AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

10-23-89
Vol. 54 No. 203

federal register

Monday
October 23, 1989

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

10-23-89
Vol. 54 No. 203
Pages 43167-43264

Federal Register

Monday
October 23, 1989

Briefing on How To Use the Federal Register
For information on briefing in New York City, see announcement on the inside cover of this issue.

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

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

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

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

How To Cite This Publication: Use the volume number and the page number. Example: 54 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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

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

NEW YORK, NY

WHEN: October 24; at 1:00 p.m.
WHERE: Room 305A,
26 Federal Plaza,
New York, NY.
RESERVATIONS: Call Arlene Shapiro or Stephen Colon at the New York Federal Information Center. 212–264–4810.

Contents

Federal Register
Vol. 54, No. 203
Monday, October 23, 1989

Separate Parts In This Issue

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 54, No. 203
Monday, October 23, 1989

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

Animal and Plant Health Inspection Service

7 CFR Part 352

[Docket 89-155]

Avocados From Mexico Transiting the U.S. to Foreign Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Plant Quarantine Safeguard Regulations by adding Galveston, Texas, to the list of ports through which avocados from Mexico may be moved. Allowing avocados from Mexico to transit the United States through Galveston, Texas, will give shippers the alternative of importing and exporting Mexican avocados from the port at Galveston, Texas, instead of Houston, Texas, and will slightly enlarge the corridor through which avocados will be allowed to transit the United States.

EFFECTIVE DATE: November 22, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Frank E. Cooper, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6799.

SUPPLEMENTARY INFORMATION:

Background

The Plant Quarantine Safeguard Regulations contained in 7 CFR part 352 (the regulations) provide requirements applicable to most plants, plant products, and related articles, including avocados from Mexico, that are moved through the United States for export. These requirements include permits, notice of arrival, marking requirements, ports of arrival, inspections, safeguards, carriers, and routes of travel through the United States.

In a document published in the **Federal Register** on June 26, 1989 (54 FR 26767-26768, Docket Number 88-214), we proposed to amend the regulations (1) by adding Galveston, Texas, to the list of ports in § 352.29(b) through which avocados from Mexico may transit the United States and (2) by revising § 352.29(f) to reflect that the eastern and southern boundary of the area through which avocados from Mexico may transit the United States would be extended by a line extending from Brownsville, Texas, to Galveston, Texas (instead of Houston, Texas), to Kinder, Louisiana, to Memphis, Tennessee, to Louisville, Kentucky, and due east from Louisville.

Comments on the proposed rule were required to be received on or before August 25, 1989. We did not receive any comments. Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposal as a final rule without change.

Executive Order 12291 and Regulatory Flexibility Act

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

This rule will allow avocados from Mexico to be transported through the port of Galveston, Texas, in accordance with safeguard provisions of part 352, for export to third countries. Persons involved in this process include the avocado owners or exporters, some of which are small entities, and the transporters (trucking, railroad, and shipping companies), all of which are large entities. Economic impacts on the small entities will be limited to small increases or decreases to shipping costs paid by the avocado owners or exporters.

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

Paperwork Reduction Act

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

Executive Order 12372

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

List of Subjects in 7 CFR Part 352

Agricultural commodities, Customs duties and inspection, Imports, Plant diseases, Plant pests, Plants (Agriculture), Postal Service, Quarantine, Transportation.

PART 352—PLANT QUARANTINE SAFEGUARD REGULATIONS

Accordingly, 7 CFR Part 352 is amended as follows:

1. The authority citation for part 352 continues to read as follows:

Authority: 7 U.S.C. 149, 150bb, 150dd, 150ee, 150ff, 154, 159, 160, 162, and 2260; 31 U.S.C. 9701; and 7 CFR 2.17, 2.51, and 371.2(c).

§ 352.29 [Amended]

2. In § 352.29(b), the words "Galveston or" are added immediately following the words "only at the following ports:"

§ 352.29 [Amended]

3. In § 352.29(f), the words "Houston, Texas," are removed and the words "Galveston, Texas," are added in their place.

Done in Washington, DC, this 17th day of October 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-24931 Filed 10-20-89; 8:45 am]
BILLING CODE 3410-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 82F-0041]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyamide-imide resins produced by the condensation of equimolar amounts of benzoyl chloride-3,4-dicarboxylic anhydride and 4,4'-diphenylmethanediamine, for use as components of articles intended for repeated use in contact with food. This action is in response to a petition filed by E. I. duPont de Nemours & Co.

DATES: Effective October 23, 1989; written objections and requests for a hearing by November 22, 1989.

ADDRESSES: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

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

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 19, 1982 (47 FR 11971), FDA announced that a food additive petition (FAP 6B3141) had been filed by E. I. duPont de Nemours & Co., Wilmington, DE 19898, proposing that § 177.2450 *Polyamide-imide resins* (21 CFR 177.2450) be amended to provide for the safe use of a polyamide-imide resin produced by the condensation reaction of benzoyl chloride-3,4-dicarboxylic anhydride and 4,4'-diphenylmethanediamine as components of articles intended for repeated use in contact with food.

FDA, in its evaluation of the safety of this additive, reviewed the safety of both the additive and the starting materials used to manufacture the additive. The polyamide-imide resin may contain minute amounts of 4,4'-diphenylmethanediamine as an impurity from its production. This chemical has been shown to cause cancer in test animals. Residual amounts of reactants and byproducts, such as 4,4'-diphenylmethanediamine, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance." (H. Rept. 2284, 85th Cong., 2d Sess. 4 (1958)). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer or Delaney clause of the Food Additives Amendment (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A))) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has often refused to approve the use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain carcinogenic chemicals but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives and food additives on the same basis.

An additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of Petitioned Use

FDA estimates that the petitioned use of the polyamide-imide resin will result in extremely low levels of exposure to this additive. The agency calculated the estimated daily intake of the additive based on considerations such as the migration of the additive under the most severe intended use conditions and the types of food-contact articles that may contain this substance. The agency estimated the daily intake for the additive to be 90 nanograms per person per day.

FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2) and has not required such testing here. However, the agency has reviewed available data from subchronic rat and dog feeding studies with the additive. No adverse effects were observed in these studies. On the basis of these data and of the low level of migration of the resin, the agency concludes that there is an adequate margin of safety for the proposed use of the additive.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper-bound limit of risk presented by the carcinogenic chemical, 4,4'-diphenylmethanediamine, that may be present as an impurity in this additive. Based on this evaluation, the agency has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that the agency has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see, e.g., 49 FR 13018 and 13019; April 2, 1984). The risk evaluation of the carcinogenic impurity 4,4'-diphenylmethanediamine has two aspects: (1) Assessment of the worst-case exposure to the impurity from the proposed use of the additive, and

(2) Extrapolation of the risk observed in the animal bioassays to the

conditions of probable exposure to humans.

A. 4,4'-Diphenylmethanediamine

Based on the fraction of the daily diet that may be in contact with surfaces containing the polyamide-imide resin and on the level of 4,4'-diphenylmethanediamine that may be present in the additive, FDA estimated the hypothetical worst-case exposure to 4,4'-diphenylmethanediamine from the use of this additive to be 0.20 nanogram per person per day (Ref. 3). The agency used data from a National Toxicology Program technical report on a carcinogenesis bioassay on 4,4'-diphenylmethanediamine to estimate the upper-bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of the additive (Ref. 4). The results of the bioassay on 4,4'-diphenylmethanediamine indicated that the material was carcinogenic for mice and rats of both sexes under the conditions of the study. The test material caused significantly increased incidence of follicular cell tumors of the thyroid in male rats, hepatocellular carcinomas in mice, follicular cell adenomas in mice and female rats, pheochromocytomas in male mice, malignant lymphomas in female rats and neoplastic nodules in the liver of male rats. In addition, several rare tumors (bile duct adenoma in male rats, and ovarian granulosa-cell tumors and urinary bladder transitional-cell papillomas in female rats) were observed in this study.

The Cancer Assessment Committee (the Committee) of FDA's Center for Food Safety and Applied Nutrition reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on 4,4'-diphenylmethanediamine. The Committee further concluded that the 4,4'-diphenylmethanediamine bioassay provided the appropriate basis on which to calculate an estimate of the upper-bound level of lifetime human cancer risk from potential exposure to 4,4'-diphenylmethanediamine stemming from the proposed use of the additive.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal studies to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions and levels of use of the food additive.

Based on a worst-case exposure of 0.20 nanogram per person per day, FDA estimates that the upper-bound limit of individual lifetime risk from potential exposure to 4,4'-diphenylmethanediamine from use of the subject additive is 2.0×10^{-10} or less than 1 in 5 billion (Ref. 5). Because of numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to 4,4'-diphenylmethanediamine is expected to be substantially less than the estimated daily intake, and therefore, the calculated upper-bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to 4,4'-diphenylmethanediamine that might result from the proposed use of the additive.

B. Need for Specifications

The agency has also considered whether a specification is necessary to control the amount of 4,4'-diphenylmethanediamine in the food additive. The agency finds that a specification is not necessary for the following reasons: (1) Because of the low levels at which 4,4'-diphenylmethanediamine may be expected to remain as an impurity following production of the additive, the agency would not expect this impurity to become a component of food at other than extremely small levels; and

(2) The upper-bound limit of lifetime risk from exposure to this impurity, even under worst-case assumptions, is very low, less than 1 in 5 billion.

C. Conclusion on Safety

FDA has evaluated the available data and other relevant material and concludes that the proposed use for the additive in components of articles intended for repeated use in contact with food is safe and that 21 CFR 177.2450 (a), (b), and (c) should be amended as set forth below. The agency is also clarifying in this final rule that the reactants benzoyl chloride-3,4-dicarboxylic anhydride and 4,4'-diphenylmethanediamine, described in the filing notice, react in equimolar parts in the manufacture of the additive.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

III. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Carr, G. M., "Carcinogenicity Testing Programs" in "Food Safety: Where Are We?," Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, July 1979, p. 59.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology," *in* "Chemical Safety Regulations and Compliance," edited by F. Homburger and J. K. Marquis, S. Karger, New York, pp. 24–33, 1985.

3. Memorandum dated October 21, 1988, from Food and Color Additives Review Section to Indirect Additives Branch, FAP 6B3141—E. I. duPont de Nemours & Co., Polyamide-imide Resins as Components of Articles Intended for Repeated Contact with Food.

4. Carcinogenesis bioassay of 4,4'-Methylenedianiline Dihydrochloride (CAS Reg. No. 1355–44–8) in F344/N Rats and B6C3F1/N Mice (Drinking Water Study), National Toxicology Program Technical Report, NTP–81–143, 1982.

5. Memorandum dated November 30, 1988, from the Quantitative Risk Assessment Committee to the Office of Toxicological Sciences, Re: Assessment of Upper-bound Cancer Risk for Residual 4,4'-Diphenylmethanediamine, FAP 6B3141—E. I. duPont de Nemours & Co. Polyamide-imide Resins as Components of Articles Intended for Repeated Contact with Food.

IV. Objections

Any person who will be adversely affected by this regulation may at any time on or before November 22, 1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made

and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 177.2450 is amended by revising paragraphs (a) and (b), and by revising the first sentence in the introductory text of paragraph (c) to read as follows:

§ 177.2450 Polyamide-imide resins.

* * * * *

(a) *Identity.* (1) For the purpose of this section the polyamide-imide resins are derived from the condensation reaction of substantially equimolar parts of trimellitic anhydride and *p,p'*-diphenylmethane diisocyanate.

