a 1984 Landsat 5 image, the accuracy of this method is estimated to be at least 95 percent.

The satellite imagery to be acquired in June of 1985 will allow determination of the total acres of irrigated land in the Project as most fields are usually planted by June and grain crops are not harvested until July. The satellite image will be processed and the 1985 "mid-season adjustment" of the allowable diversion will be available to the District by July 15, 1985. This will provide ample time for District farmers to adjust irrigation schedules because approximately 40 percent of the irrigation demand remains for the irrigation season at that time. This should not inconvenience water users as they are restricted by decrees to specific water duties on the eligible land they irrigate. The major adjustments in 1985 between the initial and midseason allowable diversion will be for differences between actual irrigated water right lands and irrigated water right land identified in the preseason irrigation form.

As soon as ownership maps suitable for computer use are acquired and entered into the Bureau's verification system, specific allocations will be calculated for each parcel of water right land. This is scheduled to occur in the winter of 1984–85. The specific water duties for each water right parcel will then be the weighted average of bench and bottom land acres on each water right parcel. This information will be used as described in Section IV.A.4. to establish water duties on each water right parcel.

Attachment C—Water Measurement Program for the Newlands Project

Introduction

The Newlands Project (Project) consists of the following facilities: Lahontan Dam, Derby Diversion Dam, Carson River Diversion Dam, Lake Tahoe Dam, and approximately 380 miles of canals and laterals. Derby Dam is on the Truckee River and diverts Truckee River water into the Truckee Canal to Project lands and Lahontan Reservior. Lahontan Dam, on the Carson River, impounds inflow from the Carson River and Truckee Canal for use on the Project. The distribution system was constructed to provide irrigations service to all acres of water right land on the Project.

Construction of the Project facilities was completed prior to execution of the 1926 repayment contract which transferred the responsibility for operation and maintenance of the Project to TCID. The system shows the effects of its age—deterioration of concrete is evident in many of the structures and many of the laterals have become inaccessible due to encroachments. Most of the canals and laterals within the Project are unlined earth canals; consequently, seepage losses are significant.

Purpose and Scope of Report

As a result of the resolution of TCID v. Secretary of Interior, Civil No. R–74–34 BRT, regarding operation of the Newlands Project, the Bureau has developed an OCAP for the Newlands Project in order to set up rules for operation of the project facilities to meet water use entitlements in an efficient and practical manner. The water measurement aspect of OCAP is addressed in this report.

The program to document and evaluate the water measurement practices on the Project was developed jointly with TCID Engineering Department in an effort to develop a comprehensive program that would not only give the Bureau data on which to base an evaluation, but also provide TCID with usable information.

This program is designed to provide information on the water measurement techniques employed by TCID, provide information on the actual deliveries at farm turnouts, provide information on actual distribution system efficencies; provide information about the shallow groundwater conditions, and collect data on the management practices used by TCID in the handling of water.

As a side benefit, this program will also provide information which could prove valuable in preparing a Rehabilitation and Betterment Program (R&B) for the Project should such a program be implemented in the future.

The references to R&B programs in this report do not refer to any planned specific program. A future R&B program could be funded through normal Bureau procedures and funding channels. An R&B with no repayment could be authorized by legislation resulting from a negotiated settlement, or it could be funded by TCID or other parties without Bureau of Reclamation (Bureau) assistance.

Objective

The overall goal of this program is to promote efficient water management practices within the Project. This goal will be attained by meeting the following objective:

Implementation of a program to document, evaluate, and recommend improvements in the present water measurement and management practices within the Project.

The methods used to meet the objective must employ the most practical, beneficial, and cost-effective means to accomplish this task.

Procedures

Surface Water

Measurements needed to obtain data on overall project diversions will require the monitoring of flows at the Truckee Canal near Wadsworth, the Truckee Canal at Lahontan Dam, the Rock Dam Ditch near Lahontan Dam, and the Carson River below Lahontan Dam. Flow data obtained at these points will provide total inflow into the Project.

The key measuring points from which total inflow data will be obtained are:

Truckee Canal near Wadsworth—U.S. Geological Survey (USGS), stream gage no. 10351300

Truckee Canal near Lahontan—USGS stream gage no. 10351400 (Truckee Canal near Hazen)

Rock Dam Ditch—Recorder to be installed in concrete-lined section

Carson River below Lahontan—USGS stream gage no. 10312150

For purposes of regulation and administration, TCID has divided the Project into 10 areas (irrigation blocks); each area or block is basically served by

one major distribution system. There are 10 ditchriders, with one ditchrider responsible for each block.

The purpose of this water measurement program is to establish monitoring sites at the upper end of each irrigation block, or at the boundaries between the blocks. This will provide information on how the entire system is functioning and also provide TCID with information as to which blocks need attention or improvements.

The monitoring sites will consist of water surface monitoring apparatuses installed upstream of check structures to record fluctuations in water surface elevations. TCID will measure the diversion either by submerged orifice computations or by weir computations. Either of these methods require a constant head to provide reasonably accurate flow measurements, and monitoring the water surface fluctuations will indicate the potential accuracy attainable. Monitoring of the water surface fluctuations will also identify problem areas in the overall system management.

Water surface monitors will be placed in the reregulating reservoirs in an effort to determine the efficiency with which they are used and also gather flow data on the releases.

The water surface monitoring sites selected for the 10 irrigation blocks are:

Fernley area—Truckee Canal near Wadsworth, USGS no. 10351300 [a]
Lahontan area—TC–13 Lateral (to be measured by TCID); Rock Dam Ditch [a]
N system area—T-Canal at headworks; N-Line at the headworks [b]
Old River area—T–C9; Old River Reservoir
Factory area—S–C4; S–7 Lateral [b]; S-Line Reservoir; Coleman Diversion Dam; Sagouspe Dam
Sheckler area—V-Canal at the head; V–C2; V–C3
St. Clair area—V–C4; L–C1; V–C6
Island area—A–C3; Sheckler Reservoir; Sheckler Outlet [b]
Smart area—L-Canal at Allen Road [b]; L–C3; L–C6; L–12 Lateral
Stillwater area—S–C7; R-Canal, S-Canal bifurcation; S–6—C10; Harmon Reservoir

[a] See inflow sites discussed earlier.
[b] Currently measured by TCID.

The overall efficiency of the Project facilities and operations can be determined by comparison of diversions into the Project area and outflows of unused water from the area. There are operational spills from various laterals and canals, but far too many to measure economically. For purposes of this evaluation, it is appropriate to analyze the data on flows into four areas, which are: Carson Lake Pasture, Stillwater Wildlife Area, Indian Lakes, and the Carson River below Sagouspe Dam. Flows into these areas will require measurements as follows:

Carson Lake Pasture—L–12 Lateral [a]; G-C17 [a]; G-3 Lateral [a]; Cabin Drain; Lee Drain [a]
Stillwater wildife area—Canvasback West Delivery [a]; Canvasback East Delivery [a]; Paiute Drain [b]; Dutch Bill Spill [a]; Stillwater Slough [a]; Diagonal Drain [b]; TJ Drain
Indian Lakes area—D-Canal [b]
Carson River below Sagouspe Dam—Carson River below Sagouspe [c]

[a] Currently measured by TCID.
[b] Currently measured by USFWS.
[c] USGS stream gage no. 10312280, Carson River below Fallon.

Some of the flows to the Stillwater area and the Carson Lake Pasture are mixed flows containing both drainage water and prime water. Analysis of this flow data will require special treatment; however, any other method of determining outflows would be economically infeasible due to the large number of measurements required. It must also be kept in mind that some downstream water users below Sagouspe Dam on the Carson River have a senior water right not controlled by OCAP or served by TCID. These water users own a total of 565 water righted acres served by the Carson River below Sagouspe Dam which include claim numbers 793, 796, 797, and 798, as shown in the Alpine Decree. The District will be required to release sufficient water below Sagouspe Dam to meet those water rights.

Fifty percent of the required water surface monitoring apparatuses were in operation June 1, 1984. The remaining water surface monitoring apparatuses will be installed by March 15, 1985, except for major measurements structures at the head of the T- and V-Canals, which are scheduled for completion by March 1986.

In order to verify flows to farm units, flows will be measured at individual turnouts. Initially, actual flows at all the turnouts on the L1–7 Lateral were to be measured by June 1, 1984. However, the data acquired would be of little value because it does not represent a full season of diversions. The physical number of turnouts to be measured, their inaccessibility, and the inaccuracies involved in these measurements would render the data questionable at best. The rating of turnouts or installation of rated weirs will produce accuracies of 85–90 percent under field conditions. Recording of staff gage readings twice daily is not effective because many of the deliveries on this system require releases for only a few hours and fluctuations would not be recorded. TCID often serves several landowners on this lateral with one head of water on a rotational basis during one 24-hour period; controlled water surfaces are maintained for individual turnouts only during deliveries.

Therefore, a more feasible approach is to measure the inflow to the L1–7 lateral and the spill at its terminus, treating the lateral system as a large farm unit with an efficiency factor applied to cover system losses. These data will be analyzed over a full irrigation season (1985) to determine the actual annual delivery rate per acre. The canal efficiency factor will be determined by ponding tests performed at the beginning and again at the end of the irrigation season. Also, an inflow-outflow test may be run by releasing water into the lateral with all turnouts closed, taking measurements at the headworks and at the terminal spill. A combination of both methods could be used.

If it is desired to augment this program in the future, it would be necessary to conduct a thorough study of the entire Project farm turnout measurement scheme. Historical records, sites, and present operational practices would be reviewed to determine the actual need before initiating a farm turnout replacement program. Should such a program become necessary, it would be done on a case-by-case basis, perhaps accomplished as a part of normal OM&R, or as a part of an R&B program, because costs may be a limiting factor. TCID replaces a number of turnouts each year as part of normal operation. Replacement turnouts should have measurement capabilities to improve management and overall efficiency, and provide valuable information.

Subsurface Water

The Bureau and the District will cooperate to establish a shallow ground-water observation network. Some wells already exist in the area that were installed by the U.S. Geological Survey and other agencies. Private wells in the area could also be useful. Once a network is designed and established, each well should be read monthly. Those readings could be made as a cooperative venture by agencies such as the Bureau, District, Geological Survey, and the Soil Conservation Service. The Bureau will arrange to have well elevations surveyed where needed in the network. This shallow ground-water network will permit the collection of

ground-water quantity and quality information.

Data Collection

Data to be collected as a part of this program will include charts obtained from the water surface monitors identified above, flow data including rated flows, gate opening, weir flow measurements, ditchrider's computations, and stream gaging.

The data collected will be a coordinated effort between the Bureau and TCID. The Bureau will review, on a periodic basis, the charts from the approximately 40 monitors that are operated and maintained by TCID. In addition to this review, the Bureau will review data as computed by the ditchriders on the flow rates at various locations and times.

The additional 25 water surface monitoring apparatuses will be installed jointly by TCID and the Bureau, to be operated and maintained by the Bureau. Data from these stations will be available to TCID. The 25 additional installation sites plus selected sites operated by TCID (discussed earlier under Procedures) constitute the key location points for measurement for the purposes of this program.

It is recommended that a computer be incorporated into the water management operations as soon as possible to enhance the data evaluation of the Project operations. The computer system will facilitate TCID's prepration of reports it is required to furnish the Bureau. A computer system would also enable TCID to operate the Bureau's Water Management and Conservation (WMC) computer programs. The WMC program could improve onfarm and districtwide water management.

Data Analysis

Surface Water

The data obtained from this program will be analyzed for several purposes. The first is to analyze the accuracy of the measurement of water diversions into the Project. This will be accomplished through checking the monitor charts at the diversion points to determine if water surface elevations fluctuated significantly during period of record. The gaging of streamflows below diversion points will also be used to verify the submerged orifice readings.

The second purpose for analysis of the data is to determine how well the present water management system is functioning in all areas of the Poject. A thorough analysis will isolate any specific problem areas that may exist in the present operation. Similarly, the analysis will identify operational fluctuations caused by uncontrollable influences, such as riverflow fluctuations. The analysis of the present operational mode will provide considerable information which will be useful to any future R&B program. Drain flow data from the water stage recorders could be analyzed to indicate periods when unusual amounts of Project water are being spilled. Any sudden rises or fall to a normal flow level would be indicative of an operational spill from a lateral or canal.

By analyzing Project inflows, the outflows at key points and the diversion entitlement for lands to be served, and overall system efficiency can be obtained. To determine efficiencies for blocks of lands within the Project, it may be desirable at a future time to analyze the data gathered by this program and other flow data which may be gathered by TCID.

Data gathered from measuring devices placed at individual farm turnouts will verify the actual per-acre deliveries currently made to farm units on the Project. The selection of turnouts will have a great deal to do with the credibility of the results. If the sampling is limited to a specific small area, the projectwide validity of the results could be questionable. For this reason, a random sampling of turnouts projectwide is desirable.

Data collected on inflows to the L1–7 Lateral and spills from the L1–7 Lateral will be analyzed as if the lateral were a large farm unit. An efficiency factor will be determined and applied to the deliveries to account for seepage loss in the lateral. Analysis of this lateral will be a starting point for determination of actual farm delivery rates within the Project area.

Subsurface Water

The data obtained from the shallow ground-water observation network will be utilized in analyzing irrigation water balances, and subsurface drainage requirements, and in determining bench and bottom land locations. Previous reports on ground-water conditions of the area will be combined with new information to improve these analyses.

Long-Term Goals

The long-term goals of this program are: (1) Improve management practices; (2) conserve water where possible; (3) demonstrate to the other water users on the river system a definite effort to improve water usage; and (4) provide valuable data for preparation of a potential Project R&B program.

The activities of the long-term goals will be virtually dictated by the results of the analysis of the "historical" data assembled. In the event that existing facilities will not allow desirable levels of water control, it will be necessary to implement an action plan to attain the management goals. Methods of financing can be thoroughly examined when appropriate.

As alluded to in the early text of this report, water surface regulation is one of the basic requirements in a well-managed open conveyance water system. Accuracy of water measurements is dependent upon a constant, controlled water surface. The long-term R&B program must include facility changes to provide the water surface control required. Conveyance system changes leading to a more compact distribution system, as well as lining of canals and laterals, should also be part of the long-term goals.

Any R&B program or other system improvements should meet the economic tests of feasbility, with a positive benefit/cost ratio.

Costs

As Implementation of OCAP proceeds, the extent of physical work required will become more apparent. A cost estimate made at some future time will be more valuable. However, a quick cost estimate based on January 1984 price levels was prepared for the replacement of farm turnouts with turnouts having measurement capabilities. The cost of replacing these turnouts is estimated at $6,250,000, with an annual O&M cost of $112,000.