(2) The polyamide-imide resins (CAS Reg. No. 31957-38-7) derived from the condensation reaction of equimolar parts of benzoyl chloride-3,4-dicarboxylic anhydride and 4,4'-diphenylmethanediamine.

(b) *Specifications.* (1) Polyamide-imide resins identified in paragraph (a)(1) of this section shall have a nitrogen content of not less than 7.8 weight percent and not more than 8.2 weight percent. Polyamide-imide resins identified in paragraph (a)(2) of this section shall have a nitrogen content of not less than 7.5 weight percent and not more than 7.8 weight percent. Nitrogen content is determined by the Dumas Nitrogen Determination as set forth in the "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), sections 7.016–7.020, which is incorporated by reference in accordance with 5 U.S.C. 552(a). Copies may be obtained from the Association of Official Analytical Chemists, 2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC.

(2) Polyamide-imide resins identified in paragraph (a)(1) of this section shall have a solution viscosity of not less than 1.200. Polyamide-imide resins identified in paragraph (a)(2) of this section shall have a solution viscosity of not less than 1.190. Solution viscosity shall be determined by a method titled "Solution Viscosity" which is incorporated by reference in accordance with 5 U.S.C. 552(a). Copies are available from the Division of Food and Color Additives (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC.

(3) The polyamide-imide resins identified in paragraph (a)(1) of this section are heat cured at 600 °F for 15 minutes when prepared for extraction tests and the residual monomers: *p,p*-diphenylmethane diisocyanate should not be present at greater than 100 parts per million and trimellitic anhydride should not be present at greater than 500 parts per million. Residual monomers are determined by gas chromatography (the gas chromatography method titled "Amide-Imide Polymer Analysis—Analysis of Monomer Content," is incorporated by reference in accordance with 5 U.S.C. 552(a). Copies are available from the Division of Food and Color Additives (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC).

(c) Extractive limitations are applicable to the polyamide-imide resins identified in paragraphs (a) (1) and (2) of this section in the form of films of 1 mil uniform thickness after coating and heat curing at 600 °F for 15 minutes on stainless steel plates, each having such resin-coated surface area of 100 square inches.

* * * * *

Dated: October 13, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-24912 Filed 10-20-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 888

[Docket No. N-89-1963; FR-2633-N-02]

Section 8 Housing Assistance Payments Program; Fair Market Rents for New Construction and Substantial Rehabilitation—Suffolk County, NY; Special Revisions for Fiscal Year 1986 and Fiscal Year 1987

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

ACTION: Final notice.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to establish Fair Market Rents (FMRs) periodically, but not less frequently than annually. This document amends the Fiscal Year 1986 and the Fiscal Year 1987 Fair Market Rent Schedules to establish new FMRs for the Suffolk County, New York market area for those fiscal years. These rents are necessary to provide FMRs more comparable to market rents for new construction in this market area.

EFFECTIVE DATE: October 23, 1989.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief Appraiser, Valuation Branch, Technical Support Division, Office of Insured Multifamily Housing Development, 451 Seventh Street, SW., Washington, DC 20410-0500, telephone (202) 426-7624. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) (the Act) authorizes a system of housing assistance payments to aid lower income families in renting decent, safe, and sanitary housing. These programs, known collectively as the Section 8 Housing Assistance Payments Program, provide assistance payments for lower income families for a variety of housing

options, including new construction and substantial rehabilitation.

Under these programs, HUD or public housing agencies (PHAs) make rental assistance payments on behalf of eligible families to owners. When families lease an eligible unit, the housing assistance payment is made and is based upon the difference between the total housing expense and the total family contribution. Initial contract rents, plus an allowance for utilities generally may not exceed area-wide Fair Market Rents (FMRs) established by the Department. FMRs are based primarily on the level of rentals paid for recently completed or newly constructed dwelling units of modest design within each market area as determined by HUD Field Office staff. For the FY 1987 FMRs previously promulgated by the Department (see the April 26, 1988 **Federal Register**, 53 FR 14954), these rents reflected the Department's cost containment efforts in relation to housing assistance provided in the Section 8 New Construction and Substantial Rehabilitation Programs.

This Document

This document establishes special revisions to the Fiscal Year 1986 and the Fiscal Year 1987 Fair Market Rent schedules applicable to the Suffolk County, New York, market area. These FMRs reflect data submitted by the New York Office. Where sufficient market rental comparables do not exist, HUD procedures permit the use of an interpolation technique to arrive at indicated FMRs. Although the use of interpolation and adjustments to establish rents are sound principles and techniques, the best data for "market rents" would be that from recently constructed projects, as it would necessarily reflect current conditions in the marketplace with respect to financing, vacancy rates, etc., and would provide a degree of assurance that rents so derived should be adequate to support new projects, all factors being equal.

The New York Office requested that the Department establish new rents for the Suffolk County, New York market area. Careful analysis of this request and reanalysis of the FY 1986 and FY 1987 FMRs for this market area indicate that the rents resulting from the application of the aforementioned techniques, when modified to reflect the Department's cost containment policies, are not adequate, even when it is clear that there has been compliance with the Department's cost containment guidelines with respect to project design. Therefore, an upward adjustment of the FY 1986 and FY 1987 FMRs for this market area is needed.

A proposed notice was published in the **Federal Register** on May 15, 1989, at 54 FR 20859, and a 30-day comment period was afforded the public. Comments were received from five housing management and development organizations and one municipal government. All comments were favorable and urged promulgation of the new rents.

Accordingly, the Department is establishing revisions of the FY 1986 and FY 1987 schedules applicable to the Suffolk County, New York market area. It is intended that the applicability of these schedules be the same as set forth in the preamble to the original FY 1986 and FY 1987 schedules, published on August 7, 1986, at 51 FR 28486, and April 26, 1988, at 53 FR 14954, respectively.

Other Information

HUD regulations in 24 CFR part 50, implementing section 102(2)(c) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the FMRs established in this Notice are within the exclusion set forth in § 50.20(1), no environmental assessment is required, and no environmental finding has been prepared.

The Catalog of Federal Domestic Assistance Program number and title for the activities covered by this notice are 14.156, Lower Income Housing Assistance Program (section 8).

Accordingly, the following amendments to the FY 1986 and FY 1987 Fair Market Rent schedule are established for the Suffolk County, New York Market Area:

BILLING CODE 4210-27-M

SCHEDULE A - FAIR MARKET RENTS FOR NEW CONSTRUCTION
AND SUBSTANTIAL REHABILITATION
(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES' PROGRAMS)

Region 2--New York Regional Office
Market: Suffolk County, New York

Special Revision of FY 1986 FMRs

	Number of Bedrooms				
Structural	0	1	2	3	4+
Detached			925	1121	1250
Semi-Detached/Row	699	741	878	918	1093
Walkup	561	654	787	858	947
Elevator 2-4 STY	721	847	1032		
Elevator 5+ STY	779	868	1085		

Special Revision of FY 1987 FMRs

	Number of Bedrooms				
Structural	0	1	2	3	4+
Detached			1013	1228	1369
Semi-Detached/Row	766	811	961	1005	1197
Walkup	615	716	862	939	1037
Elevator 2-4 STY	790	928	1130		
Elevator 5+ STY	853	951	1188		

BILLING CODE 4210-27-C

Authority: Section 8(c)(1), U.S. Housing Act of 1937, 42 U.S.C. 1437f; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Dated: October 11, 1989.

C. Austin Fitts,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 89-24902 Filed 10-20-89; 8:45 am]

BILLING CODE 4210-27-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3672-5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision for Lake County and Lassen County Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This notice approves revisions to the California State Implementation Plan (SIP). The California Air Resources Board (ARB) submitted these revisions to EPA on March 23, 1988 for inclusion in the SIP. They affect the Lake County and Lassen County Air Pollution Control Districts (APCDs). These revisions consist of administrative and noncontroversial rules. EPA is approving these revisions because they retain equivalent emission control requirements in the existing SIP. They are consistent with the Clean Air Act, 40 CFR part 51, and EPA policy, and should be approved under section 110 of the Clean Air Act. The intended effect of this action is to update rules and regulations in the California SIP.

EFFECTIVE DATE: This action will be effective on December 22, 1989, unless notice is received within 30 days of publication that adverse or critical comments will be submitted. If the effective date is delayed timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be sent to: Colleen W. McKaughan, Environmental Protection Agency, Region 9, Attn: Air and Toxics Division, State Implementation Plan Section (A-2-3), 215 Fremont Street, San Francisco, CA 94105.

Copies of the rules and of EPA's Evaluation Reports are available for public inspection during normal business hours at the EPA Region 9 office in San Francisco. The ARB in Sacramento also has a complete set of the district rules. For information on a rule concerning a specific county, you may contact the ARB or the appropriate office listed below.

California Air Resources Board, SIP Section, Technical Support Division, 1131 "S" Street, Sacramento, CA 95812
Lake County Air Pollution Control District, 255 N. Forbes Street, Lakeport, CA 95453
Lassen County Air Pollution Control District, 175 Russell Avenue, Susanville, CA 96130
Public Information Reference Unit, U.S. Environmental Protection Agency, 401 "M" Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen (A-2-3), State Implementation Plan Section, Air and Toxics Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-7365 or FTS: 454-7365, (Effective November 13, 1989 new telephone will be (415) 744-1716—FTS: 484-1716).

SUPPLEMENTARY INFORMATION:

Background

On March 23, 1988, the ARB officially submitted to EPA a set of revisions to the California SIP. This notice addresses the noncontroversial and administrative rules from this SIP submittal. The following list identifies the rules addressed in this notice.

Description of Rules—March 23, 1988 Submittal

Lake County APCD

Rule 431.5 Non-Agricultural Burning—Open Burning
Rule 431.7 Non-Agricultural Burning—Burn Hours
Rule 432 Exemptions—Public Officers
Rule 432.5 Exemptions—Preparation of Food and Recreational Purposes
Rule 433 Exemptions—Households
Rule 434 Exemptions—Right of Way Clearing
Rule 436.5 Wood Waste Burning
Rule 442 Wood Waste Disposal by Open Burning
Rule 1105 Agricultural Burning Hours
Rule 1107 Burning During Fire Hazard Season

Lassen County APCD

Article I Definitions
Article II Notification of Burning Conditions
Article III Exceptions
Article IV Enforcement
Article V Prohibitions
Article VI Burning Permits
Article VII Agricultural Burning Reports

EPA Evaluation

EPA has evaluated these rules for consistency with the Clean Air Act, 40 CFR part 51, and EPA policy. EPA is approving these rule revisions because they are consistent with the previously approved regulations. The rules govern routine administrative air pollution control operations for agricultural and non-agricultural burning. The revisions include recodifications of and minor language changes to existing rules which are expected to result in increased effectiveness and enforceability of those rules. In addition, new rules have been added setting out prohibitions for both agricultural and non-agricultural burning activities. A brief description of each county's rule changes is provided below.

Lake County Air Pollution Control District

New Rule 431.5, *Non-Agricultural Burning—Open Burning,* prohibits non-agricultural burning in the Lake County Air Basin from June 1 to the end of fire season, except as specified in the exemptions pursuant to Rules 432, 432.5 and 442. Rule 431.7, *Non-Agricultural Burning—Burn Hours,* establishes burning ignition hours for non-agricultural burning of 8 a.m. to 12 p.m. during the fire season and 9 a.m. to 3 p.m. during the non-fire season with extended burn days. Rule 433, *Exemptions— Households,* outlines what can be burned at a residence and the hours in which burning can be done. Rule 1105, *Agricultural Burning Hours,* specifies burning hours for agricultural burning and allow exceptions for agricultural burning on multi-day burn permits. Rule 1107, *Burning During Fire Hazard Season,* limits agricultural burning during the fire hazard season. Rules 431.5, 431.7, 433, 1105 and 1107 now reference section 226.5 of the Lake County Burning Rules and Regulations instead of the Director of the California Department of Forestry and Fire Protection. Rule 432, *Exemptions—Public Officers,* allows burning for disease or pest prevention and allows the burning of pesticide bags when no other alternative exists.

Rule 432.5, *Exemptions for Preparation of Food and Recreational Purposes,* consists of a recodification of the previously approved rule and exempts food preparation and recreational burning. Rule 434, *Exemptions-Right-of-way Clearing,* provides for right-of-way clearing by burning during the non-burn ban. Rule 436.5, *Wood Waste Burning,* consists of a recodification of the previously approved rule and specifies that the

District shall be contacted prior to any burning of wood waste and that burning may be delayed when necessary.

New Rule 442, *Wood Waste Disposal by Open Burning*, allows for the permitting and establishment of vegetative dump sites where vegetation can be burned as a method of disposal under restrictive conditions.

Lassen County Air Pollution Control District

Article I, *Definitions*, consists of a recodification of Appendix A—Implementation Plan for Agricultural Burning, and adds new definitions for permit, wildland vegetation management burning and prescribed burning. Article II—*Notification of Burning Conditions*, Article III—*Exceptions*, and Article V—*Prohibition—5.1 General*, and *Prohibitions—5.2 Range Improvement Burning* consists of a recodification of Appendix A—Implementation Plan for Agricultural Burning. Article IV—*Enforcement* is a recodification of appendix B. In Article VI—*Burning Permits*, this new rule specifies how a permit can be obtained, where it can be obtained and what it should include as far as the description of the burn. And, in Article VII—*Agricultural Burning Reports*, this new rule specifies two methods available for filing a report after a burn.

EPA Action

EPA's review of these new and revised rules finds them consistent with the Clean Air Act, 40 CFR part 51 and EPA policy. Therefore, EPA is taking final action to approve these rules under section 110 of the Clean Air Act. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment action and anticipates no adverse comments. This action will be effective December 22, 1989, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective December 22, 1989.

Regulatory Process

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 22, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxide, Ozone, Particulate matter, and Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: October 2, 1989.

John Wise,

Acting Regional Administrator.

Subpart F of part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart F—California

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.220 is amended by adding paragraphs (c)(177)(i) (B) and (C) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(177) * * *

(i) Incorporation by reference.

(B) Lake County Air Pollution Control District.

(*1*) Amended rules 431.5, 431.7, 432, 432.5, 433, 434, 436.5, 442, 1105, and 1107 adopted October 20, 1987.

(C) Lassen County Air Pollution Control District.

(*1*) Amended Articles I, II, III, IV, V, VI, and VII adopted August 11, 1987.

* * * * *

[FR Doc. 89–24876 Filed 10–20–89; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 52

[FRL–3672–6]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision for Siskiyou County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice approves revisions to the California State Implementation Plan (SIP). The California Air Resources Board submitted these revisions to EPA on March 23, 1988 for inclusion in the SIP. They affect the Siskiyou County Air Pollution Control District (APCD). These revisions consist of administrative and noncontroversial rules. EPA is approving these revisions because they either strengthen the SIP or retain equivalent emission control requirements. They are consistent with the Clean Air Act, 40 CFR part 51, and EPA policy, and should be approved under section 110 of the Clean Air Act. The intended effect of this action is to update the subject rules and regulations.

EFFECTIVE DATE: This action will be effective on December 22, 1989 unless notice is received within 30 days of publication that adverse or critical comments will be submitted. If the effective date is delayed timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be sent to: Colleen W. McKaughan, Environmental Protection Agency, Region 9, Attn: Air and Toxics Division, State Implementation Plan Section (A–2–3), 215 Fremont Street, San Francisco, CA 94105.

Copies of the rules and of EPA's Evaluation Reports are available for public inspection during normal business hours at the EPA Region 9 office in San Francisco. The California Air Resources Board (ARB) in Sacramento also has a complete set of the district rules. For information on a

rule concerning a specific county, you may contact the ARB or the appropriate district office listed below.

California Air Resources Board, Stationary Source Division, Criteria Pollutants Branch, Industrial Section, 1025 "P" Street, room 210, Sacramento, CA 95814.
Siskiyou County Air Pollution, Control District, 525 So. Foothill Drive, Yreka, CA 96097.
Public Information Reference Unit, U.S. Environmental Protection Agency, 401 "M" Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen (A-2-3), State Implementation Plan Section, Air and Toxics Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-7635 or FTS: 454-7635, Effective November 13, 1989 the new number will be 744-1716 or FTS: 484-1716.

SUPPLEMENTARY INFORMATION:

Background

On March 23, 1988, the ARB officially submitted to EPA a set of revisions to the California SIP. This notice addresses the non-controversial and administrative rules from this SIP revision submittal. The following list identifies the rules addressed in this notice.

Description of Rules—March 23, 1988 Submittal

Siskiyou County APCD

Regulation IV—Prohibition

Rule 4.1 Visible Emissions
Rule 4.1-1 Exceptions to Visible Emissions
Rule 4.1-2 Uncombined Water
Rule 4.2-1 Exceptions
Rule 4.3 Non-Agricultural Burning
Rule 4.4 Specific Air Contaminants
Rule 4.5 Particulate Matter
Rule 4.6 Circumvention
Rule 4.6-1 Exception to Circumvention
Rule 4.7 Gasoline Storage
Rule 4.8 Analyses Required (deleted)
Rule 4.8 Combination of Emissions
Rule 4.9 Separation of Emissions
Rule 4.10 Reduction of Animal Matter
Rule 4.11 Orchard and Citrus Heaters

Regulation VII—Agricultural Burning

Rule 7.1 Agricultural Burning, Definitions
Rule 7.2 Notification of Burning Conditions
Rule 7.3 Exceptions
Rule 7.4 Enforcement
Rule 7.5.1 Prohibitions, General
Rule 7.5.2 Prohibitions, Range Improvement Burning
Rule 7.5.3 Prohibitions, Wildland Vegetation Management Burning
Rule 7.6 Burning Permits
Rule 7.7 Agricultural Burning Reports

EPA Evaluation

EPA has evaluated these rules for consistency with the Clean Air Act, 40 CFR part 51, and with EPA policy. We have also reviewed them to determine if they weaken or strengthen the existing SIP. The rules that are being approved in this notice meet the requirements of the Act, 40 CFR part 51, and EPA policy. The rules govern prohibitions relating to carbon monoxide, volatile organic compounds, sulfur dioxide, ozone, and particulate matter and routine administrative air pollution control operations for agricultural burning. The revisions include minor changes to existing rules which are expected to result in an increased effectiveness and enforceability of those rules. The remaining revisions either delete or repeal rules which were combined with existing rules and are no longer applicable. In addition, most of the rules result in a strengthening of the existing SIP and the remainder cause no change to the existing SIP. A brief description of the rule changes is provided below.

Rule 4.1, *Visible Emissions,* adds a phrase at the beginning of the paragraph for clarification; Rule 4.2-1, *Exceptions,* deletes paragraph (B), an exception for nuisance, from the rule which is a strengthening of the existing SIP; and Rule 4.4, *Specific Air Contaminants,* is a recodification of the previously approved rule and deletes reference to sulfides from specific air contaminants. This deletion should have no effect on air quality since there are no sources that emit sulfides; therefore, there are no sources subject to this provision. Sulfur compounds are still regulated by this rule, so new sources of sulfur dioxide coming into the County would be regulated.

Rules 4.1-2, *Uncombined Water;* 4.5, *Particulate Matter;* 4.6, *Circumvention;* 4.6-1, *Exception to Circumvention;* 4.8, *Combination of Emissions;* 4.9, *Separation of Emission;* 4.10, *Reduction of Animal Matter;* 4.11, *Orchard and Citrus Heaters;* 7.2, *Notification of Burning Conditions;* 7.3, *Exceptions;* 7.5-1, *Prohibitions—General;* 7.5-2, *Prohibitions—Range Improvement Burning;* 7.6, *Burning Permits;* and 7.7, *Agricultural Burning Reports,* consist of a recodification of the previously approved rules as follows:

March 23, 1988 submittal	Previous rules and submittal dates
Rule 4.1-2 Uncombined Water	Rule 4.14—07/25/73
Rule 4.5 Particulate Matter	Rule 4.4—02/21/72, Rule 4.6—02/21/72
Rule 4.6 Circumvention	Rule 4.7—02/21/72
Rule 4.6-1 Exception to Circumvention	Rule 4.7-1—02/21/72
Rule 4.8 Combination of Emissions	Rule 4.10—06/30/72
Rule 4.9 Separation of Emissions	Rule 4.11—06/30/72
Rule 4.10 Reduction of Animal Matter	Rule 4.12—07/25/73
Rule 4.11 Orchard and Citrus Heaters	Rule 4.13—07/25/73
Rule 7.2 Notification of Burning Conditions	Article II—01/28/81
Rule 7.3 Exceptions	Article III—01/28/81
Rule 7.5-1 Prohibitions—General	Article V—01/28/81
Rule 7.5-2 Prohibitions—Range Improvement Burning	Article V—01/28/81
Rule 7.6 Burning Permits	Article VI—01/28/81
Rule 7.7 Agricultural Burning Reports	Article VII—01/28/81

Rule 4.7, *Gasoline Storage,* adds a minor language clarification and consists of a recodification of the previously approved rule as follows:

March 23, 1988 submittal	Previous rule and submittal dates
Rule 4.7 Gasoline Storage	Rule 4.9—02/21/72

The deletion of Rule 4.8, *Analyses Required,* previously approved on May 31, 1972, is being approved since it is incorporated into Rule 4.8, *Combination of Emissions,* submitted on March 23, 1988.

Rule 7.1, *Definitions,* is a recodification of the previously approved rule and adds five (5) new definitions which consist of: (1) Agricultural Burning Guidelines, (2) Wildland Vegetation Management Burning, (3) Prescribed Burning, (4) Sensitive Receptor Area, and (5) Burning Permit. Rule 7.4, *Enforcement,* is a recodification of the previously approved rule and deletes procedures for a complaint received on an observed burning.

Recodification of the previously approved rules are as follows:

March 23, 1988 submittal	Previous rules and submittal dates
Rule 7.1 Definitions	Article I—01/28/81
Rule 7.4 Enforcement	Article IV—01/28/81

Rule 7.5-3, *Prohibition—Wildland Vegetation Management Burning,* is a new rule which outlines prohibitions and procedures for wildland vegetation management burning and applies to all

burning which meets the definition of wildland vegetation management burning. This new rule is a strengthening of the existing SIP.

EPA Action

EPA's review of these new and revised rules finds them consistent with the Clean Air Act, 40 CFR part 51 and with EPA policy. Therefore, EPA is taking final action to approve these rules under section 110 of the Clean Air Act. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment action and anticipates no adverse comments. This action will be effective December 22, 1989, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective December 22, 1989.