Funding

Effective implementation of this water measurement program will require financial cooperation between TCID and the Bureau. The installation of the first 22 recorder stations will be completed with the Bureau providing the necessary hardware and materials, and TCID furnishing labor and construction equipment necessary for the installations. The monitoring devices, to be furnished on a temporary basis by the Bureau, will be operated and maintained by the Bureau from the Carson City office. The operation and maintenance of the monitors will require one technician on a nearly full-time basis during the irrigation season. Data analysis and coordination with TCID will require a hydraulic or civil engineer on a full-time basis.

The water management within the Project can be improved by adapting the operation to a computer system. The Bureau's WMC program could provide 50-percent cost sharing of program costs. The management of TCID has indicated an interest in the program, and

suggested that it may be included in its funding for budget year beginning July 1985. Upon completion of the initial computer setup, this WMC program would be operated and maintained by TCID.

The program outlined for measurement of deliveries to individual farm units could be an ongoing program with the cost shared by the bureau and TCID, or covered in an R&B Program. TCID replaces a number of turnouts each year as a part of normal operation and maintenance. The measurements at the delivery points would best be made by the ditchriders from TCID, due to the logistics involved with the random locations. The computer system suggested above would also be useful in keeping records associated with this portion of the program.

These existing OCAP rules are to continue in full force and effect until October 31, 1985.

In compliance with Executive Orders 11988 and 11990, Reclamation is notifying the public that the action as proposed would occur in the floodplain of the Truckee and Carson Rivers and associated wetlands. In promulgating operating criteria and procedures for the Newlands Project, Reclamation will of necessity involve floodplain and wetlands areas, as irrigation projects are necessarily located in and adjacent to such areas. Copies of the environmental assessment and proposed OCAP are available at the public libraries in Fallon and Reno, Nevada, and at the address provided below. Comments on the proposed action are requested and may be sent to: David G. Houston, Regional Director, Bureau of Reclamation, Mid-Pacific Region, 2800 Cottage Way, Sacramento, CA 95825.

Public meetings on the proposed OCAP will be held on:

—February 20, 1985—7:30 p.m. at the Fallon Community Convention Center, 100 Campus Way, Fallon, Nevada 89406

—February 21, 1985—7:30 p.m. at the Reno-Sparks Convention Center, South Meeting Room A1, 4590 South Virginia, Reno, Nevada 59502

Comments should be received by the Bureau of Reclamation no later than March 14, 1985.

Dated: January 31, 1985.

Robert N. Broadbent,

Assistant Secretary of Interior.

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Tuesday
February 12, 1985

Part IV

Department of Agriculture

Food and Nutrition Service

7 CFR Part 210

National School Lunch Program; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 210

National School Lunch Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rulemaking proposes a complete reorganization of 7 CFR Part 210, the regulations covering the National School Lunch Program and the Commodity School Program. Since the January 20, 1970 issuance, Part 210 has been amended with over 60 final rules and a number of interim rules. This proposed revision is intended to resolve ambiguities and inconsistencies; eliminate unnecessary, duplicative and obsolete provisions; and clarify both language and style so that Part 210 is easily understood. Further, this proposal makes several policy changes which are addressed in detail in the following preamble.

DATES: To be assured of consideration, comments must be received on or before April 15, 1985.

ADDRESS: Comments should be sent to Diane Berger, Section Head, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written submissions will be available for public inspection in Room 509, 3101 Park Center Drive, Alexandria, Virginia, during regular business hours (8:30 a.m. to 5:00 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Berger at the address listed above or call (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

The proposed rule has been reviewed under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, now will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirement of Pub. L. 96-354, the Regulatory Flexibility Act. The Administrator of the Food and Nutrition Service has certified that this rule will not have a significant adverse economic impact on a substantial number of small entities.

Although this rule proposes a number of changes to Part 210, the reporting and recordkeeping requirements remain unchanged. These requirements were approved by the Office of Management and Budget (OMB) for use through June 30, 1987 (OMB No. 0584-0006).

Background

The last major revision of the regulations governing the National School Lunch Program and the Commodity School Program (7 CFR Part 210) was published in the **Federal Register** on January 20, 1970 (35 FR 753). Since that time, Part 210 has been amended by well over 60 final and interim rules. As a result, Part 210 contains ambiguities and inconsistencies as well as duplicative and obsolete provisions.

On February 17, 1981, President Reagan issued Executive Order 12291 (46 FR 13193) which establishes procedures for review of existing regulations to assure compliance with his goal of reducing Federal regulatory burdens and minimizing duplication and conflict of regulations. In complying with this Order and in responding to recommendations of State agencies and Food and Nutrition Service (FNS) Regional Offices, the Department is proposing a major revision of Part 210. This revision is intended to solve ambiguities and resolve inconsistent or contradictory provisions; remove unnecessary, duplicative, and obsolete provisions; examine the organization of Part 210 and its components; rewrite as necessary to ensure that Part 210 is easily understood; and, based on the resultant revisions, redesignate paragraphs and sections to accommodate this change.

When reviewing this proposed rule, commentors should be aware that the Department has reorganized Part 210 to more clearly identify programs topics and to group related sections together under them. Subpart headings have been added to clarify the reorganization. A *Redesignation Table* indicating old section numbers and new section numbers is provided at the end of this preamble. The proposed reorganization should make the regulations easier to read.

In a further effort to facilitate use of the regulations, numerous minor editorial clarifications have been made. These are not individually discussed in the preamble because they merely clarify meanings rather than change them. These clarifications were not intended to make policy changes; however, commentors are encouraged to review this proposed rewrite of Part 210 carefully to assure that unintentional changes have not been made.

Commentors should be aware of a number of changes which appear throughout Part 210 to bring the lunch program into compliance with Office of Management and Budget (OMB) circulars. The Department published Uniform Federal Assistance Regulations (7 CFR Part 3015) in proposed form on July 20, 1981 (46 FR 37252) and as a final rule on November 10, 1981 (46 FR 55636). These regulations implement OMB Circulars A-102 and A-110, which standardize the administration of grants and cooperative agreements, and specify the principles for determining allowable costs as set forth in OMB Circulars A-87, A-21, and A-122, as well as OMB Guidance on Implementation of the Federal Grant and Cooperative Agreement Act of 1977 (43 FR 36860). Appropriate revisions have been made throughout the proposal to incorporate the provisions of 7 CFR Part 3015. Changes occasioned by 7 CFR 3015 are nondiscrtionary and are not subject to alteration because of public comment.

In addition to the directives of OMB, the Department has included the provisions mandated by the U.S. Department of the Treasury's directive of May 17, 1982. This directive states: ". . . . a late charge will be assessed on any overdue amounts owed to the Federal Government by any party outside the Federal Government." This is an agency-wide policy which became effective on July 28, 1982, and is outlined in FNS Instruction 494-4. A new paragraph, § 210.19(c)(3), has been added to reflect this policy. This provision is of a nondiscretionary nature and is not subject to alteration because of public comment.

The nondiscrimination requirements of Part 210 have been revised to refer to the Department's nondiscrimination regulations (7 CFR Parts 15, 15a, and 15b).
This revision is nondiscretionary and is not subject to alteration because of public comment.

The remainder of this preamble identifies policy revisions, by section, and provides a rationale for the proposed revision. Commentors are asked to cite the proposed section and paragraph (for example, § 210.10(a)) of each provision addressed in comment

letters. Comments prove most helpful when they are specific, stating the reasons for support or opposition, suggesting modifications which would resolve commentors' concerns, and providing relevant background information, as appropriate.

Subpart A—General

General Purpose and Scope (§ 210.1)

This section has been condensed to more clearly specify the general purpose and scope of the program.

Definition (§210.2)

The Department has reformatted this section by deleting the paragraph designations, i.e., (a), (b). Definitions are now in alphabetical order. Definitions (b–1), (b–2), (b–3)(1–4), (b–4), (h–6), and (q–2) have been moved to § 210.18(g), *AIMS definitions*. Definitions (h–4), (h–5), and (i) have been moved to § 210.10(a), *Meal pattern definitions*. The exceptions for certain States that are provided under the definition of "Milk" have been moved to § 210.10(i)(2).

The terms "Federal, or private agency" have been deleted from the definition of "Distributing agency" to reiflect school; program operations. "Long-term facility" has been deleted and incorpored into the definition of "School".

On March 13, 1984, a proposed rule (49 FR 9426) was published to reflect changes in the regulation of competitive foods required by the ruling in the case of the *National Soft Drink Association* v. *Block, et al.* The terms "competitive foods" and "competitive foods approved by the Secretary" have been omitted in this proposal pending the publication of a final competitive foods rule.

The definition "School" has been revised to reflect long-standing policy and regulatory history. Prior to 1970 a school meant an educational unit of high school grade or under as recognized by the State agency. Subsequent amendments to the definition moved the phrase "as recognized by the State agency" from the first sentence of the definition to the second sentence. This move resulted in a technical error which put the regulatory wording in opposition to long-standing policy. This proposal reinstates the phrase in the first sentence, thus bringing the regulatory wording into conformance with operating policies.

The definition of State agency has been expanded to include the FNS Regional Office when that office acts as an administering agency. This change is designed to eliminate the often confusing terms "State agency of FNSRO, where appropriate". The reference to the number of representatives required on the State Food Distribution Advisory Council has been moved to the appropriate section of the text (§ 210.27). The term "Special needs children" has been replace by a new term, "Handicapped child" and includes references to the Department's nondiscrimination regulations, 7 CFR Part 15b. A new definition of "Uniform Federal Assistance Regulations" explains 7 CFR Part 3015 and its relationship to OMB Circulars.

Administration (§ 210.3)

This section proposes to clarify a participating State agency's responsibility to comply with the Department's nondiscrimination regulations (7 CFR Parts 15, 15a, and 15b), the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015), the program regulations (7 CFR Parts 210 and 245), the State Administrative Expense Funds Regulations (7 CFR Part 235) and instructions issued under the FNS Directives Management System.

Paragraph (b) has been rewritten to clarify that the administration of the program may be in the State educational agency or any other agency of the State as is designated by the Governor or legislative authority of the State and approved by the Department. This clarification responds to section 204 of the Intergovernmental Act of 1968.

Subpart B—Assistance to States

Cash and Commodity Assistance to States (§ 210.4)

Due to the major differences in program payments, paragraph (b) sets forth the avilability of both cash and commodity assistance for the National School Lunch Program while paragraph (c) sets forth the availability of such assistance for the Commodity School Program.

Payment Process (§ 210.5) and Method of Reimbursement (§ 210.8)

These sections have been revised to reflect the submission of claims requirements published as a final rule in the **Federal Register** on May 4, 1984 (49 FR 18983).

Subpart C—Requirements for School Food Authority Participation

Agreement With State Agency (§ 210.9)

This proposed revision has deleted references to each of the specific areas of compliance which currently must be included in the agreement. Rather than listing specifics, the Department is proposing to change the agreement by requiring a general statement which would bind School Food Authorities with *all* the requirements of Parts 210 and 245. A State agency may continue to highlight specific requirements in the agreement at its discretion provided that the required statement appears on the agreement. In the past, several regulatory requirements were indirectly imposed through the agreement. This proposal has placed these requirements in appropriate sections of the text. For example, § 210.8(e)(12), "Maintain necessary facilities for storing, preparing, and serving food," now appears under § 210.13, *Facilities management*, paragraph (b), *Storage*.

Paragraph (c), *Extension of agreements*, reflects the deletion of a proviso. Under § 210.14(a–3) of the existing Part 210, an agreement may not be extended until all "Claims for Reimbursement and the information required under § 210.13(c) for the current fiscal year have been submitted . . ." The submission of claims requirements set forth under § 210.5 obviate the need for this claims submission proviso. The information required under § 210.13(c) was the October and March estimates of participation which were eliminated by Pub. L. 97–35.

Lunch Components and Quantities (§ 210.10)

Three definitions, "Infant cereal", "Infant forumula", and "Milk", were moved from the § 210.2 definitions to § 210.10(a), *Meal pattern definitions*, since they appear only in this section. The exceptions that appeared in the definition of milk have been moved to § 210.10(i), *Insufficient milk supply*.

Section 210.10 continues to require the service of a half pint (8 fluid ounces) of milk to Group III children; except in those School Food Authorities which served 6 fluid ounces of milk prior to May 1, 1980. This rule proposes to amend § 210.10(a)(2)(i) by deleting the requirement that School Food Authorities serving the 6 ounce portions since 1980 document their reasons for adopting this portion size since the rationale has already been provided in previous years.

This rule proposes to change § 210.10(b) to eliminate Federal reimbursement for second meals. Currently, School Food Authorities are allowed to serve excess lunches to eligible children and claim such second lunches for reimbursement, provided production and participation records are maintained which demonstrate positive action toward providing one lunch per child per day. However, concern has been expressed that, at this time of

limited Federal resources, this provision is contrary to the national effort to reduce waste. Restricting reimbursement to one meal per child per day will encourage School Food Authorities to intensify efforts to ensure that excess meals not produced. It encourages closer reviews of participation records and a greater awareness of participation trends and student attitudes toward the school's food service. Schools may continue to serve excess food as second meals, but may not claim reimbursement for such meals. Since no Federal reimbursement will be paid for second meals, the manner of service of the meals and any requirement that free, reduced price or paid students pay for seconds, either by meal or by food component, is totally at the discretion of the School Food Authority. In the first lunch, schools may continue to serve increased portion sizes to students, such as older students, for whom larger portions more adequately meet nutritional needs. Although the meal pattern recognizes the different needs of children by providing larger portion sizes for older students, some students request even larger portions and may be accommodated at the discretion of the School Food Authority.

This rule proposes a change to § 210.10(j) to accommodate the Department's nondiscrimination regulations (7 CFR Part 15b) which were published in the **Federal Register** on June 11, 1982 (47 FR 25470). In the case of a handicapped child, School Food Authorities are required to make substitutions in foods listed under § 210.10(c) if the child is unable to consume such foods. This proposal allows food substitutions, for a handicapped child or a child with special food needs, only when supported by a statement from a physician that includes recommended alternate foods.

Competitive Food Service (§ 210.11)

On March 13, 1984, the Department published a proposed competitive foods rule (49 FR 9426) to amend the "time and place" portion of the rule to restrict the sale of foods of minimal nutritional value only during meal hours in meal service areas. This change responds to a decision by the U.S. Court of Appeals for the District of Columbia Circuit in the case of *National Soft Drink Association* v. *Block, et al.*, which found that the Department had exceeded its rulemaking authority when it promulgated the "time and place" portion of the competitive foods rule, restricting the sale of foods of minimal nutritional value throughout the school from the beginning of the school day until after the last lunch period. This section has been reserved to accommodate the final competitive foods rules when it is published.

Facilities Management (§ 210.13)

Both paragraph (a), *Health standards*, and paragraph (b), *Storage*, were derived from paragraphs (9) and (12) of the listing of School Food Authority responsibilities highlighted in the agreement required under § 210.8(e) of the existing regulations.