Regulatory Process

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 22, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxide, Ozone, Particulate matter, and Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 27, 1989.

John Wise,

Acting Regional Administrator.

Subpart F of part 52, chapter I title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart F—California

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.220, paragraph (c) is amended by adding paragraph (176) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(176) Revised regulations for the following APCD's were submitted on March 23, 1988 by the Governor's designee.

(i) Incorporation by reference.

(A) Siskiyou County Air Pollution Control District.

(*1*) New and amended rules 4.1, 4.1–1, 4.1–2, 4.2–1, 4.3, 4.4, 4.5, 4.6, 4.6–1, 4.7, 4.8, 4.9, 4.10, 4.11, 7.1, 7.2, 7.3, 7.4, 7.5–1, 7.5–2, 7.5–3, 7.6, and 7.7 adopted on October 27, 1987.

* * * * *

[FR Doc. 89–24863 Filed 10–20–89; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 52

[FRL–3672–8]

Approval and Promulgation of State Implementation Plans; Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the Committal State Implementation Plan (SIP) for the Colorado Group II PM_{10} areas submitted by the Governor on April 14, 1989. The SIP commits the State to continue monitoring for PM_{10} and to submit a full SIP for any of the Group II areas in which a violation of the PM_{10} National Ambient Air Quality Standards (NAAQS) is detected. Also submitted on April 14, 1989, were the SIP revisions for the Colorado Group I Areas of Aspen, Canon City and Pagosa Springs. The Group I SIPs will be addressed in another notice.

DATES: This action will be effective on December 22, 1989, unless notice is received by November 22, 1989, that someone wishes to submit adverse or critical comments. If the effective date is delayed timely notice will be published in the Federal Register.

ADDRESSES: Copies of the revision are available for public inspection between 8 a.m., and 4 p.m., Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202–2405.

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

Colorado Department of Health, Air Pollution Control Division, Ptarmigan Place, N. Cherry Creek Drive and Colorado Blvd., Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Dale M. Wells, Air Programs Branch, Environmental Protection Agency, One Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202–2405 (303) 294–1773 (FTS) 564–1773.

SUPPLEMENTARY INFORMATION: The 1977 amendments to the Clean Air Act require EPA to review periodically and, if appropriate, revise the criteria on which the NAAQS for each air pollutant are based, as well as review and revise the NAAQS themselves. In response to these requirements, EPA published a notice to promulgate revised NAAQS for particulate matter under ten microns in size (known as PM_{10}) on July 1, 1987 (52 FR 24634). As a result, States must revise their State Implementation Plans (SIPs) to attain and maintain the new NAAQS.

To implement the new SIP requirements, all areas in the country were divided into three groups, based on the probability that each of these areas would violate the PM_{10} NAAQS. Group I areas have violated the PM_{10} NAAQS or have air quality data showing high (greater than 95%) probabilities of violating the NAAQS. These areas must submit full SIPs including control strategies and attainment demonstrations. Group II areas are estimated to have a moderate (20%–95%) probability of violating the PM_{10} NAAQS, and must commit to monitor for PM_{10} and submit a full SIP if a violation occurs. Group III areas are estimated to have a low (less than 20%)

probability of violating the PM_{10} NAAQS, and no new control strategy requirements apply.

The following Colorado areas have been classified as Group II: Greeley, Longmont, Brighton, Colorado Springs, Crested Butte, Delta, Grand Junction, Fruita, Rifle, Glenwood Springs, Steamboat Springs, and Vail. On April 14, 1989, the State submitted a Committal SIP for these areas. The requirements for Group II Committal SIPs, and the State's response to these requirements are described below.

EPA Requirements for Group II Committal SIPs

(1) Revisions to 40 CFR part 58 set forth the requirements for design of national, State and local PM_{10} air monitoring networks. The revised monitoring networks must be submitted for EPA approval. The required monitoring frequency varies with area grouping; Group I areas are required to monitor daily for at least one site in the area of expected maximum concentration, Group II areas are required to monitor every other day at such a site, and Group III areas are required to monitor every sixth day at such a site. Monitoring frequency in Group I and Group II areas can be reduced if the reduction is supported by at least one year of data.

In addition, Committal SIPs for Group II areas must contain enforceable commitments to:

(2) Gather ambient PM_{10} data, at least to an extent consistent with minimum EPA requirements and guidance.

(3) Analyze and verify the ambient PM_{10} data and report 24-hour PM_{10} NAAQS exceedances to the appropriate Regional Office within 45 days of each exceedance.

(4) When an appropriate number of verifiable 24-hour NAAQS exceedances becomes available or when an annual arithmetic mean above the level of the annual PM_{10} NAAQS becomes available, acknowledge that a nonattainment problem exists and immediately notify the appropriate Regional Office.

(5) Within 30 days of the notification referred to in (4), above, or within 37 months of promulgation of the PM_{10} NAAQS, whichever comes first, determine whether the measures in the existing SIP will assure timely attainment and maintenance of the primary PM_{10} standards, and immediately notify the appropriate Regional Office.

(6) Within 6 months of the notification referred to in (5), above, adopt and submit to EPA a PM_{10} control strategy that assures attainment as expeditiously as practicable but no later than 3 years from approval of the Committal SIP.

(7) Committal SIPs must include an enforceable schedule with appropriate milestones or checkpoints.

Colorado Submittal

The State submittal addresses EPA's requirements as follows:

(1) *PM_{10} monitoring networks.* There is at least one PM_{10} monitoring site operating in each of the Group II areas in Colorado operating at the required frequency. EPA has performed an evaluation of the Colorado PM–10 monitoring network and has concluded that the 40 CFR 58 criteria have been met. The State has committed to continue monitoring in the Committal SIP.

(2) *Gather ambient PM_{10} data according to requirements.* This commitment is contained in the Committal SIP.

(3) *Analyze and verify ambient PM_{10} data and report exceedences.* This commitment is contained in the Committal SIP.

(4) *Immediate notification of EPA if the area moves into nonattainment.* This commitment is contained in the Committal SIP.

(5) *Determination of adequacy of the existing SIP.* This commitment is contained in the Committal SIP.

(6) *Submittal of a revised control strategy for PM_{10} if the area moves into nonattainment.* This commitment is contained in the Committal SIP.

The Committal SIP also contains commitments to submit an emissions inventory of sources of PM_{10} for each of the areas. EPA requirements for administrative procedures, adequate legal authority to implement the SIP, and intergovernmental consultation have been satisfied by the State. These procedures have been approved as part of the SIP in previous **Federal Register** notices (see 40 CFR 52 subpart G). The State held a public hearing on the Committal SIP on September 15, 1988.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of the **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective December 22, 1989.

Final Action

EPA hereby approves the PM_{10} Committal SIP for the Colorado Group II areas as part of the Colorado SIP. The Committal SIP provides for adequate ambient air quality monitoring, notification to EPA should exceedance occur and for development of SIP revisions should violations of the PM_{10} NAAQS occur.

EPA finds that good cause exists for making the action taken in this notice immediately effective because the implementation plan revisions are already in effect under State law or regulation. EPA's approval poses no additional regulatory burden.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. Section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 22, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter.

Dated: September 25, 1989.

Irwin L. Dickstein,

Acting Regional Administrator.

Part 52 chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart G—Colorado

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.331 is added to read as follows:

§ 52.331 Committal SIP for the Colorado Group II PM_{10} areas.

On April 14, 1989, the Governor submitted a Committal SIP for the Colorado Group II PM_{10} areas. The SIP commits the State to continue to monitor for PM_{10}, report data and to submit a full SIP if a violation of the PM_{10} National Ambient Air Quality Standards is detected.

[FR Doc. 89–24862 Filed 10–20–89; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6750

[CO–930–09–4214–10; C–46833]

Withdrawal of National Forest System Land for Protection of Recreational Values; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws approximately 4,222 acres of National Forest System land from mining for a period of 50 years for the protection of existing and planned recreational facilities at the Beaver Creek Ski Area near Avon, Colorado. The land has been and remains open to such forms of disposition as may by law be made of National Forest System land and to mineral leasing.

EFFECTIVE DATE: October 23, 1989.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–236–1752.

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

1. Subject to valid existing rights, the following described National Forest System land, which is under the jurisdiction of the Secretary of Agriculture, is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2) to protect existing and planned recreational values which are a part of the Beaver Creek Ski Area:

Sixth Principal Meridian

White River National Forest

T. 5 S., R. 81 W.,
- Sec. 19, SE¼NW¼, E½SW¼, and SW¼SE¼;
- Sec. 30, lots 1, 2, 5, 6, 7, 8, E½, and E½NW¼;
- Sec. 31, lots 1 thru 4, W½NE¼, E½W½, and NW¼SE¼.

T. 5 S., R. 82 W.,
- Sec. 22, SE¼NE¼, NE¼SE¼, and S½SE¼;
- Sec. 23, SW¼NW¼, and S½;
- Sec. 24, SW¼SW¼, and SW¼SE¼;
- Sec. 25, lots 1, 2, E½, NW¼NW¼, S½NW¼, and E½SW½,
- Sec. 26, lot 1, N½, SW¼, N½SE¼, and SW¼SE¼;
- Sec. 27, E½, SE¼NW¼, and NE¼SW¼;
- Sec. 36, lots 1, 2, 3, 4, 5, SW¼NE¼, NE¼NW¼, S½NW¼, SW¼, W½SE¼, and SE¼SE¼;

T. 6 S., R. 82 W.,
- Sec. 1, The North 20 chains as defined by Protraction Diagram No. 10, Accepted May 10, 1965.

The area described aggregates approximately 4,222 acres of National Forest System land in Eagle County.

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

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: October 16, 1989.

Frank A. Bracken,

Under Secretary of the Interior.

[FR Doc. 89–24934 Filed 10–20–89; 8:45 am]

BILLING CODE 4310–JB–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–6971]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–2767.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR part 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or

show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains.

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State	County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Georgia	Fulton and DeKalb Counties.	City of Atlanta	Oct. 19, 1989, Oct. 26, 1989, Atlanta Journal-Constitution.	The Honorable Andrew Young, Mayor, City of Atlanta, 55 Trinity Avenue, SW, Atlanta, Georgia 30335–0325.	Oct. 6, 1989	135147
Louisiana	Lafourche	Town of Golden Meadow.	Sept. 28, 1989, Oct. 5, 1989, The Daily Comet.	The Honorable Jervis Autin, Mayor of the Town of Golden Meadow, 313 North Bayou Drive, Golden Meadow, Louisiana 70357.	Sept. 19, 1989	225196 B

Issued: October 11, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89–24948 Filed 10–20–89; 1:30 pm]

BILLING CODE 6718–03–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 532 and 552

[APD 2800.12A CHGE 1]

General Services Administration Acquisition Regulation, Authorizing Payment by Credit Card Under GSA Schedule Contracts

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is amended to add subpart 532.70 to prescribe a contract clause that will authorize GSA schedule contractors to accept the Government commercial credit card as an alternative method of payment for orders of $25,000 or less; revise § 552.210–79, Packing List, to add supplemental information, which must be included on the packing list or other shipping document when payment will be made by Government commercial credit card; and add § 552.232–80 to provide the text of a clause authorizing GSA schedule contractors to be paid for oral or written orders of $25,000 or less by using the Government commercial credit card.

EFFECTIVE DATE: December 1, 1989.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Office of GSA Acquisition Policy and Regulations (202) 566–1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

A notice of proposed rulemaking was published in the **Federal Register** on June 29, 1989 (GSAR Notice 5–272, 54 FR 27396). Fifteen public comments were received all favoring the use of the Government commercial credit card as an additional method of payment for orders of $25,000 or less. As a result of the public comments and comments received from various GSA offices, the requirement for vendors to give an additional discount from its schedule prices, before payment by Government commercial credit card would be authorized, has been deleted. Several minor editorial changes also have been made for clarification.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this proposed rule.

C. Regulatory Flexibility Act

The GSA, in GSAR Notice 5–272, certified that the rule would not have a significant impact on a substantial number of small entities. Any impact was perceived to be beneficial, since payments to vendors would be expedited. Consequently, no regulatory flexibility analysis was prepared, though comments from small entities were solicited. No comments, taking exception to the certification, were received.

D. Paperwork Reduction Act

The Packing List clause at GSAR 552.210–79 contains an information collection requirement which has been approved by OMB under section 3504(h) of the Paperwork Reduction Act and assigned OMB Control No. 3090–0246. The title of the collection is "48 CFR 552.210–79, Packing list." The clause requires GSA schedule contractors shipping items that will be paid for by Government commercial credit card to include on the packing list or other suitable shipping document the name and telephone number of the cardholder and the term "Credit Card." This information is needed by the cardholder to verify receipt of the order, reconcile the monthly credit card statement, and expeditiously authorize payment to the credit card issuer. The respondents are GSA schedule contractors. The estimated annual burden for this collection is 2,427 hours. This is based on an estimated average burden hour per response of 0.0167, a proposed frequency of 48.4 responses per respondent, and an estimated number of respondents of 3,000. Any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden may be directed to the Director, Office of GSA Acquisition Policy (VP), 18th and F Streets, NW., room 4026, Washington, DC 20405 and to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Washington, DC 20503.

List of Subjects in 48 CFR Parts 532 and 552

Government procurement.

1. The authority citation for 48 CFR parts 532 and 552 continues to read as follows:

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

PART 532—[AMENDED]

2. Subpart 532.70 is added to read as follows:

Subpart 532.70—Authorizing Payment by Credit Under Schedule Contracts

Subpart 532.70—Authorizing Payment by Credit Card Under Schedule Contracts

532.7001 Definition.

"Government commercial credit card," used in this subpart, means the uniquely numbered credit card issued by the contractor under single award schedule, Federal Supply Schedule IG 615, Governmentwide Commercial Credit Card Service, to named individual Government employees to pay for official Government purchases.

532.7002 Solicitation requirements.

When solicitations for schedule contracts for supplies (other than telecommunication and telephone equipment) and services (other than teleprocessing services) request offerors to indicate whether payment by Government commercial credit card for orders of $25,000 or less will be accepted, the contracting officer shall identify the clearinghouse that is being used by the contractor issuing credit cards under single award schedule, Federal Supply Schedule IG 615, for Governmentwide Commercial Credit Card Service on the cover page or in section L of the solicitation. The name of the clearinghouse is provided for offerors' information and use in responding to the schedule solicitation.

532.7003 Contract clause.

The contracting officer shall insert the clause at 552.232–80, Payment By Credit Card, in schedule solicitations and resultant contracts for supplies (other than telecommunication and telephone equipment) and services (other than teleprocessing services) to provide for payment by Government commercial credit card as an alternative method of payment for orders of $25,000 or less.

3. Section 552.210–79 is revised to read as follows:

552.210–79 Packing List.

As prescribed in 510.011(i), insert the following clause:

Packing List (Dec 1989)

(a) A packing list or other suitable shipping document shall accompany each shipment and shall indicate: (1) Name and address of the consignor; (2) Name and complete address of the consignee; (3) Government order or requisition number; (4) Government

bill of lading number covering the shipment (if any); and (5) Description of the material shipped, including item number, quantity, number of containers, and package number (if any).

(b) When payment will be made by Government commercial credit card, in addition to the information in (a) above, the packing list or shipping document shall include: (1) Cardholder name and telephone number and (2) the term "Credit Card."

(End of Clause)

PART 552—[AMENDED]

4. Section 552.232–80 is added to read as follows:

552.232–80 Payment by credit card.

As prescribed in 532.7003, insert the following clause:

Payment by Credit Card (Dec 1989)

(a) Definitions. "Government commercial credit card" means the uniquely numbered credit card issued by the Contractor under single award schedule, Federal Supply Schedule IG 615, Governmentwide Commercial Credit Card Service, to named individual Government employees to pay for official Government purchases.

"Oral delivery order" means an order placed orally either in person or by telephone, which is paid for by Government commercial credit card.

(b) At the option of the Government and if agreeable to the Contractor, payments of $25,000 or less for oral or written delivery orders may be made using the Government commercial credit card.

(c) The Contractor shall not process a transaction for payment through the credit card clearinghouse until the purchased supplies have been shipped or services performed. Unless the cardholder requests correction or replacement of a defective or faulty item in accordance with other contract requirements, the Contractor shall immediately credit a cardholder's account for items returned as defective or faulty.

(End of Clause)

Dated: October 13, 1989.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy.

[FR Doc. 89–24933 Filed 10–20–89; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

Atlantic Tuna Fisheries

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

ACTION: Notice of closure.

SUMMARY: NOAA issues this notice to close the fishery for Atlantic bluefin tuna conducted by vessels angling for young school, school or medium Atlantic bluefin tuna. Closure of this segment of the fishery is necessary because the annual quota for this category has been attained. The intent of this action is to prevent overharvest of the quota established for this fishery.

EFFECTIVE DATES: The closure is effective 0001 hours local time October 21, 1989, through December 31, 1989.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, 508–281–9324.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971–971h) regulating the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction were published in the **Federal Register** on October 25, 1985 (50 FR 43396).

Section 285.22(e) of 50 CFR Part 285 provides for an annual quota of 139 short tons (st) of young school (less than 66cm), school (66cm but less than 145cm) and medium (145cm but less than 196cm) Atlantic bluefin tuna to be harvested from the regulatory area by anglers. The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) is authorized under § 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the total catch of Atlantic bluefin tuna will equal any quota under § 285.22. The Assistant Administrator is further authorized under § 285.20(b)(1) to prohibit the fishing for, or retention of, Atlantic bluefin tuna by the category of gear subject to the quotas. The Assistant Administrator has determined, based on the reported catch, that the annual quota of Atlantic bluefin tuna for the Angling category will be attained by October 21, 1989. Therefore, fishing for, and retention of, any young school, school or medium Atlantic bluefin tuna harvested under § 285.22(e) must cease at 0001 local time on October 21, 1989.

Other Matters

Notice of this action will be mailed to all Atlantic bluefin tuna dealers, several industry publications, associations and state agencies. This action is taken under the authority of 50 CFR 285.20, and is taken in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Authority: 16 U.S.C. 971 *et seq.*

Dated: October 18, 1989.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation & Management, National Marine Fisheries Service.

[FR Doc. 89–24979 Filed 10–18–89; 4:55 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 54, No. 203
Monday, October 23, 1989

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1032

[DA-89-041]

Milk in the Southern Illinois-Eastern Missouri Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This action invites written comments on a proposal to suspend certain provisions of the Southern Illinois-Eastern Missouri Federal milk marketing order for the months of November 1989 through January 1990. The proposed suspension would reduce the shipping standard for pool supply plants operated by cooperative associations. The action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that operates supply plants and represents producers who supply the market. Mid-Am contends that the action is necessary to reflect a reduced need for shipments of milk from supply plants to distributing plants. Mid-Am indicates that less of its supply plant milk will be needed because of the sale of a distributing plant whose fluid milk accounts will be shifted to distributing plants that are regulated under other Federal orders. Absent a suspension, Mid-Am contends that costly and inefficient movements of milk would have to be made to continue to pool the milk of dairy farmers who have historically supplied the fluid milk needs of the market.

DATE: Comments are due on or before October 30, 1989.

ADDRESS: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of milk in the Southern Illinois-Eastern Missouri marketing area is being considered for November 1989 through January 1990:

In § 1032.7(b), the words "and at least 75 percent of the total producer milk marketed in that 12-month period by such cooperative association was delivered", and the words "and physically received at".

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include November in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would suspend certain provisions of the order for the months of November 1989 through January 1990. The action would reduce the shipping standard for pool supply plants operated by cooperative associations.

Currently, the order provides that a supply plant must ship at least 40 percent of its receipts of milk to distributing plants during December, and 50 percent in other months, to be a pool plant under the order. A supply plant that meets the pooling standard during each of the months of September through January is a pool plant during each of the months of February through August. Also, the order provides a monthly shipping standard of 25 percent for a supply plant operated by a cooperative association if at least 75 percent of the cooperative's total milk supply during the preceding months of September through August is received at distributing plants. The proposed suspension would result in reducing the shipping standard for a cooperative association supply plant to 25 percent of receipts during November 1989-January 1990.

The action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that operates supply plants under the order and represents producers who supply the market. Mid-Am contends that the action is necessary because of a reduced need for shipments of milk from supply plants to furnish the fluid milk requirements of distributing plants.

Mid-Am indicates that the reduction of the fluid milk requirement for the market is a result of the recent sale of a distributing plant to another handler that is regulated under the order. Mid-Am has maintained pool plant status under the order for one of its supply plants by making shipments to the distributing plant that was sold. The fluid milk accounts of the plant that was sold are to be shifted to distributing plants that are regulated under other Federal orders and the distributing plant will cease receiving milk to supply its

current accounts on October 19, 1989. As a result, there will be a reduction in the amount of supplemental supply plant milk required of Mid-Am to meet the fluid milk needs of the market. Consequently, Mid-Am contends that the suspension is necessary to reduce the shipping standard to 25 percent of receipts during November 1989–January 1990. Absent a suspension, Mid-Am contends that costly and inefficient movements of milk would have to be made to pool its supply plant and the milk of its producers who have historically supplied the market.

List of Subjects in 7 CFR Part 1032

Dairy products, Milk, Milk marketing orders.

PART 1032—[AMENDED]

The authority citation for 7 CFR part 1032 continues to read as follows:

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

Signed at Washington, DC, on October 17, 1989.

David Haley,

Administrator.

[FR Doc. 89–24880 Filed 10–20–89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I

[Docket No. 89N–0226]

Information Packet and Issue Papers for Food Labeling Hearings; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of an information packet and a compendium of food labeling issue papers as background information for the four regional food labeling hearings announced in the **Federal Register** on September 20, 1989 (54 FR 38806). The compendium summarizes the food labeling issues that were set forth in the advance notice of proposed rulemaking that published in the **Federal Register** on August 8, 1989 (54 FR 32610).

ADDRESSES: Submit written requests for single copies of the information packet and the compendium of food labeling issue papers to the Office of Consumer Affairs (HFE–88), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3170. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. The compendium of food labeling issue papers is available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Center for Food Safety and Applied Nutrition (HFF–200), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–245–1561.

SUPPLEMENTARY INFORMATION: In the **Federal Register** on August 8, 1989 (54 FR 32610), FDA published an advance notice of proposed rulemaking and request for public comment on possible changes to the food labeling requirements. The notice addressed five food labeling topics and announced that public hearings would be held. The public hearing dates and locations were announced September 20, 1989 (54 FR 38806). The first of the four regional food labeling hearings was held on October 16, 1989, in Chicago, IL 60612. The other three hearings are scheduled for November 1, 1989, San Antonio, TX 78284; December 7, 1989, Seattle, WA 98174; and December 13, 1989, Atlanta, GA 30303. The agency has prepared an information packet and a compendium of issue papers for distribution at the hearings. The compendium summarizes the focus issues to be addressed at the hearings: nutrition label content (Chicago), ingredient labeling/food standards and food descriptors (San Antonio), health messages (Seattle), and nutrition label format (Atlanta).