Resource Management (§ 210.14)

Paragraphs (a)–(f) were also derived from the listing of responsibilities highlighted in the agreement required under § 210.8(e) of the existing regulations. Paragraphs (a)–(d) reflect paragraphs (1), (2), (13), and (10) of the existing § 210.8(e), respectively. Paragraph (e) has been added to cross reference the procurement requirements and paragraph (f) is based on paragraphs (11) and (17) of the existing § 210.8(e).

Reporting and Recordkeeping (§ 210.15)

This section is new and serves to highlight the more important reporting and recordkeeping requirements.

Subpart D—Requirements for State Agency Participation

Matching Federal Funds (§ 210.17)

The existing § 210.6, *State revenue matching requirements*, requires a State to match 30 percent of the Federal funds received under section 4 of the National School Lunch Act with State revenues appropriated or used for (National School Lunch) Program purposes. A downward adjustment in this matching requirement is made if the State's per capita income is below the national average. Given the elimination of program specific cost restrictions (48 FR 40194), the Department is proposing a clarification of the term "Program purposes" to include programs under 7 CFR Parts 210, 215, and 220. The Department believes this approach to be a logical extension of the elimination of cost restrictions. Commentors are encouraged to address this change.

Monitoring Responsibilities (§ 210.18)

The provisions of § 210.18(c), *Improved Management*, reflect the deletion of a sentence from existing 210.14(f) which states: "Poor student acceptance is indicated by a substantial number of students who routinely and over a period of time: (1) Do not favorably accept a particular menu item; (2) return foods; or (3) under paragraph (4) of § 210.10 choose less than all five food items." The Department is proposing to delete this sentence to provide the State agency the flexibility of determining what constitutes poor management practices. Furthermore, deletion of this phrase will eliminate an incorrect citation. § 210.10(a)(4) should have been § 210.10(a)(5). Paragraph (a)(4) discusses increased portion sizes for Group V children while the correct citation, pargraph (a)(5), discusses the offer versus serve provision. The incorrect citation and the implicit inconsistency with the offer versus serve provision, has resulted in the proposed deletion of this provision.

The Department has replaced the criteria for statistical sampling which currently appears in § 210.14(a)(3) with the chart derived from the statistical sampling guidance previously disseminated to State agencies. The Department is proposing this change to eliminate the confusion resulting from the technical sampling wording, i.e., ". . . 95 percent chance that the error rate is not less than 2 percentage points less than the error rate found in the sample . . ." As a result of this change, the Department also proposes to delete the requirement that State agencies maintain documentation demonstrating compliance with the statistical sampling criteria.

Additional Responsibilities (§ 210.19)

Paragraph (b)(2) proposes to encourage rather than require State agencies to provide schools with information on foods available in plentiful supply. The Department is proposing this change to the existing § 210.14(e) provision since plentiful foods information is no longer provided to State agencies on a regular basis by the Department.

A new paragraph (3) is added to § 210.19(c), *Fiscal action*. The policy of assessing late charges on overdue amounts owed the Federal government is authorized by the Federal Claims Collection Standards contained in the Treasury Fiscal Requirements manual and mandated by the U.S. Department of the Treasury directive of May 17, 1982. This directive states that a late charge will be assessed on any overdue amounts owed to the Federal Government by any party outside the Federal government. Since State agencies are outside the Federal government, a late charge would be assessed on amounts paid late by them. This agency-wide policy became effective on July 28, 1982, and is outlined in FNS Instruction 494–4. Interest will be assessed on all claims billed after July 28, 1982, and on all old claims that are rebilled after July 28, 1982.

Reporting and Recordkeeping (§ 210.20)

This new section summarizes the reporting and recordkeeping requirements of participating State agencies.

Subpart E—State Agency and School Food Authority Responsibilities

Audits (§ 210.22)

This section proposes to totally revise the existing § 210.17, *Management evaluations and audits*, to conform to the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015).

Subpart F—Additional Provisions

Appendix A, B, and C

Appendix A, B, and C have not been included in the proposal because they remain as currently stated.

List of Subjects in 7 CFR Part 210

Food assistance programs, National School Lunch Program, Commodity School Program, Grant programs—Social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Redesignation Table

For the assistance of commentors, the following table shows where the provisions of the current Part 210 are located in the proposed new Part 210.

REDESIGNATION TABLE

Old section	New section
210.1	
210.1(a)	210.1(a).
210.1(b)	210.1(a).
210.1(c)	210.1(b).
210.2	
210.2 (a) and (b)	210.2.
210.2(b-1)	210.18(g).
210.2(b-2)	210.18(g).
210.2(b-3)	210.2 and 210.18(g).
210.2(b-4)	210.18(g).
210.2(c)	210.2.
210.2 (c-1)-(c-2)	210.2.
210.2(c-3)	Deleted.
210.2(c-4)	Deleted.
210.2(d)	Deleted.
210.2(e)-(h-3)	210.2.
210.2 (h-4) and (h-5)	210.10(a).
210.2(h-6)	210.18(g).
210.2 (h-7) and (h-8))	210.2.
210.2(h-9)	Deleted.
210.2(i)	210.10 (a), (i).
210.2(i-1)-(k)	210.2.
210.2(1)	Deleted.
210.2(1-1)	210.2.
210.2(m)	Deleted.
210.2(n)-(q)	210.2.
210.2(q-1)	Deleted.
210.2(q-2)	210.16(g).
210.2(r)-(w)	210.2.
210.3	
210.3(a)	210.3(a).
210.3(b)	210.3(b).
210.3(b) proviso	210.3(c).
210.3(b-1)	210.3(b), (c).
210.3(b-2)	Deleted.
210.3(c)	210.3(b).
210.4	
210.4(a)	210.4(b).

REDESIGNATION TABLE—Continued

Old section	New section
210.4(b)	210.4(c).
210.4(c)	210.4(b).
210.4(d)	210.4(b).
210.5	
210.5(a)	210.5(a).
210.5(b)	210.5(c).
210.5(c)	210.5(b).
210.5a	
210.5a	210.6(b).
210.6	
210.6(a)	210.17(a).
210.6(b)	210.17(b).
210.6(c)	210.17(c).
210.6(d)	210.17(d).
210.6(e)	210.17(e).
210.6(f)	210.17(h).
210.6(g)	210.17(g).
210.6(h)	210.17(f).
210.7	
210.7(a)	210.6(a).
210.7(b)	210.14(a).
210.7(c)	210.25.
210.7(d)	210.25.
210.8	
210.8(a)	210.9(a).
210.8(b)	210.9(a).
210.8(c)	Deleted.
210.8(d)	Deleted.
210.8(e)	210.9(b).
210.8(e)(1)	210.14(a).
210.8(e)(2)	210.14(b).
210.8(e)(3)	210.10 (b), (g).
210.8(e)(4)	210.10(b).
210.8(e)(5)	210.23(a).
210.8(e)(6)	210.23(b).
210.8(e)(7)	210.7(a).
210.8(e)(8)	210.8(a).
210.8(e)(9)	210.13(a).
210.8(e)(10)	210.14(d).
210.8(e)(11)	210.14(f).
210.8(e)(12)	210.13(b).
210.8(e)(13)	210.14(c).
210.8(e)(14)	210.19(d).
	210.23(c)
210.8(e)(15)	210.23(b).
210.8(e)(16)	210.23(c).
210.8(e)(17)	210.14(f).
210.8(e)(18)	210.23(c).
210.8(f)	210.19(f).
210.8a	
210.8a(a)	210.15(a).
	210.16(c).
210.8a(b)	210.16(c).
210.8a(c)	210.16(a).
210.8a(d)	210.16(d).
210.8a(e)	210.16(b).
210.8a(f)	210.16(a).
210.9	
210.9	210.23(a).
210.9a	
210.9a(a)	210.12(a).
210.9a(b)	210.12(a).
210.9a(c)	210.12(b).
210.9a(d)	210.12(c).
210.9a(e)	210.12(d).
210.10	
210.10(a)(1)	210.10(c).
210.10(a)(2)	210.10(b).
	210.10(c).
210.10(a)(2)(i)	210.10(d)(1).
210.10(a)(2)(ii)	210.10(d)(2).
210.10(a)(2)(iii)	210.10(d)(3).
210.10(a)(2)(iv)	210.10(d)(4).
210.10(a)(3)	210.10(g).
210.10(a)(4)	210.10(c).
210.10(a)(5)	210.10(e).
210.10(a)(6)	210.10(f).
210.10(b)	210.10(h).
210.10(c)	210.10(i)(1).
210.10(d)	210.10(i)(2).
210.10(e)	210.10(i)(3).
210.10(f)	210.10(j)(3).
210.10(g)	210.10(j)(1).
210.10(h)	210.10(j)(2).
210.10(i)	210.10(j)(4).
210.10(j)	210.10(j)(5).
210.11	
210.11(a)	210.7(a).
	210.10(b)
210.11(b)	210.7(b).
210.11(c)	210.7(b).
210.11(d)	210.7(b).

REDESIGNATION TABLE—Continued

Old section	New section
210.11(e)	210.7(b).
210.12	
210.12	210.7(a).
210.13	
210.13(a)	210.8(a).
210.13(b)	210.8(a), (b).
210.13(b-1)	210.8(b).
	210.15(b)(1)
210.13(c)	210.8(c).
210.14	
210.14(a)(1)	210.19(a).
210.14(a)(2)	210.18(f).
	210.19(a).
	210.23.
210.14(a)(3)	210.18 (g), (i).
210.14(a)(4)	210.18(j).
210.14(a)(5)	210.18(h).
210.14(a)(6)	210.18(k).
210.14(a)(7)	210.18(f).
210.14(a-1)	210.14(c).
	210.19(a)
210.14(a-2)	Deleted.
210.14(a-3)	210.9(c).
210.14(b)	210.18(d).
210.14(c)	210.18(d).
210.14(d)	210.19(b).
210.14(e)	210.19(b).
210.14(f)	210.18(c).
210.14(g)	210.5(d).
	210.17(g).
	210.18(1).
	210.23(c).
210.14(h)	210.18(e).
210.14(i)	210.18(a).
210.15	
210.15	210.18(b).
210.15b	
210.15b	210.11 Reserved.
210.16	
210.16 (a), (b), (c), (e), (f), (h), (i).	210.19(c).
210.16(d)	210.19(c).
	210.23
210.16(g)	Deleted.
210.17	
210.17(a)	210.22(a), (b).
210.17 (b) and (c)	Deleted.
210.17 (d), (c), (f)	210.19(d).
210.18	
210.18	210.26.
210.19	
210.19	210.24.
210.19a	
210.19a (a), (b), (c)	210.21 (a), (b), (c).
210.20	
210.20(a)	210.27 (a), (c).
210.20(b)	210.27 (a), (b).
210.20(c)	210.27(a).
210.20(d)	210.27(d).
210.20(d-1)	210.27(e).
210.20(d-2)	210.27(f).
210.20(e)	210.27(g).
210.21	
210.21(a-g)	210.26(a)(1-7).

Accordingly, Part 210, up to but not including the Appendices, is proposed to be revised as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

Subpart A—General

Sec.

Subpart B—Assistance to States

Sec.

Authority: Sec. 2–12, 60 Stat. 230, as amended; sec. 10, 80 Stat. 889, as amended; 84 Stat. 270; 42 U.S.C. 1751–1760, 1779.

Subpart A—General

§210.1 General purpose and scope.

(a) *Purpose of the program.* The National School Lunch Program is a grant-in-aid program under which the Department provides grants to States. The grants are to be used to assist schools of high school grade and under to serve nutritious lunches to students at low cost or free each school day. Under the Program, grant funds are also provided to residential child care institutions to assist those institutions in serving nutritious lunches to children at low cost or free each day of the week. Section 2 of the National School Lunch Act, as amended, states: "It is hereby declared to be the policy of Congress, as a measure of national security, to safeguard the health and well-being of the Nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food, by assisting the States, through grants-in-aid and other means, in providing an adequate supply of foods and other facilities for the establishment, maintenance, operation, and expansion of nonprofit school-lunch programs." In furtherance of these objectives, participating schools shall serve lunches that are nutritionally adequate, as set forth in these regulations, and shall also coordinate the school's health education activities with the formation of good eating habits in the lunch room, so that participating children gain a full understanding of the relationship between proper eating and good health.

(b) *Scope of the regulations.* This part sets forth the requirements for participation in the National School Lunch and Commodity School Programs. It specifies program responsibilities of State and local officials in the areas of program administration, preparation and service of nutritious lunches, payment of funds, use of program funds, program monitoring, and reporting and recordkeeping requirements.

§210.2 Definitions.

For the purpose of this part:

"Act" means the National School Lunch Act, as amended.

"AIMS" means the Assessment, Improvement and Monitoring System. This is a management improvement system used in the National School Lunch and the Commodity School Programs.

"AIMS Performance Standards" means the standards specified in § 210.18(g) which are used to measure compliance with Program regulations.

"Child" means—(a) a student of high school grade or under, as determined by the State educational agency, including students who are mentally or physically handicapped as defined by the State and who are participating in a school program established for the mentally or physically handicapped; and (b) in residential child care institutions, a person under 21 chronological years of age.

"CND" means the Child Nutrition Division of the Food and Nutrition Service of the Department.

"Commodity School Program" means the program under which participating schools operate a nonprofit lunch program in accordance with this part and receive primarily commodity assistance. States administering the Commodity School Program shall receive special cash and commodity assistance in accordance with § 210.4(c).

"Department" means the United States Department of Agriculture.

"Distributing agency" means a State agency which enters into an agreement with the Department for the distribution to schools of donated foods pursuant to Part 250 of this chapter.

"Donated foods" means food commodities donated by the Department for use in nonprofit lunch programs.

"Fiscal year" means a period of 12 calendar months beginning October 1 of any year and ending with September 30 of the following year.

"FNS" means the Food and Nutrition Service, United States Department of Agriculture.

"FNSRO" means the appropriate Regional Office of the Food and Nutrition Service of the Department.

"Food of minimal nutritional value" means—(a) in the case of artificially sweetened foods, a food which provides less than five percent of the United States Recommended Dietary Allowances (USRDA) for each of eight specified nutrients per serving; and (b) in the case of all other foods, a food which provides less than five percent of the USRDA for each of eight specified nutrients per 100 calories and less than five percent of the USRDA for each of eight specified nutrients per serving. The eight nutrients are—protein, vitamin A, vitamin C, niacin, riboflavin, thiamin, calcium, and iron. Categories of foods of minimal nutritional value are listed in Appendix B of this part.

"Food service management company" means a commercial enterprise or a nonprofit organization which is or may be contracted with a School Food Authority to manage its school food service.

"Free lunch" mean a lunch served under the Program to a child from a household eligible for such benefits under Part 245 and for which neither the child nor any member of the household pays or is required to work.