Interested persons who will be unable to attend the hearings may request a copy of the information packet and compendium by following the procedure outlined above.

Dated: October 17, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–24913 Filed 10–20–89; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3673–8]

Approval and Promulgation of Implementation Plans; State of Missouri; Revised Rules for the Control of Volatile Organic Compound Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve amended state rules as a revision to the Air Pollution Control State Implementation Plan (SIP) of the state of Missouri. The rules, required by the Clean Air Act, establish reasonably available control technology (RACT) to limit volatile organic compound (VOC) emissions in the St. Louis Area. EPA's approval of this SIP revision provides federal enforceability of the rules, which will ensure progress toward improved air quality in the St. Louis vicinity.

DATE: Comments must be received by November 22, 1989.

ADDRESSES: Comments should be sent to Larry A. Hacker, Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. The state-submitted information and the EPA-prepared technical support document are available for public review during normal business hours at the above address and at the Missouri Department of Natural Resources, Air Pollution Control Program, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri 65101.

FOR FURTHER INFORMATION CONTACT: Larry A. Hacker at (913) 236–2893 (FTS 757–2893).

SUPPLEMENTARY INFORMATION: Part D of the Clean Air Act, as amended, requires that a state revise its SIP for all areas that have not attained the National Ambient Air Quality Standards (NAAQS). On May 26, 1988, EPA informed the Governor of Missouri that the SIP for the St. Louis area was substantially inadequate to attain the NAAQS for ozone and carbon monoxide.

In response to the SIP call, the state submitted corrections to its St. Louis VOC control rules on March 30, 1989. The rule amendments were adopted by the Missouri Air Conservation Commission (MACC) after proper notice and public hearing, and became effective on March 11, 1989.

The state adopted these amendments in compliance with section 172(b)(2) of the Clean Air Act, which requires SIPs to provide for the implementation of all reasonably available control measures as expeditiously as practicable. The amendments are consistent with EPA policy as outlined in "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarification to Appendix D of November 24, 1987 Federal Register," dated May 25, 1988.

The state submittal consisted of amendments to the following rules: 10 CSR 10–5.220, Control of Petroleum Liquid Storage, Loading and Transfer; 10 CSR 10–5.300, Control of Emissions from Solvent Metal Cleaning; 10 CSR 10–5.310, Liquefied Cutback Asphalt Restricted; 10 CSR 10–5.340, Control of Emissions from Rotogravure and Flexographic Printing Facilities; 10 CSR 10–5.350, Control of Emissions of Synthesized Pharmaceutical Products; 10 CSR 10–5.360, Control of Emissions from Polyethylene Bag Sealing Operations; 10–CSR 10–5.370, Control of Emissions from the Application of Deadeners and Adhesives; 10 CSR 5.390, Control of Emissions from the Manufacturing of Paints, Varnishes, Lacquers, Enamels and Other Allied Surface Coating Products; 10 CSR 10–5.410, Control of Emissions from the Manufacture of Polystyrene Resin; 10 CSR 10–5.420, Control of Emissions from Synthetic Organic Chemical and Polymer Manufacturing Plants; and 10 CSR 10–6.020, Definitions. Also, Rule 10 CSR 10–5.400, Control of Emissions from Production of Maleic Anhydride, was rescinded. This rule affected only one source, which has been permanently shut down.

The rule amendments improve the clarity and enforceability of the rules. Source applicability levels are more clearly defined. The rules now contain appropriate EPA approved compliance test methods; previously, some rules contained outdated, incorrect, or missing test method references. The rules now contain detailed recordkeeping requirements. Sources are required to keep sufficient records so that source compliance status can be determined on the basis of such records. For a detailed discussion of the state submittal, the reader is directed to the aforementioned EPA technical support document.

In rule 10 CSR 10–3.370, the state adopted a source-specific alternative RACT emission limit which applies to the Chrysler automobile assembly plant. This limit specifies that, after July 31, 1985, vinyl top adhesive shall not contain more than 5.33 pounds of VOC per gallon of adhesive. EPA's technical support document discusses the rationale for this alternative RACT limit.

Rule 10 CSR 10–5.340 provides for alternative compliance plans whereby compliance can be determined by a daily weighted average of emissions from a combination of source operations. EPA proposes approval of this rule with the understanding that any such alternative compliance plans must be submitted and approved by EPA as individual SIP revisions. In the absence of such approval, the enforceable requirements of the SIP would be the reduction requirements stated in the rule.

EPA Action

EPA proposes to approve the state's June 14, 1985; November 19, 1986; and March 30, 1989, submittals as a revision to the Missouri SIP. EPA's decision to approve or disapprove this SIP revision will be based on comments received and on a determination of whether the revision meets the requirements of sections 110 and 172 of the Clean Air Act and 40 CFR part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, and Ozone.

Dated: October 9, 1989.

Morris Kay,

Regional Administrator.

40 CFR part 52, subpart AA, is proposed to be amended as follows:

Subpart AA—Missouri

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642

2. Section 52.1320 is amended by adding paragraph (c)(71) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(71) Revisions to regulations for controlling volatile organic compound emissions in the St. Louis area were submitted by the Missouri Department of Natural Resources on June 14, 1985; November 19, 1986; and March 30, 1989.

(i) Incorporation by reference

(A) New rule 10 CSR 10–5.410, Control of Emissions from the Manufacture of Polystyrene Resin, effective May 11, 1985, with amendments effective September 26, 1986, and March 11, 1989.

(B) Revisions to rules 10 CSR 10–5.220, Control of Petroleum Liquid Storage, Loading and Transfer; 10 CSR 10–5.300, Control of Emissions from Solvent Metal Cleaning; 10 CSR 10–5.310, Liquefied Cutback Asphalt Restricted; 10 CSR 10–5.320, Control of Emissions from Perchloroethylene Dry Cleaning Installations; 10 CSR 10–5.340, Control of Emissions from Rotogravure and Flexographic Printing facilities; 10 CSR 10–5.350, Control of Emissions of Synthesized Pharmaceutical Products; 10 CSR 10–5.360, Control of Emissions from Polyethylene Bag Sealing Operations; 10 CSR 10–5.370, Control of Emissions from the Application of Deadeners and Adhesives; 10 CSR 10–5.390, Control of Emissions from the Manufacturing of Paints, Varnishes, Lacquers, Enamels and Other Allied Surface Coating Products; 10 CSR 10–5.420, Control of Equipment Leaks from Synthetic Organic Chemical and Polymer Manufacturing Plants; and 10 CSR 6.020, Definitions; effective March 11, 1989.

(C) Rescinded rule 10 CSR 10–5.400, Control of Emissions from Production of Maleic Anhydride, effective March 11, 1989.

3. Section 52.1323 is amended by adding paragraph (b) to read as follows:

§ 52.1323 Approval status.

* * * * *

(b) The Administrator approves rule 10 CSR 10–5.340 as identified under § 52.1320, paragraph (c)(71), with the understanding that any alternative compliance plans issued under this rule must be approved by EPA as individual SIP revisions. In the absence of such approval, the enforceable requirements of the SIP would be the reduction requirements stated in the rule.

[FR Doc. 89–24923 Filed 10–20–89; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

Natural Resource Damage Assessments

AGENCY: Department of the Interior.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: On September 22, 1989, the Department published three advance notices of proposed rulemaking to announce its intent to revise the type B rule and the type A natural resource damage assessment procedure for coastal and marine environments, both codified at 43 CFR part 11, and to modify the ongoing development of a type A procedure for Great Lakes environments to conform with recent court rulings. The natural resource damage assessment rule was developed pursuant to Section 301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). The Department is now extending the period for comment on each of the three advance notices of proposed rulemaking from October 23, 1989, to November 13, 1989. Commenters should submit separate comments for each of the advance notices of proposed rulemaking.

DATE: Comments on the advance notices of proposed rulemaking (54 FR 39013, 54 FR 39015, and 54 FR 39016) will be accepted through November 13, 1989.

ADDRESS: Comments on the revision of the type B rule should be addressed to: Office of Environmental Project Review, ATTN: Type B NRDA Rule, room 2340, Department of the Interior, 1801 C Street NW., Washington, DC 20240. Comments on the revision of the type A procedure for coastal and marine environments should be addressed to: Office of Environmental Project Review, ATTN: NRDA Coastal and Marine Type A Rule, room 2340, Department of the Interior, 1801 C Street, NW., Washington, DC 20240. Comments on the revision to the ongoing development of a type A procedure for Great Lakes environments should be addressed to: Office of Environmental Project Review, ATTN: NRDA Great Lakes Type A Rule, room 2340, Department of the Interior, 1801 C Street NW., Washington, DC 20240. (Regular business hours 7:45 a.m. to 4:15 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Linda Burlington or David Rosenberger at (202) 343–1301.

SUPPLEMENTARY INFORMATION: On September 22, 1989, the Department of the Interior (Department) published three advance notices of proposed rulemaking to announce its intent to: (1) Revise the type B natural resource damage assessment procedures (see 54 FR 39016); (2) revise the type A natural resource damage assessment procedure for coastal and marine environments (see 54 FR 39103), both codified at 43 CFR part 11; and (3) modify the ongoing development of a type A procedure for Great Lakes environments (see 54 FR 39015) to conform with recent court rulings. These revisions will ensure that the natural resource damage assessment rule carries out the purpose and requirement of the Cmprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA) for the restoration, or replacement, of injured natural resources. The revisions must also meet the requirement in the law that the rule contain the "best available" procedures for performing damage assessments. The natural resource damage assessment rule was developed pursuant to section 301(c) of CERCLA.

The purpose of the three advance notices of proposed rulemaking of September 22, 1989, was to request public comments and technical information to assist the Department in complying with the issues remanded to the Department by the court, specifically, the incorporation of restoration or replacement values and the inclusion of all reliably calculated lost use values, with no required hierarchy of methodologies for conducting those valuations. Commenters should submit separate comments for each of the advance notices of proposed rulemaking.

Comments received from the public to date in response to the advance notices of proposed rulemaking have requested additional time to compile both informational and technical comments. These kinds of comments are what the Department specifically requested in the advance notices of proposed rulemaking. Therefore, after considering these requests, the Department has decided to extend the three comment periods through November 13, 1989.

Dated: October 19, 1989.

Terence N. Martin,

Acting Director, Office of Environmental Project Review.

[FR Doc. 89–24990 Filed 10–20–89; 8:45 am]

BILLING CODE 4310–RG–M

Bureau of Land Management

43 CFR Parts 2090 and 2200

RIN 1004–AB28

[AA–320–00–4212–02]

Land Exchange; General Procedures; Extension of Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of comment period.

SUMMARY: The proposed rule that would revise the exchange regulations of the Bureau of Land Management was published in the **Federal Register** on August 18, 1989 (54 FR 34380), with a 45-day comment period. The comment period is being extended by 60 days to December 1, 1989, in response to public requests.

DATE: The period for the submission of comments is hereby extended to December 1, 1989. Comments received or postmarked after this date may not be considered as part of the decisionmaking process on issuance of the final rule.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 18th & C Streets NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Roger Taylor or Dave Cavanaugh, (202) 343–8735 or 343–5441.

Dated: October 18, 1989.

David O'Neil,

Assistant Secretary of the Interior.

[FR Doc. 89–24906 Filed 10–20–89; 8:45 am]

BILLING CODE 4310–84–M

Notices

Federal Register
Vol. 54, No. 203
Monday, October 23, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket 89-176]

Receipt of a Permit Application for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment), in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organism	Field test location
89-257-04	U.S. Department of Agriculture/Agricultural Research Service	09-14-89	Potato genetically engineered for a marker gene	Idaho.

Done in Washington, DC, this 17th day of October.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-24932 Filed 10-20-89; 8:45 am]

BILLING CODE 3410-34-M

Commodity Credit Corporation

Dairy Export Incentive Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: This notice announces a change in the operation of the Dairy Export Incentive Program (DEIP). Henceforth, the Commodity Credit Corporation (CCC) will pay exporters the agreed upon bonus through the issuance of generic certificates redeemable for CCC-owned commodities.

ADDRESSES: Comments should be submitted to the General Sales Manager, Foreign Agricultural Service, USDA, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: L.T. McElvain, Director, Commodity Credit Corporation Operations Division, Export Credits, Foreign Agricultural Service, USDA, Washington, DC 20250, phone (202) 447-6225 or Mark Rowse of the same Division, phone (202) 382-9240. A revised announcement and invitation will be issued under the program and may be requested from the Commodity Credit Corporation Operations Division, Export Credits, Foreign Agricultural Service, USDA, Washington, DC 20250.

SUPPLEMENTARY INFORMATION: Section 153 of the Food Security Act of 1985 instructed the CCC to establish and operate an export incentive program for dairy products through September 30, 1989, with payment of the bonus through either cash, commodity certificate or CCC-owned commodities. This program became the DEIP. Section 106 of the Hunger Prevention Act of 1988 extended the operation of the DEIP through September 30, 1990.

A notice announcing the establishment of the DEIP program was published in the **Federal Register** on March 3, 1986, 51 FR 7300, and contains a general description of the operation of the program.

Since the inception of the program, CCC paid bonuses to exporters in the form of CCC-owned dairy products. Section 4308 of the Omnibus Trade and Competitiveness Act of 1988 amended section 153 of the Food Security Act of 1985 by changing the method by which CCC could pay bonuses to exporters. Under current law, bonuses may be paid in cash or through the issuance of generic certificates, redeemable for CCC-owned commodities. Accordingly, CCC will no longer make payment of bonuses in the form of CCC-owned dairy products. Future payments will be made through the issuance of generic certificates, redeemable for designated CCC-owned commodities. CCC-owned dairy products will no longer be available through the redemption of generic certificates.

The General Sales Manager invites the public to comment on this system and the operation of this program at any time. The operation of the program is subject to review and change at any time after comments are received and in

light of experience gained in operating the program.

Signed at Washington, DC, on September 25, 1989.

F. Paul Dickerson,

General Sales Manager and Vice President, Commodity Credit Corporation.

[FR Doc. 89-24928 Filed 10-20-89; 8:45 am]

BILLING CODE 3410-10-10

Forest Service

Union Pass Road Project, Bridger-Teton National Forest, Fremont, Sublette, and Teton Counties, WY

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Department of Agriculture—Forest Service, in cooperation with the State of Wyoming and the five-County Council of Governments, will prepare an environmental impact statement on a proposal to relocate a portion of the Union Pass Road on the Pinedale Ranger District, Bridger-Teton National Forest. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decisionmaking process that will occur on the proposal so that interested and affected people are aware of how they may participate and contibute to the final decision.

DATE: Comments concerning the scope of the analysis should be received in writing by December 8, 1989.

ADDRESSES: Send written comments to Paul Arndt, Union Pass Road Team Leader, Bridger-Teton National Forest, P.O. Box 1688, Jackson, WY 83001.

Public Meetings: The Pinedale District Ranger will hold informal public meetings at the public library in Pinedale, WY on November 14, 1989 at 7:00 p.m. and at Dubois, WY on November 16, at 7:00 p.m. The location in Dubois will be announced at a later date. Other meetings can be arranged if requested.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Bob Reese, Pinedale District Ranger, Box 220, Pinedale, WY 82941 (phone 307-367-4326).

Responsible Official: Brian E. Stout, Forest Supervisor, Bridger-Teton National Forest, Jackson, Wyoming is the responsible official.

SUPPLEMENTARY INFORMATION: The proposal is to relocate the "Connecting Road" segment of the Union Pass Road. The Connecting Road segment runs from Bacon Ridge to Kendall Bridge and connects with the Green River Lakes Road.

The Connecting Road segment is needed to provide access to a significant portion of the Pinedale Ranger District. The access is needed by both the Forest Service for management purposes, as well as the public for recreational purposes. Currently, a portion of the Connecting Road goes through private property and the Forest Service does not have legal access across that section. The Connecting Road is also a "substandard" road with problems of erosion and safety concerns with the road design where site distances are limited. Conflicts between local ranchers who use the area for cattle drives and recreationists also need to be addressed.

The alternatives evaluated will be based upon direction contained in the pending Bridger-Teton National Forest and Resource Management Plan, along with recommendations contained in the "Union Pass Road Study" prepared for the five-member Council of Governments (Fremont, Lincoln, Sublette, Sweetwater, and Teton Counties).

A range of alternatives for this project will be considered. One alternative will look at continuing the existing situation, one will look at improving the existing road alignment, and other alternatives will evaluate relocating portions of the road.

Federal, State and local agencies, and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the prepartion of the environmental impact statement. This will include: (a) Further identifying potential issues; (b) further identifying issues to be analyzed in depth; (c) eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis; (d) determination of need for the project; (e) exploring additional alternatives; and (f) identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect and cumulative effects, and connected actions).

The State of Wyoming and the five-County Council of Governments will be invited to participate as Cooperating Agencies in the development of the environmental impact statement. The U.S. Fish and Wildlife Service, Department of the Interior, will also be invited to participate as a Cooperating Agency to evaluate potential impacts on threatened and endangered species habitat.

The analysis is expected to take approximately six months. The draft environmental impact statement should be available for public review by April, 1990. The final environmental impact statement is scheduled to be completed by September, 1990.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Dated: October 12, 1989.

Brian E. Stout,

Forest Supervisor, Bridger-Teton National Forest.

[FR Doc. 89-24869 Filed 10-20-89; 8:45 am]

BILLING CODE 3410-11-M

Somes and Butler Compartments EIS; Klamath National Forest, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement for a proposal to implement commercial timber sales and related management activities, over the next five years,

within portions of the Somes and Butler Compartments on the Ukonom Ranger District.

DATE: Comments concerning the scope of the analysis must be received by December 1, 1989.

ADDRESSES: Send written comments and suggestions concerning the scope of the analysis to Alice R. Forbes, District Ranger, Klamath National Forest, P.O. Drawer 410, Orleans, CA 95556.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Penny Eckert, TMO, Ukonom Ranger District, phone (916) 627–3291.

SUPPLEMENTARY INFORMATION: A range of alternatives for this area will be considered. One of these will be no road construction or timber harvest. Other alternatives will consider an array of resource management strategies including intensive timber management (requiring high road densities and large amounts of stand treatments) to low intensity management with greater emphasis on other resource values.

Federal, State, and local agencies, and other individuals or organizations who may be interested in or affected by the decision are hereby invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
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. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determination of potential cooperating agencies and assignment by responsibilities.

The U.S. Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the compartments.

Robert Rice, Forest Supervisor, Klamath National Forest, is the responsible official.

The analysis is expected to take about 10 months.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June, 1990. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register.**

The comment period on the draft environmental impact statement (DEIS) will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.** It is very important that those interested in the management of the Somes and Butler Compartments EIS participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed by September 1990. The Forest Service is required to respond in the FEIS to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Dated: October 12, 1989.

Barbara Holder,

Deputy Forest Supervisor.

[FR Doc. 89–24870 Filed 10–20–89; 8:45 am]

BILLING CODE 3410–11–M

Draft Environmental Impact Statement for Exploratory Oil and Gas Wells; Lewis and Clark National Forest, Glacier and Pondera Counties, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice of availability; notice of meeting.

SUMMARY: Notice is hereby given that the Forest Service is distributing for public review a Draft Environmental Impact Statement on the proposals to drill exploratory oil and gas wells near Badger Creek and Hall Creek, Lewis and Clark National Forest, Glacier and Pondera Counties, Montana.

DATES: Five public open house sessions will be held at the following locations:

November 2, 1989, 3–8 PM—Holiday Inn, 200 S. Pattee, Missoula, MT

November 6, 1989, 3–8 PM—Glacier Electric Bldg., 410 E. Main, Cut Bank, MT

November 7, 1989, 3–8 PM—Little Flower Parish, Browning, MT

November 8, 1989, 3–8 PM—Community Hall, 412 Highway 2, East Glacier, MT

November 14, 1989, 3–8 PM—Ponderosa Inn, 220 Central Ave., Great Falls, MT

Written comments on this draft EIS must be received by the responsible official of the lead agency by December 15, 1989.

ADDRESS: Send written comments to John D. Gorman, Forest Supervisor, Lewis and Clark National Forest, Post Office Box 871, Great Falls, Montana 59403.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft EIS should be directed to Norman Yogerst, EIS Team Leader, USDA Forest Service, Post Office Box 7669, Missoula, Montana 50807, Phone: (406) 329–3634.

SUPPLEMENTARY INFORMATION: This Draft Environmental Impact Statement (DEIS) discloses the environmental effects of proposed oil and gas exploration drilling in the North End Geographic Unit of the Lewis and Clark National Forest, Rocky Mountain Ranger District. This area is commonly known as the Badger-Two Medicine Area. The Blackfeet people often refer to this area as the "ceded strip" and "Blackfeet unit."

This DEIS analyzes the impacts of proposed drilling applications submitted by Chevron USA, near Badger Creek, and Fina Oil and Chemical Company, near Hall Creek. Based on the issues and concerns identified during the scoping process, the DEIS focuses on impacts to water resources, air quality,

Glacier National Park resources, adjacent Bob Marshall and Great Bear Wilderness, the Badger-Two Medicine Roadless area, wildlife and fisheries (including the grizzly bear), vegetation, outdoor recreation and visual resources, archaeological resources, Blackfeet Tribe reserved rights and traditional religious practices, local economic and social conditions, including public health and safety associated with the drilling proposals.

The analysis addresses 33 combinations of alternatives, including roaded access, helicopter mobilization of the drilling projects, and no action. The EIS also addresses each of the exploration proposals independently. The EIS preferred alternative is to permit the exploration projects, utilizing roaded access and mitigation requirements that minimize adverse environmental effects.

Dated: October 10, 1989.

John D. Gorman,

Forest Supervisor, Lewis and Clark National Forest.

[FR Doc. 89-24868 Filed 10-20-89; 8:45 am]

BILLING CODE 3410-11-M

Kensington Venture Gold Mine Project, AK, Tongass National Forest-Chatham Area, Juneau Ranger District; Intent To Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the USDA Forest Service, Juneau Ranger District will be directing the preparation of an environmental impact Statement to be prepared by a third party contractor on the impacts of a proposed underground mine, the Kensington Venture Gold Mine Project, proposed on public and private lands in the City and Borough of Juneau in southeastern Alaska.