"Handicapped child" means any child who has a physical or mental impairment as defined in § 15b.3 of the Department's nondiscrimination regulations (7 CFR Part 15b).

"Lunch" means a meal which meets the school lunch pattern for specified age/grade groups of children as designated in § 210.10.

"National School Lunch Program" means the program under which participating schools operate a nonprofit lunch program in accordance with this part. States administering the National School Lunch Program shall receive general and special cash assistance and commodity assistance in accordance with § 210.4(b).

"Net cash resources" means all monies, as determined in accordance with the State agency's established accounting system, that are available to or have accrued to a School Food Authority's nonprofit school food service at any given time, less cash payable. Such monies may include, but are not limited to, cash on hand, cash receivable, earnings on investments, cash on deposit and the value of stocks, bonds or other negotiable securities.

"Nonprofit", when applied to schools or institutions eligible for the Program, means exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1954, as amended; or, in the Commonwealth of Puerto Rico, certified as nonprofit by the Governor.

"Nonprofit school food service" means all food service operations conducted by the School Food Authority principally for the benefit of school children, all of the revenue from which is used solely for the operation or improvement of such food service.

"OIG" means the Office of the Inspector General of the Department.

"Program" means the National School Lunch Program and the Commodity School Program.

"Reduced price lunch" means a lunch served under the Program: (a) to a child from a household eligible for such benefits under Part 245; (b) for which the price is less than the full price of the lunch and which does not exceed the maximum allowable reduced price mandated by law, in accordance with Part 245, and (c) for which neither the child nor any member of the household is required to work.

"Reimbursement" means Federal cash assistance including advances paid or payable to participating schools for lunches meeting the requirements of § 210.10 and served to eligible children.

"Revenue", when applied to nonprofit school food service, means all monies received by or accruing to the nonprofit school food service in accordance with the State agency's established accounting system including, but not limited to, children's payments, earnings on investments, other local revenues, State revenues, and Federal cash reimbursements.

"School" means: (a) An educational unit of high school grade or under, recognized as part of the educational system in the State and operating under public or nonprofit private ownership in a single building or complex of buildings; *except for* private schools with an average yearly tuition exceeding $1,500 per child; (b) any public or nonprofit residential child care institution, or distinct part of such institution, which operates principally for the care of children, and, if private, is licensed to provide residential child care services under the appropriate licensing code by the State or a subordinate level of government, *except for* residential summer camps which participate in the Summer Food Service Program for Children, Job Corps Centers funded by the Department of Labor, and private foster homes; or (c) with respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico. (The term "high school grade or under" includes classes of preprimary grade when recognized as part of the educational system or when they are conducted in a school having classes of higher grade. The term "residential child care institution" includes, but is not limited to: homes for the mentally, emotionally or physically impaired, and unmarried mothers and their infants; group homes; halfway houses; orphanages; temporary shelters for abused children and for runaway children; long-term care facilities for chronically ill children; and juvenile detention centers. A long-term care facility is a hospital, skilled nursing facility, intermediate care facility, or distinct part thereof, which is intended for the care of children confined for 30 days or more.)

"School Food Authority" means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate the Program therein.

"School year" means a period of 12 calendar months beginning July 1 of any year and ending June 30 of the following year.

"Secretary" means the Secretary of Agriculture.

"State" means any of the 50 States, District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianas, or the Trust Territory of the Pacific Islands.

"State agency" means (a) the State educational agency; (b) any other agency of the State which has been designated by the Governor or other appropriate executive or legislative authority of the State and approved by the Department to administer the Program in schools, as defined in this section; or (c) the FNSRO, in cases where the FNSRO administers the Program.

"State educational agency" means, as the State legislature may determine (a) the chief State school officer (such as the State Superintendent of Public Instruction, Commissioner of Education, or similar officer), or (b) a board of education controlling the State department of education.

"State food distribution advisory council" means a group which meets to advise the State agency with respect to the needs of schools participating in the Program concerning the manner of selection and distribution of commodities.

"Tuition" means the basic charge required for a student to enroll at a school, excluding any amount paid for the cost of room and board, transportation, books, supplies, equipment, and fees. The following monies shall not be included when calculating a school's average yearly tuition per child—(a) academic scholarship aid from public or private organizations or entities given to students, or to schools for students, and (b) State, county or local funds provided to schools operating principally for the purpose of educating handicapped children for whose education the State, county or local government is primarily or solely responsible. In schools which vary tuition, the average yearly tuition is determined by adding the total tuition receipts for the period of time in which the majority of children are in attendance and dividing by the total number of students enrolled during that period.

"Uniform Federal Assistance Regulations" means 7 CFR Part 3015, regulations published by the Department to implement Office of Management and Budget Circulars A-21, A-87, A-102, A-110, and A-122.

§ 210.3 Administration.

(a) *FNS.* FNS will act on behalf of the Department in the administration of the Program. Within FNS, the Child Nutrition Division (CND) will be responsible for Program administration.

(b) *States.* The State agency shall be responsible for the administration of Program operations in schools within the State. Each State agency desiring to administer the Program shsll enter into a written agreement with the Department for the administration of the Program in accordance with the requirements of this part; Part 235; Part 245; Parts 15, 15a, 15b, and 3015 of Departmental regulations and instructions issued under the FNS Directives Management System.

(c) *FNSROs.* The FNSRO shall administer the Program in nonprofit private schools or residential child care institutions if the State agency is prohibited by law from disbursing Federal funds paid to such schools. The FNSRO shall also administer the Program in all nonprofit private schools

or residential child care institutions which have been under continues FNS administration since October 1, 1980 unless the administration of the Program in such schools is assumed by the State. The FNSRO shall, in each State in which it administers the Program, assume all responsibilities of a State agency as set forth in this part, Part 235 and Part 245 of this chapter. References in this part to "State agency" include FNSRO when it is the agency administering the Program.

(d) *School Food Authorities.* The School Food Authority shall be responsibile for the administration of the Program in schools.

Subpart B—Assistance to States

§ 210.4 Cash and commodity assistance to States.

(a) *General.* To the extent funds are available, FNS will make cash assistance available in accordance with the provisions of this section to each State agency for lunches served to children under the National School Lunch and Commodity School Programs. To the extent commodities are available, FNS will provide commodity assistance to distributing agencies for each lunch served in accordance with the provisions of this part and Part 250 of this chapter.

(b) *Assistance for the National School Lunch Program.* The Secretary will make cash and commodity assistance available to each State agency and distributing agency administering the National School Lunch Program, as follows:

(1) *Cash assistance:* Cash assistance payments are comprised of a *general* cash assistance payment, authorized under section 4 of the Act, and a *special* cash assistance payment, authorized under section 11 of the Act. General cash assistance is provided to each State agency for *all* lunches served to children in accordance with the provisions of the National School Lunch Program. Special cash assistance is provided to each State agency for lunches served under the National School Lunch Program to children determined eligible for free or reduced price lunches in accordance with Part 245 of this chapter. The total of these payments to each State for any fiscal year is calculated by multiplying the number of lunches of each type—paid, free, and reduced price—reported, in accordance with the provisions of § 210.5(d) for each month of service during the fiscal year, by the applicable national average payment rates prescribed by FNS. In accordance with section 11 of the Act, FNS will prescribe annual adjustments to the per meal national average payment rate (general cash assistance) and the special assistance national average payment rates (special cash assistance) which are effective on July 1 of each year. These adjustments, which reflect changes in the food away from home series of the Consumer Price Index for all Urban Consumers, are annually announced by Notice in the **Federal Register.** FNS will also establish maximum per meal rates of reimbursement within which a State may vary reimbursement rates to School Food Authorities. These maximum rates of reimbursement are established at the same time and announced in the same Notice as the national average payment rates.

(2) *Commodity assistance.* For each school year, FNS will provide distributing agencies with donated foods for each lunch served under the National School Lunch Program as provided under Part 250 of this chapter. The per lunch value of commodity assistance is adjusted by the Secretary annually to reflect changes as required under section 6 of the Act. These adjustments, which reflect changes in the Price Index for Foods Used in Schools and Institutions, are effective on July 1 of each year and are announced in the **Federal Register.** The total value of donated foods under the National School Lunch Program to each distributing agency for each school year is calculated by multiplying the total number of lunches served under the National School Lunch Program from July 1 through June 30 of each year by the national average value of donated foods prescribed by the Secretary for that period.

(c) *Assistance for the Commodity School Program.* FNS will make special cash assistance available to each State agency for each lunch served in commodity schools in the same manner as special cash assistance is provided in the National School Lunch Program. FNS will provide commodity assistance in accordance with Part 250 of this chapter. Payment of such amounts to State agencies is subject to the reporting requirements contained in § 210.5(d). Of the total value of commodity assistance to which it is entitled, the School Food Authority may elect to receive cash payments of up to five cents per lunch for lunches served in its commodity school(s) for donated foods processing and handling expenses. Such expenses include any expenses incurred by or on behalf of a commodity school for processing or other aspects of the preparation, delivery, and storage of donated foods. The School Food Authority may have all or part of these cash payments retained by the State agency for use on its behalf for processing and handling expenses by the State agency or it may authorize the State agency to transfer to the distributing agency all or any part of these payments for use on its behalf for these expenses. Payment of such amounts to State agencies is subject to the reporting requirements contained in § 210.5(d). The total value of commodity assistance is calculated on a school year basis by adding—

(1) The applicable national average payment rate (section 4) prescribed by the Secretary for the period of July 1 through June 30 multiplied by the total number of lunches served during the school year under the Commodity School Program; and

(2) The national average value of donated foods prescribed by the Secretary for the period of July 1 through June 30 multiplied by the total number of lunches served during the school year under the Commodity School Program.

§ 210.5 Payment process.

(a) *Letter of Credit.* FNS will specify the terms and conditions of the State agency's grant in a grant award document and will make payments available by means of a Letter of Credit issued in favor of the State agency. The State agency shall obtain funds for reimbursement to participating School Food Authorities through procedures established by FNS in accordance with 7 CFR Part 3015. State agencies shall limit requests for funds to amounts that will permit prompt payment of claims or authorized advances. The State agency shall disburse funds received from such requests without delay for the purpose for which drawn. FNS may, at its option, reimburse a State agency by Treasury Check. FNS will pay by Treasury Check with funds available in settlement of a valid claim if payment for that claim cannot be made within the grant closeout period specified in paragraph (d) of this section.

(b) *Cash-in-lieu of commodities.* All Federal funds to be paid to any State in place of commodities will be made available as provided in Part 240 of this chapter.

(2) *Recovery of funds.* The State agency shall release to FNS any Federal funds made available to it under this part which are in excess of reported obligations at the end of each fiscal year in accordance with the reconciliation procedures specified in paragraph (d) of this section. Release of funds by the State agency shall be made as soon as practicable but in any event not later than 30 days following demand by FNS, and shall be reflected by a related

adjustment in the State agency's Letter of Credit.

(d) *Substantiation and reconciliation process.* Each State agency shall maintain Program records as necessary to support the reimbursement payments made to School Food Authorities under §§ 210.7 and 210.8 and the reports submitted to FNS under this paragraph. The State agency shall ensure such records are retained for a period of three years after the date of submission of the final Financial Status Report for the fiscal year except that if audit findings have not been resolved, the records shall be retained beyond the three year period as long as required for the resolution of the issues raised by the audit.

(1) *Monthly report.* Each State agency shall submit a final Report of School Program Operations (FNS–10) to FNS for each month which shall be limited to claims submitted in accordance with § 210.8 and which shall be postmarked and/or submitted no later than 90 days following the last day of the month covered by the report. States shall not recieve Program funds for any month for which the final report is not submitted within this time limit unless FNS grants an exception. Upward adjustments to a State's report shall not be made after 90 days from the month covered by the report unless authorized by FNS. Downward adjustments to a State's report shall always be made, without FNS authorization, regardless of when it is determined that such adjustments are necessary. Any adjustments to a State's report shall be reported to FNS in accordance with procedures established by FNS.

(2) *Quarterly report.* Each State agency shall also submit to FNS a quarterly Financial Status Report (SF–269) on the use of Program funds. Such reports shall be postmarked and/or submitted no later than 30 days after the end of each fiscal year quarter.

(3) *End of year report.* Each State agency shall submit a final Financial Status Report for each fiscal year. This final fiscal year grant closeout report (SF–269) shall be postmarked and/or submitted to FNS within 120 days after the end of each fiscal year or part thereof that the State agency administered the Program. FNS will not be responsible for reimbursing Program obligations reported later than 120 days after the close of the fiscal year in which they were incurred. State agencies shall liquidate all obligations before final closure of a fiscal year grant, and shall report obligations for the fiscal year in which they occur. Grant closeout procedures are to be carried out in accordance with 7 CFR Part 3015.

§ 210.6 Use of Federal funds.

(a) *General.* State agencies shall use federal funds made available under the Program to reimburse or make advance payments to School Food Authorities in connection with lunches served in accordance with the provisions of this part; *except that,* with the approval of FNS, any State agency may reserve an amount up to one percent of the funds earned in any fiscal year under this part for use in carrying out special developmental projects. Advance payments to School Food Authorities may be made at such times and in such amounts as are necessary to meet the current fiscal obligations. All Federal funds paid to any State in place of commodities shall be used as provided in Part 240 of this chapter.

(b) *Transfer of funds.* A State agency may request FNS approval for the transfer of funds, within a fiscal year, among programs authorized under the Act and the Child Nutrition Act of 1966, as amended. A request to transfer funds shall be accompanied by a justification showing how such transfers will better accomplish the purpose of the Acts. If the transfer is approved by FNS, FNS will amend the related payments of funds or Letter of Credit.

§ 210.7 Reimbursement for School Food Authorities.

(a) *General.* Reimbursement payments are to be made only to School Food Authorities operating under a written agreement with the State agency and will be made only after execution of the agreement; *except that,* such payments may be made for lunches served in accordance with provisions of this part and Part 245 in the calendar month preceding the calendar month in which the agreement is executed, *provided that* both months are in the same fiscal year. These reimbursement payments include general cash assistance for all lunches served under the National School Lunch Program and special cash assistance payments for free or reduced price lunches served under the National School Lunch and Commodity School Programs to children determined eligible for such benefits. The School Food Authority shall not claim or be eligible for special cash assistance reimbursement for free or reduced price meals in excess of the number of children approved for such meals in accordance with Part 245 of this chapter.

(b) *Assignment of rates.* At the beginning of each school year, State agencies shall establish the per meal rates of reimbursement for School Food Authorities participating in the Program. These rates of reimbursement may be assigned at levels based on financial need; *except that,* the rates are not to exceed the maximum rates of reimbursement established by the Secretary under § 210.4 and are to permit reimbursement for the total number of lunches in the State from funds available under § 210.4. Within each School Food Authority, the State agency shall assign the same rate of reimbursement from general cash assistance funds for lunches served to children at the full price and for lunches served to children free or at a reduced price. Assigned rates of reimbursement may be changed at any time by the State agency; *provided that* notice of any change is given to the School Food Authority. The combined rates of reimbursement paid to any School Food Authority for lunches served to children during the school year are not to exceed the sum of the products obtained by multiplying the total number of free, reduced price, and paid lunches respectively, served to eligible children during the school year by the applicable maximum per lunch reimbursements prescribed for the school year for each type of lunch.

§ 210.8 Method of reimbursement.

(a) *Monthly claims.* To be entitled to reimbursement under this part, each School Food Authority shall submit to the State agency, a monthly Claim for Reimbursement, as described in paragraph (b) of this section. A final Claim for Reimbursement shall be postmarked and/or submitted to the State agency not later than 60 days following the last day of the full month covered by the claim. State agencies may establish shorter deadlines at their discretion. Claims not postmarked and/or submitted within 60 days shall not be paid with Program funds unless FNS determines that an exception should be granted. The State agency shall promptly take corrective action with respect to any Claim for Reimbursement as determined necessary through its claims review process or otherwise. In taking such corrective action, State agencies may make upward adjustments on claims filed within the 60 day deadline if such adjustments are completed within 90 days of the last day of the claim month and are reflected in the final Report of School Program Operations (FNS–10) for the claim month required under § 210.5(d). Upward adjustments in Program funds claimed which are not reflected in the final FNS–10 for the claim month shall not be made unless authorized by FNS. Downward adjustments in amounts claimed shall always be made, without FNS authorization, regardless of when it

is determined that such adjustments are necessary.

(b) *Content of claim.* The Claim for Reimbursement shall include data in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the Report of School Program Operations required under § 210.5(d). Unless otherwise approved by FNS, the Claim for Reimbursement for any month shall include only lunches served in that month except if the first or last month of Program operations for any year contains 10 operating days or less, such month may be combined with the Claim for Reimbursement for the appropriate adjacent month; however, Claims for Reimbursement may not combine operations occurring in two fiscal years.

(c) *Advance funds.* The State agency may advance funds available for the Program to a School Food Authority in an amount equal to the amount of reimbursement estimated to be needed for one month's operation. Following the receipt of claims, the State agency shall make adjustments, as necessary, to ensure that the total amount of payments received by the School Food Authority for the fiscal year does not exceed an amount equal to the number of lunches by type—paid, free, and reduced price, served to children times the respective payment rates assigned by the State in accordance with § 210.7. The State agency shall recover advances of funds to any School Food Authority failing to comply with the 60-day claim submission requirements in paragraph (a) of this section.

Subpart C—Requirements for School Food Authority Participation

§ 210.9 Agreement with State agency.

(a) *Application.* An official of the local public school district or individual private school shall make written application to the State agency for any school which desires to operate the Program. Applications must provide the State agency with sufficient information to determine eligibility. The School Food Authority shall also submit for approval a Free and Reduced Price Policy Statement in accordance with Part 245 of this chapter.

(b) *Agreement.* Each fiscal year School Food Authorities wishing to participate in the Program shall enter into a written agreement with the State agency. This agreement shall contain a statement to the effect that the "School Food Authority and participating schools under its jurisdiction, shall comply with all provisions of 7 CFR Parts 210 and 245."

(c) *Extension of agreement.* An agreement with any School Food Authority may be extended through the subsequent fiscal year; *provided that* the School Food Authority complies with the requirements of this part.

§ 210.10 Lunch components and quantities.

(a) *Meal pattern definitions.* For the purpose of this section:

(1) "Infant cereal" means any iron-fortified dry cereal especially formualted and generally recognized as cereal for infants and that is routinely mixed with formula or milk prior to consumption.

(2) "Infant formula" means any iron-fortified formula intended for dietary use solely as a food for normal, healthy infants; excluding those formulas specifically formulated for infants with inborn errors of metabolism or digestive or absorptive problems. Infant formula, as served, must be in liquid state at recommended dilution.

(3) "Milk" means pasteurized fluid types of unflavored or flavored whole milk, lowfat milk, skim milk, or cultured buttermilk which meet State and local standards for such milk; *except that,* in the meal pattern for infants (0 to 1 year of age) milk means unflavored types of whole fluid milk or an equivalent quantity of reconstituted evaporated milk which meet such standards. All milk should contain vitamins A and D at levels specified by the Food and Drug Administration and consistent with State and local standards for such milk.

(b) *General.* School Food Authorities shall ensure that participating schools provide nutritious and well-balanced lunches to children in accordance with the provisions of this section. The requirements and recommendations of this section are designed so that the nutrients of the lunch averaged over a period of time, *approximate* one-third of the Recommended Dietary Allowances. School Food Authorities shall ensure that each lunch is priced as a unit. Except as otherwise provided herein, School Food Authorities shall ensure that sufficient quantities of food are planned and produced so that lunches provided contain all the required food components in at least the amounts indicated in the table presented under paragraph (c) of this section. School Food Authorities shall ensure that lunches are planned and produced on the basis of participation trends, with the objective of providing one lunch per child per day. Production and participating records shall be maintained to demonstrate positive action toward this objective. Any excess lunches or food components that are produced may be served, but shall *not* be claimed for reimbursement.

(c) *Minimum required lunch quantities.* School Food Authorities that are able to provide quantities of food to children solely on the basis of their ages or grade level should do so. School Food Authorities that cannot serve children on the basis of age or grade level shall provide all school age childen Group IV portions as specified in the table presented in this paragraph. School Food Authorities serving children on the basis of age or grade level shall plan and produce sufficient quantities of food to provide Groups I–IV no less than the amounts specified for those children in the table presented in this paragraph, and sufficient quantities of food to provide Group V no less than the specified amounts for Group IV. It is recommended that such School Food Authorities plan and produce sufficient quantities of food to provide Group V children the larger amounts specified in the table. School Food Authorities that provide increased portion sizes for Group V may comply with children's requests for smaller portion sizes of the lunch components; *provided,* that the requested portion size is not less than the portion required for Group IV. The approximate per lunch minimums for each age and grade level are:

SCHOOL LUNCH PATTERN—APPROXIMATE PER LUNCH MINIMUMS

Components		Minimum quantities				
		Group I age 1–2 (preschool)	Group II age 3–4 (preschool)	Group III age 5–8 (K–3)	Group IV age 9 and older (4–12)	Recommended quantities group V, 12 years and older (7–12)[2]
Milk	Unflavored fluid lowfat, skim, or buttermilk must be offered[1].	¾ cup (6 fl. oz.)	¾ cup (6 fl. oz.)	½ pint (8 fl. oz.)	½ pint (8 fl. oz.)	½ pint (8 fl. oz.)
Meat or meat alternate (quantity of the edible portion as served).	Lean meat, poultry, or fish	1 oz	1½ oz	1½ oz	2 oz	3 oz.
	cheese	1 oz	1½ oz	1½ oz	2 oz	3 oz.

SCHOOL LUNCH PATTERN—APPROXIMATE PER LUNCH MINIMUMS—Continued

Components		Minimum quantities				
		Group I age 1-2 (preschool)	Group II age 3-4 (preschool)	Group III age 5-8 (K-3)	Group IV age 9 and older (4-12)	Recommended quantities group V, 12 years and older (7-12)[2]
	Large egg	½ oz	¾	¾	1	1½
	Cooked dry beans or peas	¼ cup	⅜ cup	⅜ cup	½ cup	¾ cup
	Peanut butter or an equivalent quantity of any combination of any of above.	2 Tbsp	3 Tbsp	3 Tbsp	4 Tbsp	6 Tbsp
Vegetable or fruit	2 or more servings of vegetables or fruits or both.	½ cup	½ cup	½ cup	¾ cup	¾ cup
Bread or bread alternate (servings per 5-day week).	Must be enriched or whole grain—at least ½ serving for group I or one serving for groups II-V must be served daily[3].	5	8	8	8	10

[1] If a school provides another form of milk (whole or flavored), it must offer its children unflavored fluid lowfat milk, skim milk, or buttermilk as a beverage choice.
[2] The minimum portion sizes for these children are the portion sizes for group IV.
[3] Serving—1 slice of bread; or ½ cup of cooked rice, macaroni, noodles, other pasta products, other cereal product such as as bulgur and corn grits; or as stated in the *Food Buying Guide for Child Nutrition Programs* (PA-1331) for biscuits, rolls, muffins, and similar products.

(d) *Lunch components.* The four basic components (categories) of the school lunch pattern are as follows:

(1) *Milk.* As noted in the table presented in paragraph (c) of this section, School Food Authorities shall offer unflavored fluid lowfat milk, unflavored fluid skim milk, or buttermilk as a beverage. Therefore, if a School Food Authority serves another form of milk (flavored or whole), it shall also offer unflavored fluid lowfat milk, unflavored fluid skim milk, or buttermilk as a beverage choice. School Food Authorities that served ¾ cup (6 fluid ounces) of milk to Group III children prior to May 1, 1980 may continue to do so. Such School Food Authorities shall document the date on which they adopted this portion size.

(2) *Meat or meat alternate.* The quantity of only the edible portion as served shall be counted as contributing to the meat/meat alternate requirement. To be counted as meeting the requirement, the meat or meat alternate must be served in a main dish or in a main dish and only one other menu item. The Department recommends that if School Food Authorities do not offer children choices of meats or meat alternates each day, they limit service of each specific meat alternate or form of meat (ground, diced, pieces, etc.) to three times in a single week. Vegetable protein products, cheese alternate products, and enriched macaroni with fortified protein defined in Appendix A may be used to meet part of the meat or meat alternate requirement when used as specified in Appendix A.

(3) *Vegetable or fruit.* Full strength vegetable or fruit juice may be counted to meet not more than one-half of the vegetable/fruit requirement. Cooked dry beans or peas may be used as a meat alternate or as a vegetable, but not as both food components in the same meal.

(4) *Bread or bread alternate.* Unlike the other component requirements, the bread requirement is based on minimum daily servings *and* total servings per week. Schools shall serve daily at least one-half serving of bread or bread alternate to children in Group I and at least one serving to children in Groups II–V. Schools which serve lunch at least five days a week shall serve a total of at least five servings of bread or bread alternate to children in Group I and eight servings per week to children in Groups II–V. School Food Authorities serving lunch six or seven days per week should increase the weekly quantity by approximately 20 percent (⅕) for each additional day. When schools operate less than five days per week, they may decrease the weekly quantity by approximately 20 percent (⅕) for each day less than five. All bread or bread alternate products must be enriched or whole grain. The servings for biscuits, rolls, muffins, and other similar bread alternates are specified in the *Food Buying Guide.* An enriched macaroni product with fortified protein as defined in Appendix A may be used as part of a meat alternate or as a bread alternate, but not as both food components in the same meal.

(e) *Offer versus serve.* Each school shall *offer* its students all five items of the four component lunch. Senior high students shall be permitted to decline up to two items. Students below the senior high level may be permitted to decline up to two items, or only one time, at the discretion of the School Food Authority. The charge for the lunch is not affected by a student's decision to decline food items or accept smaller portions. State educational agencies shall define "senior high."

(f) *Choice.* To provide variety and to encourage consumption and participation, School Food Authorities should, whenever possible, provide a selection of foods and types of milk from which children may make choices. When a School Food Authority offers a selection of more than one lunch, or when it offers a variety of foods and types of milk for choice within the required lunch pattern, the School Food Authority shall offer all children the same selection regardless of whether the children are eligible for free or reduced price lunches or pay the full price.

(g) *Lunch period.* School Food Authorities shall serve lunches which meet the requirements of this part during a period designated as the lunch period by the School Food Authority. With State approval, schools that serve children 1–5 years old may, and are encouraged to, divide the service of the specified quantities and components of foods into two distinct service periods. Schools may divide the quantities and/or components between these service periods in any combination that they choose.

(h) *Infant lunch pattern.* When infants 0–1 year of age participate in the Program in schools as defined in 210.2, an infant lunch pattern shall be served. Foods within the infant lunch pattern shall be of texture and consistency appropriate for the particular age group being served. The amount of food in the lunch may be offered to the infant during a span of time consistent with the infant's eating habits. The infant lunch pattern shall contain, as a minimum, each of the following components in the amounts indicated for the appropriate age group:

(1) *0 to 4 months*—four to six fluid ounces of infant formula; zero to one tablespoon of infant cereal; and zero to one tablespoon of fruit or vegetable of appropriate consistency or a combination of both.

(2) *4 to 8 months*—six to eight fluid ounces of infant formula; one to two tablespoons of infant cereal; one to two tablespoons of fruit or vegetable of appropriate consistency or a combination of both; and zero to one tablespoon of meat, fish, poultry, or egg yolk, or zero to one ounce (weight) of cheese or zero to one ounce (weight or volume) of cottage cheese or cheese

food or cheese spread of appropriate consistency.

(3) *8 months to 1 year*—six to eight fluid ounces of infant formula, or six to eight fluid ounces of whole milk and zero to three fluid ounces of full strength fruit juice; three to four tablespoons of fruit or vegetable of appropriate consistency or infant cereal or combination of such foods; and one to four tablespoons of meat, fish, poultry, or egg yolk, or one-half to two ounces (weight) of cheese or one to four ounces (weight or volume) of cottage cheese or cheese food or cheese spread of appropriate consistency.

(i) *Insufficient milk supply.* The inability of a school to obtain a supply of milk shall not bar it from participation in the Program and is to be resolved as follows:

(1) If emergency conditions temporarily prevent a school that normally has a supply of unflavored fluid lowfat milk, skim milk or buttermilk from obtaining delivery of such milk, the State agency may approve the service of lunches during the emergency period with an available alternate form of milk or without milk.

(2) If a school is unable to obtain a supply of unflavored fluid lowfat milk, skim milk, or buttermilk on a continuing basis, the State agency may approve the service of another type of fluid milk. The Department recommends that the State agency approve for service the available fluid milk with the lowest fat and sugar content. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Marianas, and the Virgin Islands, if a sufficient supply of such types of fluid milk cannot be obtained, "milk" shall include reconstituted or recombined milk, or as otherwise provided under written exceptions by FNS.

(3) If a school is unable to obtain a supply of any type of fluid milk on a continuing basis, the State agency may approve the service of lunches without milk if the school uses an equivalent amount of canned, whole dry, or nonfat milk in the preparation of the lunch.

(j) *Exceptions.* Exceptions to and variations of the lunch components or quantities specified above are restricted to the following:

(1) *Medical or dietary needs.* School Food Authorities shall make substitutions in foods listed above for handicapped students who are under the aegis of 7 CFR Part 15b and whose handicap restricts their diet. School Food Authorities may also make substitutions for non-handicapped students who are unable, because of medical or other special dietary needs, to consume the regular lunch. In either case substitutions shall be made only when supported by a statement of the need for substitutions from a medical doctor that includes recommended alternate foods.

(2) *Ethnic, religious or economic variations.* FNS may approve variations in the food components of the lunch on an experimental or on a continuing basis in any school where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, or economic needs.

(3) *American Samoa, Puerto Rico, and Virgin Islands.* Schools in American Samoa, Puerto Rico and the Virgin Islands may serve a starchy vegetable such as yams, plantains, or sweet potatoes to meet the bread or bread alternate requirement.

(4) *Trust Territories.* FNS, with the concurrence of officials of the Trust Territory of the Pacific Islands, has established a meal pattern which is consonant with local food consumption patterns and which, given available food supplies and food service equipment and facilities, provides optimum nutrition consistent with sound dietary habits for participating children. The State agency shall attach to and make a part of the written agreement required under § 210.9, the requirements of that pattern. Because the Commonwealth of the Northern Mariana Islands was part of the Trust Territories when this special meal pattern was established, this meal pattern shall also apply to the Commonwealth and be made part of their written agreement.

(5) *Natural disaster.* In the event of a natural disaster, FNS may temporarily allow School Food Authorities to serve lunches for reimbursement that do not meet the requirements of this section.

§ 210.11 Competitive food services [Reserved].

§ 210.12 Student, parent and community involvement.

(a) *General.* School Food Authorities shall promote activities to involve students and parents in the Program. Such activities may include menu planning, enhancement of the eating environment, program promotion, and related student-community support activities. School Food Authorities are encouraged to use the school food service program to teach students about good nutrition practices and to involve the school faculty and the general community in activities to enhance the Program.

(b) *Food service management problems.* School Food Authorities experiencing food service management problems shall comply with the provisions of §210.18(c) with regard to the required design of activities to involve parents and students in the school food service program.

(c) *Food service management companies.* School Food Authorities contracting with a food service management company shall comply with the provisions of § 210.16 with regard to the establishment of an advisory board of parents, teachers and students.

(d) *Residential child care institutions.* Residential child care institutions shall comply with the provisions of this section, to the extent possible.

§ 210.13 Facilities management.

(a) *Health standards.* The School Food Authority shall ensure that food storage, preparation and service is in accordance with the sanitation and health standards established under State and local law and regulations.

(b) *Storage.* The School Food Authority shall ensure that the necessary facilities for storage, preparation and service of food are maintained. Facilities for the handling, storage and distribution of commodities shall be such as to properly safeguard against theft, spoilage and other loss.

§ 210.14 Resource management.

(a) *Nonprofit school food service.* School Food Authorities shall maintain a nonprofit school food service. Revenues received by the nonprofit school food service are to be used only for the operation or improvement of such food service, *except that*, such revenues may not be used to purchase land or buildings or to construct buildings. Expenditures of nonprofit school food service revenues shall be in accordance with the financial management system established by the State agency under § 210.19(a) of this part.

(b) *Net cash resources.* The School Food Authority shall limit its net cash resources to an amount that does not exceed three months average expenditures for its nonprofit school food service or other such amount as may be approved by the State agency.

(c) *Financial management system.* The School Food Authority shall maintain a financial management system in accordance with § 210.19(a) of this part. School Food Authorities shall account separately for any food services other than the nonprofit school food service account cited in paragraph (a) of this section, which may be operated by the School Food Authority.

(d) *Purchasing practices.* The School Food Authority shall purchase in as large quantities as may be efficiently utilized in its nonprofit school food service, foods designated as plentiful by the State agency or the Department.

(e) *Procurement.* School Food Authorities shall comply with § 210.21 which sets forth requirements concerning the procurement of supplies, food, equipment and other services with Program funds.

(f) *Use of donated foods.* The School Food Authority shall enter into an agreement to receive donated foods as required by § 250.6 of this chapter. In addition, the School Food Authority shall accept and use, in as large quantities as may be efficiently utilized in its nonprofit school food service, such foods as may be offered as a donation by the Department.

§ 210.15 Reporting and recordkeeping.

(a) *Reporting summary.* Participating School Food Authorities are required to submit forms and reports to the State agency to demonstrate compliance with Program requirements. These reports include but are not limited to:

(1) A Claim for Reimbursement as specified by the State agency in accordance with § 210.8;

(2) An application and agreement for Program operations between the School Food Authority and the State agency and Free and Reduced Price Policy as required under § 210.9;

(3) A corrective action plan whenever AIMS performance standard violations in excess of error tolerances are disclosed on either a first or second review as specified under § 210.18;

(4) A response to AIMS audit findings under § 210.18;

(5) Net cash resources, or the information necessary for the State to compute it if the State has not already reviewed net cash resources through a review or audit as specified under § 210.18;

(6) Estimated participation and resulting need for USDA donated foods as required under § 210.19;

(7) A commodity school's preference whether to receive part of its donated food allocation in cash for processing and handling of donated foods as required under § 210.19;

(8) A response to audit findings pertaining to the School Food Authority's operation as required under § 210.22; and

(9) Information on civil rights complaints and their resolution as required under § 210.23.

(b) *Recordkeeping summary.* In order to participate in the Program, a School Food Authority shall maintain records to demonstrate compliance with Program requirements. These records include but are not limited to:

(1) Documentation of participation data by school and working papers in support of the Claim for Reimbursement, as required under § 210.8;

(2) Production and participation records to demonstrate positive action toward providing one meal per child per day as required under § 210.10;

(3) Records of revenues and expenditures to demonstrate that the food service is being operated on a nonprofit basis, as required under § 210.14;

(4) Records to accept for State funds counted toward the State revenue matching requirement specified in § 210.17;

(5) Records of cash, liquid assets and current liabilities to determine the School Food Authority's net cash resources as required under § 210.18; and

(6) Currently approved and denied applications for free and reduced price meals, as required under § 210.23.

§ 210.16 Food service management companies.

(a) *General.* Any School Food Authority (including a State agency acting in the capacity of a School Food Authority) may contact with a food service management company to manage its feeding operation in one or more of its schools. Any School Food Authority that employs a food service management company shall—

(1) adhere to the procurement standards specified in § 210.21 when contracting with the food service management company;

(2) ensure that the food service operation is in conformance with the School Food Authority's agreement under the Program;

(3) monitor the food service operation through periodic on-site visits;

(4) retain control of the quality, extent, and general nature of its food service, and the prices to be charged with children for meals;

(5) ensure that all Federally donated foods received by the School Food Authority and made available to the food service management company accrue only to the benefit of the School Food Authority's nonprofit school food service and be utilized therein;

(6) maintain applicable health certification and assure that all State and local regulations are being met by a food service management company preparing or serving meals at a School Food Authority facility;

(7) adhere to and include all the requirements of this section in any contractual agreement with a food service management company; and

(8) establish an advisory board composed of parents, teachers, and students to assist in menu planning.

(b) *Invitation to bid.* In addition to adhering to the procurement standards under § 210.21, School Food Authorities contracting with food service management companies shall ensure that:

(1) The invitation to bid or request for proposal contains a 21-day cycle menu to be used as a standard for the purpose of basing bids or estimating average cost per meal. If a School Food Authority has no capability to prepare a cycle menu, it may, with State agency approval, request that a 21-day cycle menu be developed and submitted by each food service management company which intends to submit a bid or proposal to the School Food Authority. The food service management company must adhere to the cycle for the first 21 days of meal service. Changes thereafter may be made with the approval of the School Food Authority.

(2) Any invitation to bid or request for proposal indicates that nonperformance subjects the food service management company to specified sanctions in instances where the food service management company violates or breaches contract terms. The School Food Authority shall indicate these sanctions in accordance with the procurement provision stated in § 210.21.

(c) *Contracts.* Contracts that permit all receipts and expenses to accrue to the food service management company and "cost-plus-a-percentage-of-cost" and "cost plus-a-percentage-of-income" contracts are prohibited. Contracts that provide for management fees established on a per meal basis are allowed. Contractual agreements with food service management companies are to include the following:

(1) The food service management company shall maintain such records as the School Food Authority will need to support its Claims for Reimbursement under this part, and shall, at a minimum, report claim information to the School Food Authority promptly at the end of each month. Such records are to be made available as specified under § 210.23.

(2) The food service management company shall have State or local health certification for any facility outside the school in which it proposes to prepare meals and the food service management company shall maintain this health certification for the duration of the contract.

(3) No payment is to be made for meals that are spoiled or unwholesome at time of delivery, do not meet detailed specifications as developed by the School Food Authority for each food component specified in § 210.10, or do not otherwise meet the requirements of the contract. Specifications shall cover items such as grade, purchase units, style, weight, ingredients, and formulations.

(d) *Duration of contract.* The contract between a School Food Authority and a food service management company shall be of a duration of no longer than one year; and options for the yearly renewal of a contract may not exceed two additional years. All contracts will include a termination clause whereby either party may cancel for cause with 60-day notification.

Subpart D—Requirements for State Agency Participation

§ 210.17 Matching Federal funds.

(a) *State revenue matching.* For each school year, the amount of State revenues appropriated or used specifically by the State for programs under this part, Part 215, and Part 220 shall not be less than 30 percent of the funds received by such State under section 4 of the National School Lunch Act during the school year beginning July 1, 1980; *provided that,* the State revenues derived from the operation of such programs and State revenues expended for salaries and administrative expenses of such programs at the State level are not considered in this computation. However, if the per capita income of any State is less than the per capita income of the United States, the matching requirements so computed shall be decreased by the percentage by which the State per capita income is below the per capita income of the United States.

(b) *Private school exemption.* No State in which the State agency is prohibited by law from disbursing State appropriated funds to nonpublic schools shall be required to match general cash-for-food assitance funds expended for meals served in such schools, or to disburse to such schools any of the State revenues required to meet the requirements of paragraph (a) of this section. Furthermore, the requirements of this seciton do not apply to schools in which the Program is administered by a FNSRO.

(c) *Territorial waiver.* American Samoa and the Commonwalth of the Northern Mariana Islands shall be exempted from the matching requirements of paragraph (a) of this section if their respective matching requirements are under $100,000.

(d) *Applicable revenues.* The following State revenues, appropriated or used specifically for program purposes which are expended for any school year shall be eligible for meeting the applicable percentage of the matching requirements prescribed in paragraph (a) of this section for that school year: (1) State revenues disbursed by the State agency to School Food Authorities for program purposes, including revenue disbursed to nonprofit private schools where the State administers the program in such schools; (2) State revenues made available to School Food Authorities and transferred by the School Food Authorities to the nonprofit school food service accounts or otherwise expended by the School Food Authorities in connection with the nonprofit school food service program; and (3) State revenue used to finance the costs (other than State salaries or other State level administrative costs) of the nonprofit school food service program, i.e.: (i) Local program supervision; (ii) operating the program in participating schools; and (iii) the intrastate distribution of foods donated under Part 250 of this chapter to schools participating in the program.

(e) *Distribution of matching revenues.* All State revenues made available under pragraph (a) of this section are to be disbursed to School Food Authorities participating in the Program, *except as* provided for under paragraph (b) of this section. Distribution of matching revenues may be made with respect to a class of School Food Authorities as well as with respect to individual School Food Authorities.

(f) *Failure to match.* If, in any school year, a State fails to meet the State revenue matching requirement, as prescribed in paragraph (a) of this section, the general cash-for-food assistance funds utilized by the State during that school year shall be subject to recall by and repayment to FNS.

(g) *Reports.* Within 90 days after the end of each school year, each State agency shall submit an Annual Report of Revenues (FNS–13) to FNS. This report identifies the State revenues to be counted toward the State revenue matching requirements specified in paragraph (a) of this section.

(h) *Accounting system.* The State agency shall establish or cause to be established a system whereby all expended State revenues counted in meeting the matching requirements prescribed in paragraph (a) of this section are properly documented and accounted for.

§ 210.18 Monitoring responsibilities.

(a) *General program compliance.* Each State agency shall ensure that School Food Authorites comply with the applicable provisions of this part. The State agency shall ensure compliance through audits, supervisory assistance reviews visits to participating schools, or by other means.

(b) *Net cash resources.* Each State agency shall monitor the net cash resources of the nonprofit school food service in each School Food Authority participating in the Program. In the event that such resources exceed three months average expenditures for the School Food Authority's nonprofit school food service or such other amount as may be approved by the State agency, the State agency may require the School Food Authority to reduce the price children are charged for meals, improve food quality or take other actions designed to improve the nonprofit school food service. In the absence of any such action, the State agency shall make adjustments in the rate of reimbursement under the Program.

(c) *Improved management.* In a School Food Authority where the State agency has found poor food service management practices leading to decreasing or low student participation and/or poor student acceptance of the Program or of foods served, the State agency in cooperation with the School Food Authority shall develop, implement, and monitor a system to improve the School Food Authority's management practices. Such a system is to include the promotion of student and parent involvement in Program activites. In addition to the general requirement of student and parent involvement for all School Food Authorities set forth in § 210.12, this student and parent involvement is to assist in the correction of the School Food Authority's particular management problems.

(d) *Food service management companies.* Each State agency shall annually review each contract between any School Food Authority and food service management company to ensure compliance with all the provisions and standards set forth in § 210.16. Each State agency shall annually monitor on-site not less than 20 percent of all School Food Authorities who have contracted with a food service management company. The State agency may require that all food service management companies that wish to contract for food service with any School Food Authority in the State must register with the State agency.

(e) *Investigations.* Each State agency shall promply investigate complaints received or irregularities noted in connection with the operation of the Program, and shall take appropriate action to correct any irregularities. State agencies shall maintain, on file, evidence of such investigations and actions. FNS and OIG will make investigations at the request of the State agency or where FNS or OIG determines investigations are appropriate.

(f) *Assessment, Improvement and Monitoring System (AIMS).* Each State agency shall perform AIMS reviews, audits or a combination thereof of all School Food Authorities participating in the Program in accordance with the provisions of this section. In lieu of implementing AIMS, a State agency may develop a different compliance monitoring system if it satisfies the following criteria. The State developed monitoring system shall—

(1) Be equivalent to AIMS in scope;

(2) Monitor compliance with AIMS Performance Standards 1–4;

(3) Include on-site visits of all School Food Authorities on a cyclical basis;

(4) Require that corrective action be taken and documented for any Program deficiency found;

(5) Provide for fiscal action and set forth the State agency's criteria for taking such action;

(6) Provide for the maintenance of a detailed description of the system and records of all monitoring visits and activities which demonstrate the degree of compliance with AIMS performance standards, corrective action needed and taken, and fiscal action taken; and

(7) Receive approval by the appropriate FNSRO prior to implementation.

(g) *AIMS definitions.* The following definitions are provided in order to clarify AIMS requirements:

(1) "AIMS audits" means on-site evaluations of all School Food Authorities participating in the Program for compliance with AIMS performance standards, by State auditors or State contracted auditors once every two years, in accordance with USDA's audit guide or an audit guide approved by FNS and USDA's OIG.

(2) "AIMS error tolerance level" means the degree of error of an AIMS performance standard which, if exceeded by a reviewed School Food Authority, triggers a second AIMS review in all large School Food Authorities in violation and in 25 percent of all small School Food Authorities in violation.

(3) "AIMS performance standards" means the following standards which measure compliance with Program regulations:

(i) *Performance Standard 1*—Within the School Food Authority, each child's application for free and reduced price meals is correctly approved or denied in accordance with the applicable provisions of Part 245.

(ii) *Performance Standard 2*—The numbers of free and reduced price meals claimed for reimbursement by each school for any review period are, in each case, less than or equal to the number of children in that school correctly approved for free and reduced price meals, respectively for the review period, times the days of operation for the review period.

(iii) *Performance Standard 3*—The *system* used for counting and recording meal totals for paid, free, and reduced price meals claimed for reimbursement at both the School Food Authority and school levels yields correct claims.

(iv) *Performance Standard 4*—Meals claimed for reimbursement within the School Food Authority contain food components as required by § 210.10.

(4) "AIMS reviews" means on-site evaluations of all School Food Authorities participating in the Program once every four years by the State agency or State auditors for compliance with the AIMS performance standards and follow-up reviews, as required.

(5) "Large School Food Authority" means, in any State—(i) the two largest School Food Authorities that participate in the Program and have enrollments of 2,000 students or more each; and (ii) all other School Food Authorities that participate in the Program and have enrollments of 40,000 students or more each.

(6) "Small School Food Authority" means, in any State, a School Food Authority that participates in the Program and is not a large School Food Authority.

(h) *Number of schools reviewed or audited under AIMS:* The number of schools within the School Food Authority which must be included in a review or audit is dependent upon the number of schools in the School Food Authority. The minimum number of schools the State agency shall review or audit is illustrated in Table A:

TABLE A

Number of schools in the School Food Authority	Minimum number of schools to be reviewed or audited
1 to 5	1
6 to 10	2
11 to 20	3
21 to 40	4
41 to 60	6
61 to 80	8
81 to 100	10
101 or more	[1]12

[1] 12 + 5 pct of the number of schools over 100. Fraction must be rounded to the nearest whole number.

(i) *AIMS reviews.* States performing AIMS reviews shall monitor compliance with the AIMS performance standards described in paragraph (g) of this section. On the first AIMS review, the State agency shall review the School Food Authority for Performance Standards 1–4. On second AIMS reviews, the State agency shall, as a minimum, review the School Food Authority for the performance standards which exceeded error tolerances in the first review.

(1) *Scope of AIMS reviews.* In reviewing performance standards:

(i) The State agency shall analyze and determine the adequacy of local approval procedures for free and reduced price meals by examining the eligibility determinations made within the School Food Authority. The State agency shall review the applications for all children attending the reviewed schools and for whom application was made, or a statistically valid sample of such children. If a statistically valid sample is chosen, the State agency shall ensure that the sample size is determined on the basis of Table B:

TABLE B

Total number of children	Sample size
Less than 50	All
51 to 100	50
101 to 600	50%
601 to 700	310
701 to 800	335
801 to 900	355
901 to 1,000	370
1,001 to 1,250	400
1,251 to 1,500	420
1,501 to 1,750	440
1,751 to 2,000	460
2,001 to 3,000	490
3,001 to 4,000	520
4,001 to 5,000	535
5,001 plus	550

In addition, the State agency shall determine the need for a second review and base fiscal action upon the error rate found in the sample. The State agency shall also ensure that the system to update the application file is adequate.

(ii) The State agency shall ensure that, at a minimum, for each school reviewed, the number of free meals claimed in the School Food Authority's most recent

Claim for Reimbursement does not exceed the number of children correctly approved for free meals for the claim period times the days of operation of that school as reported to the School Food Authority for the claim month. The State agency shall apply the same procedure to the claim for reduced price meals.

(iii) The State agency shall ensure that each school reviewed has an adequate system for counting and recording meals served by type (i.e., free, reduced price and paid) and that the School Food Authority properly consolidates meal counts from its schools.

(iv) The State agency shall determine by observation of a representative sample of meals that all meals contain all required components.

(2) *Timing of AIMS reviews.* The first AIMS review of a School Food Authority shall be completed within the school year in which the review was begun. A second AIMS review, when required, is recommended to be conducted in the same school year as the first review and is required to be conducted no later than December 31 of the school year following the first review.

(3) *Method of selecting specific schools to review.* On a first AIMS review of a School Food Authority, the State agency shall select the required minimum number of schools to review on a proportionate basis from each type of attendance unit (elementary school, middle school, high school, etc.), and shall select schools within attendance unit grouping either randomly or by using State agency criteria which shall be kept on file at the State agency. If using its own criteria, the State agency shall ensure that some of the schools selected are chosen because of the likelihood of problems. On a second AIMS review, the State agency shall choose schools using State agency criteria, which may include random selection. State agency criteria for selecting schools for second AIMS reviews shall also be kept on file. The minimum number of schools to be selected and reviewed during a first or second AIMS review of a School Food Authority is specified in paragraph (h) of this section. Each school year, the State agency shall use its own criteria to select School Food Authorities for AIMS reviews.

(4) *Error tolerance for AIMS review.* A corrective action plan, as decsribed in this section, is to be undertaken in all School Food Authorities and a second review must occur in all large and one-quarter of all small School Food Authorities, if on a first AIMS review the State agency finds that error tolerance levels are exceeded. An error tolerance is exceeded when—

(i) For AIMS Performance Standard 1, 10 percnt or more (but not less than 10 children), of the children listed on reviewed applications and attending reviewed schools in a School Food Authority are incorrectly approved or denied for free or reduced price meal benefits; and/or

(ii) For AIMS Performance Standard 2, a number of schools reviewed in a School Food Authority, as specified in Table C of paragraph (i)(5), claim reimbursement for more free or more reduced price meals, respectively, than the number of children correctly approved for such meals for the test period times the days of operation for the period; and/or

(iii) For AIMS Performance Standard 3, a number of schools reviewed in a School Food Authority, as specified in Table C of paragraph (i)(5), have an inadequate system for counting and recording meal totals for paid, free and reduced price meals claimed for reimbursement, or the School Food Authority does not use valid procedures for consolidating claims; and/or

(iv) For AIMS Performance Standard 4, 10 percent or more of the total meals observed in a School Food Authority are missing one or more components.

(5) *Performance standards 2 and 3 tolerances.* Table C indicates the number of schools violating Performance Standards 2 or 3, thus necessitating a corrective action plan in the applicable School Food Authority and a second review in all large School Food Authorities and 25 percent of the small School Food Authorities.

TABLE C

Number of schools reviewed	Number of schools[1]
1 to 10	1
11 to 20	2
21 to 30	3
31 to 40	4
41 to 50	5
51 to 60	6
61 to 70	7
71 to 80	8
81 to 90	9
91 to 100	10
101 or more	*10

[1] Number of schools violating Performance Standards 2 or 3 respectively, thus necessitating a second review of the School Food Authority.
[2] 10 plus the number identified above for the appropriate increment.

(6) *Corrective action plans for AIMS reviews.* Corrective action plans are required to address AIMS performance standard deficiencies exceeding the error tolerance levels described in this section. The following procedures shall be followed to develop a corrective action plan:

(i) The State agency shall assist the School Food Authority in developing a mutually agreed upon corrective action plan.

(ii) The corrective action plan shall identify the corrective actions and timeframes needed to correct the deficiencies found during the review. Corrective action shall include, if necessary, adjusting data to be used in preparing the Claims for Reimbursement, to ensure that the data are accurate for claims for the period during which the review is conducted.

(iii) The plan shall be written, signed by the proper official of the School Food Authority, and submitted to and approved by the State agency within 60 days following the exit conference of a review. State agencies may extend this dealine in 90 days. Extensions beyond 90 days may be made, for cause, with written justification to and approval by FNSRO.

(iv) The State agency shall require the School Food Authority to implement an amended or extended corrective action plan when error tolerance levels are exceeded on a second AIMS review.

(7) *New violations found on a second AIMS review.* If during the course of a second AIMS review, a performance standard violation is found that has not been noted on a previous AIMS review, the State agency shall institute and document appropriate corrective action. If the violation exceeds the error tolerance level, the State agency shall require a corrective action plan and the completion of corrective action. The State agency shall take fiscal action as described in § 210.19 of this part for any degree of performance standard violation.

(j) *AIMS audits.* Audits by State agency, State or State contracted auditors may be used as an alternative to AIMS reviews. If the State agency chooses this option, the audit must ensure that the four performance standards listed under paragraph (g) of this section are being complied with by the audited School Food Authority. This includes performing all activities described in paragraph (i)(1) of this section. Additionally, a State using AIMS audits in place of AIMS reviews shall—

(1) Audit all School Food Authorities once every two years;

(2) Take fiscal action in accordance with § 210.19;

(3) Have a documented system for achieving corrective action;

(4) Select schools within a School Food Authority based upon generally accepted audit principles; and

(5) Use USDA's audit guide or a State audit guide approved by FNS and the Department's OIG. A State agency shall submit its guide to FNSRO by February 1 of each year; except that portions of the guide which do not change annually need not be resubmitted. State agencies shall provide the title of the sections that remain unchanged, as well as the year of the last guide in which the sections were submitted.

(k) *AIMS exit conference, notification and corrective action.* The State agency and the School Food Authority shall hold an exit conference at the close of an AIMS review or audit to discuus the deficiencies observed, the extent of the deficiencies and the corrective action needed to correct the deficiencies. If a corrective action plan is required as described in paragraph (i)(6) of this section, it shall be discussed during the exit conference. After every AIMS review or audit, the State shall provide written notification of the review or audit findings to the School Food Authority's superintendent or authorized representative who signed the State agency/School Food Authority agreement. The State shall require that the School Food Authority take and document corrective action for any program deficiency found on any review or audit. Corrective action can include training, assistance, recalculation of data to ensure the correctness of any claim that the School Food Authority is preparing at the time of the review or other actions.

(l) *AIMS reporting and recordkeeping.* Each State agency shall report to FNSRO the name of any School Food Authority which exceeds an error tolerance level on a second AIMS review and the type and extent of the regulatory violations. Each State agency shall keep records which document the details of all AIMS reviews or audits and demonstrate the degree of compliance with AIMS performance standards. When necessary, the records must include a corrective action plan as described in this section. Additionally, the State agency must have on file—

(1) criteria for selecting schools on first and second reviews, if the selection is not random; and

(2) its system for selecting small School Food Authorities for second review.

§ 210.19 Additional responsibilities.

(a) *General program management.* Each State agency shall provide consultative, technical and managerial personnel to administer programs and monitor performance in complying with all Program requirements. Such assitance shall include visits to participating schools to ensure compliance with Program regulations and instructions, the Department's nondiscrimination regulations (7 CFR Parts 15, 15a and 15b), and the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015). Each State agency shall establish a financial management system under which School Food Authorities shall account for all revenues and expenditures of their nonprofit school food service. The system shall prescribe the allowability of nonprofit school food servcie expenditures in accordance with this part, and, as aplicable 7 CFR Part 3015. The system must permit determination of school food service net cash resources, and must include criteria for approval of net cash resources in excess of three months average expenditures.

(b) *Information activities.* The State agency shall conduct the following activities:

(1) *Commodity distribution information.* The State agency shall periodically assess school needs for donated foods under 7 CFR Part 250, notify the distributing agency of the school's commodity needs, and recommend appropriate variations in rates of distribution. In assessing the commodity needs of schools, States should fully consider usage history and existing donated foods inventories. As early as practicable each school year, but not later than September 1, the State agency shall forward to the distributing agency and FNSRO: (i) An estimate of the average daily number of lunches to be served by National School Lunch Program schools; (ii) an estimate of the average daily number of lunches to be served by commodity schools; and (iii) the amount of any cash payments in lieu of commodities for donated food processing and handling expenses to be received by or on behalf of commodity schools in accordance with § 240.5 of this chapter. The State agency shall promptly revise the information required by this paragraph to reflect additions or deletions of eligible schools and provide any necessary adjustment in the number of lunches served.

(2) *Plentiful foods.* State agencies may provide schools with information on foods available in plentiful supply, based on information provided by the Department.

(c) *Fiscal action.* Fiscal action includes, but is not limited to, the recovery of overpayments through direct assessment or offset of future claims; disallowance of overclaims as reflected in unpaid Claims for Reimbursement; and correction of records to ensure that unfiled Claims for Reimbursement are corrected when filed. State agencies shall take fiscal action against School Food Authorities for Claims for Reimbursement that are not properly payable under this part. In taking fiscal action, State agencies shall use their own procedures, within the constraints of this part, and shall maintain all records pertaining to action taken under this section. The State shall determine the extent of fiscal action based on the severity and longevity of the problems. The State agency may refer to CND, through FNSRO, for determining any action it proposes to take under this section.

(1) *AIMS.* When a State agency chooses to conduct AIMS reviews, as described in § 210.18, fiscal action may be assessed on a first review *except* fiscal action must be taken when, under Performance Standard 3, the number of meals claimed for School Food Authority reimbursement has been incorrectly aggregated from individual school reports so that an excessive number of meals has been claimed. State agencies are required to take fiscal action on the second review for any degree of violation of AIMS Performance Standards 2, 3 and 4. When a State agency chooses to conduct AIMS audits, as described in § 210.18, fiscal action is required for any degree of violations of Performance Standards 2, 3, and 4. When a State agency develops its own compliance monitoring system in accordance with § 210.18, fiscal action shall be taken in accordance with the criteria established under that system. These criteria shall be consistent in principle with the fiscal action requirements for AIMS review and audits as set forth in this section.

(2) *Failure to collect.* If a State agency fails to disallow a claim or recover an overpayment from a School Food Authority, as described in this section, FNS will notify the State agency that a claim may be asserted against the State agency. In all such cases, the State agency shall have full opportunity to submit evidence concerning overpayment. If, after considering all available information, FNS determines that a claim is warranted, FNS will assess a claim in the amount of such overpayment against the State agency. If the State agency fails to pay the claim, FNS will take action in accordance with 7 CFR Part 3015 to liquidate the indebtedness. If FNS liquidates the debt by withholding Program funds, the State agency shall provide the funds necessary to maintain Program operations at the grant level authorized by FNS from a source other than Program funds.

(3) *Interest Charge.* If an agreement cannot be reached with the State agency for payment of its debts or for offset of debts on its current Letter of Credit within 30 calendar days from the date of the first demand letter from FNS, FNS will assess an interest (late) charge against the State agency. Interest accrual will begin on the 31st day after the date of the first demand letter and will be computed monthly on any unpaid balance as long as the claim exists.

(4) *Use of recovered payment.* The amount recovered by the State agency from School Food Authorities may be utilized, first, to make payments to School Food Authorities for the purposes of the Program during the fiscal year for which the funds were initially available; and second, to repay any State funds expended in the reimbursement of claims under the Program and not otherwise repaid. Any amounts recovered which are not so utilized are to be returned to FNS in accordance with the requirements of this part.

(5) *Exception.* In the event that the State agency finds, during a State review or audit, that a School Food Authority is failing to meet the quantities for each meal component required for the meal pattern in § 210.10, the State agency need not disallow payment or collect an overpayment arising out of such failure, if the State agency takes such other action as, in its opinion, will have a corrective effect.

(6) *Claims adjustment.* FNS will have the authority to determine the amount of, to settle, and to adjust any claim arising under the Program, and to compromise or deny such claim or any part thereof. FNS will also have the authority to waive such claims if FNS determines that to do so would serve the purposes of the Program. This provision shall not diminish the authority of the Attorney General of the United States under section 516 of Title 28, U.S. Code, to conduct litigation on behalf of the United States.

(d) *Management evaluations.* Each State agency shall provide FNS with full opportunity to conduct management evaluations of all State agency Program operations and shall provide OIG with full opportunity to conduct audits of all State agency Program operations. Each State agency shall make available its records, including records of the receipt and disbursement of funds under the Program, upon a reasonable request by FNS or OIG. FNS and OIG will reserve the right to visit schools and OIG will also have the right to make audits of the records and operations of any school.

(1) *Disregard overpayment.* In conducting management evaluations or audits for any fiscal year, the State agency, FNS, or OIG may disregard any overpayment which does not exceed $35 or, in the case of State agency administered programs, does not exceed the amount established under State law, regulations, or procedure as a minimum amount for which claim will be made for State losses. However, no overpayment is to be disregarded where there are unpaid claims of the same fiscal year from which the overpayment can be deducted, or where there is substantial evidence of violation of criminal law or civil fraud statutes.

(2) *AIMS.* As a part of its management evaluation of a State agency, FNS will evaluate the State's progress in effectively meeting the AIMS requirements.

(e) *Additional requirements.* Nothing contained in this part shall prevent a State agency from imposing additional requirements for participation in the Program which are not inconsistent with the provisions of this part.

§ 210.20 Reporting and recordkeeping.

(a) *Reporting summary.* Participating State agencies shall submit forms and reports to FNS to demonstrate compliance with Program requirements. The reports include but are not limited to:

(1) Requests for cash to make reimbursement payments to School Food Authorities as required under § 210.5;

(2) Information on the amounts of Federal Program funds expended and obligated to date (SF–269) as required under § 210.5;

(3) Statewide totals on Program participation (FNS–10) as required under § 210.5;

(4) Information on State funds provided by the State to meet the State matching requirements (FNS–13) specified under § 210.17;

(5) Names of School Food Authorities found in violation of AIMS performance standards on AIMS second review, together with information on the type and extent of violations, for referral to FNSRO as required under § 210.18; and

(6) Results of the commodity preference survey and recommendations for commodity purchases as required under § 210.27.

(b) *Recordkeeping summary.* Participating State agencies are required to maintain records to demonstrate compliance with Program requirements. The records include but are not limited to:

(1) Accounting records and source documents to control the receipt, custody and disbursement of Federal Program funds as required under § 210.5;

(2) Documentation to support the amount the State agency reported having provided for State revenue matching as required under § 210.17;

(3) Confirmation of a State agency's approval of a School Food Authority's AIMS corrective action plan as required under § 210.18;

(4) Records of all AIMS reviews and audits, including records of action taken to correct program deficiencies as required under § 210.18;

(5) State agency criteria for selecting schools for AIMS reviews and small School Food Authorities for AIMS second reviews as required under § 210.18;

(6) Reports on the results of investigations of complaints received or irregularities noted in connection with Program operations as required under § 210.18;

(7) Documentation of action taken to disallow improper claims submitted by School Food Authorities, as determined through claims processing, AIMS reviews, AIMS audits, USDA audits, etc. as required by § 210.19;

(8) Records pertaining to annual food preference survey of School Food Authorities as required by § 210.27;

(9) Records of USDA audit findings, State agency's and School Food Authorities' responses to them and of corrective action taken as required by § 210.22; and

(10) Records pertaining to civil rights responsibilities as defined under § 210.23(a).

Subpart E—State Agency and School Food Authority Responsibilities

§ 210.21 Procurement.

(a) *General.* State agencies and School Food Authorities shall comply with the requirements of 7 CFR Part 3015 concerning the procurement of supplies, food, equipment and other services with Program funds. These requirements ensure that such materials and services are obtained for the Program efficiently and economically and in compliance with applicable law and executive orders.

(b) *Contractual responsibilities.* The standards contained in 7 CFR Part 3015 do not relieve the State agency or School Food Authority of any contractual responsibilities under its contracts. The State agency or School Food Authority is the responsible authority, without recourse to FNS, regarding the settlement and

satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes, but is not limited to source evaluation, protests, disputes, claims, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the local, State, or Federal authority that has proper jurisdiction.

(c) *Procurement procedure.* The State agency or School Food Authority may use its own procurement procedures which reflect applicable State and local laws and regulations, *provided that* procurements made with Program funds adhere to the standards set forth in 7 CFR Part 3015.

§ 210.22 Audits.

(a) *General.* State agencies and School Food Authorities shall comply with the requirements of 7 CFR Part 3015 concerning the audit requirements for recipients and subrecipients of the Department's financial assistance.

(b) *Audit procedure.* These requirements call for organization—wide audits of financial operations to ascertain the effectiveness of the financial management systems and internal control procedures established to meet the terms and conditions of Federal grants. States and School Food Authorities shall use their own procedures to arrange for and prescribe the scope of independent audits, provided that such audits comply with the requirements set forth in 7 CFR Part 3015.

§ 210.23 Other responsibilities.

(a) *Free and reduced price lunches.* State agencies and School Food Authorities shall ensure that lunches are supplied free or at a reduced price to all children who are determined by the School Food Authority to be eligible for such benefits. The determination of a child's eligibility for free or reduced price lunches is to be made in accordance with 7 CFR Part 245.

(b) *Civil rights.* State agencies and School Food Authorities shall comply with the Department's nondiscrimination regulations (7 CFR Parts 15, 15a, and 15b) and FNS civil rights instruction to ensure that in the operation of the Program no child will be discriminated against because of race, color, national origin, age, sex, or handicap.

(c) *Retention of records.* State agencies and School Food Authorities shall retain records for a period of three years as specified in 7 CFR Part 3015. These records are to include the individual applications for free and reduced price lunches submitted by households in accordance with 7 CFR Part 245 and all accounts and records pertaining to the nonprofit school food service. School Food Authorities shall maintain files of currently approved and denied free and reduced price applications respectively. If applications are maintained at the School Food Authority level they are to be readily retrievable by school. The records may be kept in their original form or on microfilm.

Subpart F—Additional Provisions

§ 210.24 Suspension, termination and grant closeout procedures.

Whenever it is determined that a State agency has materially failed to comply with the provisions of this part, or with FNS guidelies and instructions, FNS may suspend or terminate the Program in whole, or in part, or take any other action as may be available and appropriate. A State agency may also terminate the Program by mutual agreement with FNS. FNS and the State agency shall comply with the provisions of the Department's Uniform Federal Assistance Regulations, 7 CFR Part 3015, Subpart N concerning grant suspension, termination and closeout procedures. Furthermore, the State agency, or FNSRO where applicable, shall apply these provisions to suspension or termination of the Program in School Food Authorities.

§ 210.25 Penalties.

Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property provided under this part whether received directly or indirectly from the Department, shall: (a) If such funds, assets, or property are of a value of $100 or more, be fined no more than $10,000 or imprisoned not more than five years or both; or (b) if such funds, assets, or property are of a value of less than $100, be fined not more than $1000 or imprisoned not more than one year or both. Whoever receives, conceals, or retains to personal use or gain funds, assets, or property provided under this part, whether received directly or indirectly from the Department, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud, shall be subject to the same penalties.

§ 210.26 Educational prohibitions.

In carrying out the provisions of the Act, neither the Department nor the State agency shall impose any requirements with respect to teaching personnel, curriculum, instructions, methods of instruction, or materials of instruction in any school as a condition for participation in the Program.

§ 210.27 State Food Distribution Advisory Council.

(a) *Council composition.* Each State educational agency shall establish a State Food Distribution (SFD) Advisory Council which is composed of at least five representatives, excluding ex officio representatives of schools that participate in the Program in the State. The State should make every effort to appoint individuals who represent large urban public schools; small rural public schools; residential child care institutions; private schools; parent teacher organizations; students from junior or senior high schools; nutritionists; school administrators; and teachers. These representatives shall be appointed for not more than three years. To promote continuity, initial appointments shall be selected for one, two, and three year terms.

(b) *Council leadership.* The Chairman and Vice Chairman of the SFD Advisory Council shall be elected by members of the Council. The Chief State School Officer, or designee, shall be an ex officio member of the SFD Advisory Council acting in an advisory capacity and as a non-voting member. The Chief Officer of the State distributing agency which distributes USDA donated foods to schools within the State, or designee shall be an ex officio member of the SFD Advisory Council, also acting in an advisory capacity and as a non-voting member. If the State educational agency and the State distributing agency are the same entity within the State, the ex officio member of the SFD Advisory Council shall be the Chief Food Distribution Officer of the State educational agency, or designee.

(c) *Council timeframe.* The Council shall meet at least once a year and shall report to the State agency, no later than January 15 of each year, recommendations concerning the manner of selection and distribution of commodity assistance for the next school year. The State agency shall inform FNSRO of the Council's recommendations no later than February 15 of each year.

(d) *Council responsibilities.* Major responsibilities of the Council include providing the State agency with information concerning the most desired foods, the least desired foods and recommendations for new products. This information shall be obtained in a survey of School Food Authorities within the State. The Council shall also be encouraged to advise the State agency on the amounts of each food

item desired, the types of packaging and package size, shipping schedules, and recommendations or change in donated food specifications.

(e) *State responsibilities.* In reporting the Council's recommendations to FNSRO, the State agency shall include the number of School Food Authorities providing the required information to the Council; the average daily number of lunches served by schools in these School Food Authorities during April of the previous year; and the average daily number of lunches served by all School Food Authorities within the State during April of the previous year.

(f) *State recordkeeping.* The State agency shall maintain records concerning the survey of School Food Authorities including, at a minimum, a description of survey methods and a copy of the format used to obtain food preferences; the name and address of each School Food Authority included in the survey; and a record of the data obtained from each School Food Authority.

(g) *Expenses.* The State agency may make payment for justified expenses incurred for or by the SFD Advisory Council from State Administrative Expense funds. In instances when State Administrative Expense funds are used, payments shall be made in accordance with Part 235 of this chapter. State agencies which are the same entity as the State distribution agency may also use food distribution assessment funds as provided for in § 250.6 (i) and (j) of this chapter. Members of the SFD Advisory Council shall serve without compensation. The State education agency shall provide compensation for necessary travel and subsistence expenses incurred by Council members in the performance of Council duties. Parent and student participant members, in addition to necessary travel and subsistence expenses, shall be compensated for personal expenses related to participation on the Council, such as child care expenses and lost wages during scheduled Council meetings. The State educational agency shall establish a system whereby expenses are paid in advance for any member who indicates that they cannot financially afford to meet any of the allowed expenses. In instances where members can meet these expenses, a reimbursement shall be provided in a timely manner.

§ 210.28 Regional office addresses.

(a) *General.* School Food Authorities desiring information concerning these programs should write to their State educational agency or to the appropriate Regional Office of FNS as indicated below:

(1) In the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont: Northeast Regional Office, FNS, U.S. Department of Agriculture, 33 North Avenue, Burlington, Massachusetts 01803.

(2) In the State of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 1100 Spring Street, NW., Atlanta, Georgia 30367.

(3) In The States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 50 E. Washington Street, Chicago, Illinois 60602.

(4) In the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas: Southwest Regional Office, FNS, U.S. Department of Agriculture, 1100 Commerce Street, Room 5–C–30, Dallas, Texas, 75242.

(5) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, and Washington: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearny Street, Room 400, San Francisco, California 94108.

(6) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, Mercer Corporate Park, Corporate Boulevard, CN 02150, Trenton, New Jersey 08650.

(7) In the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming: Mountain Plains Regional Office, FNS, U.S. Department of Agriculture, 2420 West 26th Avenue, Room 430 D, Denver, Colorado 80211.

§ 210.29 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The following control numbers have been assigned to the information collection requirements in 7 CFR Part 210 by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511.

7 CFR section where requirements are described	Current OMB control No.
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210.27	0584-0006

* * * * *

Dated: February 7, 1985.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 85–3538 Filed 2–11–85; 8:45 am]

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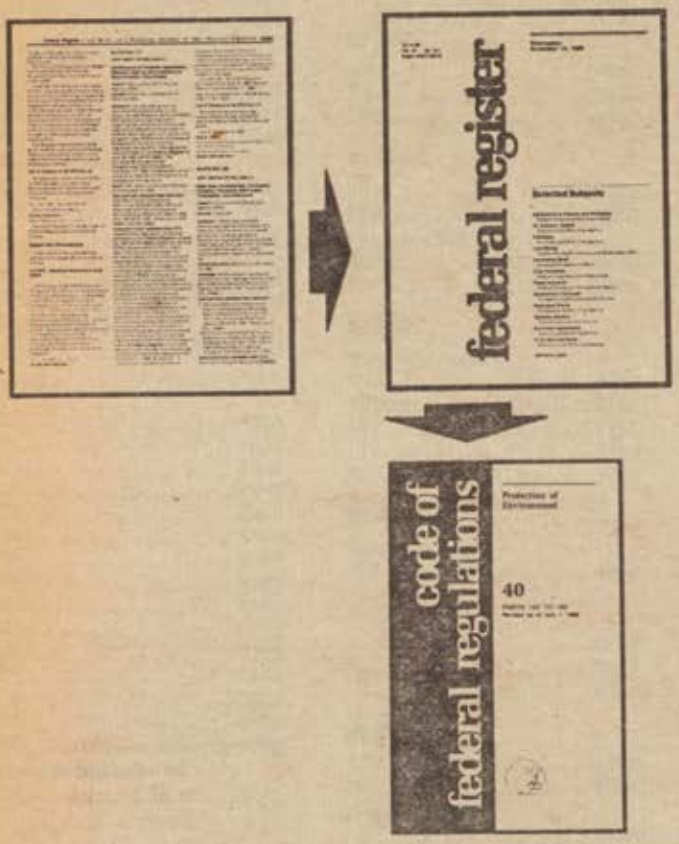

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