The Kensington Venture will be jointly owned by Echo Bay Exploration, Inc., and Coeur d'Alene Mines Corporation, who, due to the General Mining Law of 1872, have a statutory right to enter upon the public lands to search for minerals. The proposed operations are subject to Plan of Operations or Special Use permit approval under 36 CFR part 228, which is intended to minimize adverse environmental impacts on National Forest surface.

The proposed mine is located approximately 45 miles north of downtown Juneau. If approved the project could begin production by 1993. The proposal includes a 4,000 tons of ore per day mine, mill, surface processing plant, surface support facilities, 250 person camp, electrical generating system, transportation system, and tailings disposal dam site. Over the minimum anticipated mine life of 12 years, 20 million tons of tailings and 400 tons per day of waste rock will be generated.

The no action alternative will be considered in the EIS. In addition, the EIS will address the proposed options and any additional feasible alternatives, assess environmental implications, and seek comment and involvement from a wide range of local, regional, and national publics.

Key resource values to be analyzed include the water quality of the surface drainages associated with trailings disposal, including associated fisheries and estuarine habitat; social and economic impacts to the City and Borough of Juneau and its transportation system, from mine operations and employment; impacts to wildlife, scenic, and recreation values; impacts to wetlands, air, and soils and vegetation; and protection of potential historic and prehistoric cultural values.

We invite other Federal agencies, state and local agencies, and interested individuals to participate in the project, including the initial scoping session, which is scheduled for December, 1989, in Juneau, Alaska. The Forest Service's scoping process for the EIS will include (1) identification of issues to be addressed, (2) identification of viable alternatives, and (3) notifying interested groups, individuals, and agencies so that additional information concerning these issues can be obtained.

The scoping process will consist of a news release anouncing the start of the EIS process, letters of invitation to participate in the scoping process, and a scoping document which further clarifies the proposed action, alternatives and significant issues being considered, to be distributed to selected parties and available upon request.

The Environmental Protection Agency and the U.S. Army Corps of Engineers will participate as cooperating agencies.

Gary A. Morrison, Forest Supervisor, Tongass National Forest, Chatham Area, is the responsible official.

The analysis is expected to take about 12 months. The draft environmental impact statement should be available for review by July, 1990. The final environmental impact statement is scheduled to be completed by November, 1990.

Written comments and suggestions concerning the analysis should be sent to Roger Birk, Minerals Management Specialist, Juneau Ranger District, 8465 Old Dairy Road, Juneau, Alaska, 99801. The telephone number is 907-789-3111.

Dated: October 16, 1989.

Gary A. Morrison,

Forest Supervisor, Chatham Area, Tongass National Forest, Region 10.

[FR Doc. 89-24871 Filed 10-20-89; 8:45 am]

BILLING CODE 3410-11-M

Forest Resource Inventory Statistics

AGENCY: Forest Service, USDA.

ACTION: Notice; uniform data and coding proposal.

SUMMARY: The Forest Service is proposing to improve the usefulness of its forest resource inventory information by making data available to the public in a uniform format for the entire Eastern United States. The new format would include detailed ownership codes and sample plot coordinates. This change will provide improved public access to current forest resource data collected by four research facilities in the East, and improved capabilities for making comparative analyses. Public review is invited.

DATE: Comments must be received in writing by December 1, 1989.

ADDRESSES: Send written comments or requests for the draft format and coding publication to F. Dale Robertson, Chief (1500), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090. Comments are available for inspection in the office of Forest Inventory, Economics, and Recreation Research, 14th and Independence Avenue, SW., room 4105 between the hours of 8 a.m. and 4 p.m. Monday through Friday. To facilitate entrance into building, visitors are encouraged to call ahead (447-2747).

FOR FURTHER INFORMATION CONTACT: Richard A Birdsey, Forest Inventory, Economics, and Recreation Research Staff, 202-382-9341.

SUPPLEMENTARY INFORMATION: Through its Research organization, the Forest Service conducts continuing Statewide inventories of the Nation's forest resources to ascertain trends in the extent, condition, ownership, quantity, and quality of the forest resources. These statistics and subsequent analyses are released as unit, State, regional, and national resource bulletins and forest resource reports. The statistical reports are based on data collected at sample locations across the United States. Access to original data is available to the public on data tapes or through direct electronic links to data files after the State statistical report has been transmitted for publication.

In the past, data collected at different Experiment Stations have been made

available in different formats and coding systems. For this reason, multiregional analyses were difficult. Four Forest Service Experiment Stations, whose territories encompass the eastern United States (all states east of and including North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas), have proposed a uniform format and coding system for providing data to requesters. This would allow requesters to perform their own statistical analyses for several States or geographical regions within two or more States inventoried by different Experiment Stations.

The proposed new format includes coding of ownership categories for sample plots on forest lands. Ownership categories include National Forest, Bureau of Land Management, Indian Lands, Other Federal Agencies, State, County and Municipal, Forest Industry, Farmer, Farmer—Leased, Other Private—Corporate, Other Private-Individual, Other Private-Corporate—Leased, and Other Private-Individual—Leased. The new format also includes latitude and longitude coordinates for sample plots with an accuracy of plus or minus 100 seconds (approximately one mile).

If the new format is adopted, it would be used as new State inventories are completed, and the agency would plan to expand this service nationwide as technology and resources permit. A draft publication containing complete details of the proposed formats and coding, and information about how to obtain the data, is available for review upon request.

Dated: October 13, 1989.

George M. Leonard,

Associate Chief.

[FR Doc. 89-24929 Filed 10-20-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-802]

Initiation of Antidumping Duty Investigation; Gray Portland Cement and Clinker from Mexico

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of gray portland cement and clinker from Mexico are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of gray portland cement and clinker from Mexico materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before November 10, 1989. If the ITC determination is affirmative, we will make a preliminary determination on or before March 5, 1990.

EFFECTIVE DATE: October 23, 1989.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta, Kimberly Hardin, or Mary S. Clapp, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-0186, or 377-8371, 377-3965, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On September 26, 1989, we received a petition filed in proper form by the Ad Hoc Committee of Arizona-New Mexico-Texas-Florida Producers of Gray Portland Cement on behalf of the U.S. gray portland cement and clinker industry. In compliance with the filing requirements of 19 CFR 353.12, petitioner alleges that imports of gray portland cement and clinker from Mexico are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

Petitioner has alleged it has standing to file the petition. Specifically, petitioner has alleged that it is an interested party as defined under section 771(9)(F) of the Act and that it has filed the petition on behalf of a regional U.S. industry producing the product that is subject to this investigation. Any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, that wishes to register support for, or opposition to, this petition, must file written notification with the Assistant Secretary for Import Administration.

United States Price and Foreign Market Value

Petitioner's estimate of United States Price is based on the ex-factory price charged by a Mexican producer/exporter for the sale of a large shipment of gray portland cement to a U.S. customer in May 1989. Petitioner also bases its estimate of United States Price on unit Customs value of imports from Mexico for May 1989.

Petitioner's estimate of foreign market value (FMV) is based on the price at which such or similar merchandise is sold or offered for sale in the principal markets of Mexico.

Based on a comparison of United States Price and FMV as estimated by the Petitioner, the alleged dumping margins range from 96 to 111 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on gray portland cement and clinker from Mexico and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of gray portland cement and clinker from Mexico are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make a preliminary determination by March 5, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

The products covered by this investigation include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material produced when manufacturing cement, has no other use than for being ground into finished cement. Gray portland cement is currently classifiable under HTS item number 2523.29, and cement clinker is currently classifiable under number 2523.10. Gray portland cement has also

been entered under number 2523.90 as "other hydraulic cements."

Request for Exclusion

Any producer or reseller that desires exclusion from an antidumping duty order must submit to the Assistant Secretary of Import Administration, not later than 30 days after the date of publication of this notice, an irrevocable written request for exclusion in accordance with 19 CFR 353.14.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigation Import Administration.

Preliminary Determination by ITC

The ITC will determine by November 10, 1989, whether there is a reasonable indication that imports of gray portland cement and clinker from Mexico materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, it will proceed according to statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: October 16, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89- 24911 Filed 10-20-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-357-004]

Certain Carbon Steel Wire Rod From Argentina; Determination Not To Terminate Suspended Investigation

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to terminate suspended investigation.

SUMMARY: The Department of Commerce is notifying the public of its determination not to terminate the suspended countervailing duty investigation on certain carbon steel wire rod from Argentina.

EFFECTIVE DATE: October 23, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Linda Pasden, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On September 15, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 38263) its intent to terminate the suspended countervailing duty investigation on certain carbon steel wire rod from Argentina (September 27, 1982, 47 FR 42393). The Department may terminate a suspended investigation if the Secretary concludes that the agreement is no longer of interest to interested parties. The Department has not received a request to conduct an administrative review of the agreement suspending the countervailing duty investigation on certain carbon steel wire rod from Argentina for four consecutive annual anniversary months.

On September 28, 1989, four petitioners, Atlantic Steel Company, Georgetown Steel Corporation, North Star Steel Texas Incorporated and Raritan Steel Company, objected to the Department's intent to terminate this suspended investigation. On September 29, 1989, two interested parties, Bethlehem Steel Corporation and Northwestern Steel and Wire Company, objected to the Department's intent to terminate this suspended investigation. Therefore, we no longer intend to terminate the suspended investigation.

This notice is in accordance with § 355.25(d)(4) of the Commerce Department's regulations published in the **Federal Register** on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.25(d)(4)).

Dated: October 16, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-24910 Filed 10-20-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-401-056]

Viscose Rayon Staple Fiber From Sweden; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On May 2, 1989, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on viscose rayon staple fiber from Sweden. We have now completed that review and determine the net subsidy during the period January 1, 1987 through December 31, 1987 to be 12.11 percent *ad valorem*.

EFFECTIVE DATE: October 23, 1989.

FOR FURTHER INFORMATION CONTACT: Britt Doughtie or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 18687) the preliminary results of its administrative review of the countervailing duty order on viscose rayon staple fiber from Sweden (44 FR 28319; May 15, 1979). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of Swedish regular viscose rayon staple fiber and high-wet modulus ("modal") viscose rayon staple fiber. During the review period, such merchandise was classifiable under item numbers 309.4320 and 309.4325 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under item number 5504.10.0000 of the Harmonized Tariff Schedule.

The review covers the period January 1, 1987 through December 31, 1987 and four programs: (1) Loans/Grants for Plant Creation; (2) Elderly Employment Compensation Program; (3) Grant for Manpower Reduction; and (4) Conditional Loan for Manpower Reduction. The only known Swedish exporter of this merchandise to the United States during the review period was Svenska Rayon AB.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received a written comment from the Swedish

exporter, Svenska Rayon AB ("Svenska").

Comment: Svenska argues that the Department used the incorrect denominator in calculating the benefits from the four programs found to confer countervailable subsidies. Because the four programs are not specifically tied to the production, sale, or export of any product and provide benefits to the entire company, the Department should use total revenue rather than the net sales of viscose rayon staple fiber in calculating the benefit from these programs.

Department's Position: We agree and have adjusted our calculations accordingly. We determine the benefits to be 8.50 percent *ad valorem* for loan/grants for plant creation, 2.76 percent *ad valorem* for the elderly employment compensation program, 0.46 percent *ad valorem* for the manpower reduction grant, and 0.39 percent *ad valorem* for the conditional loan program.

Final Results of Review

After considering the comment received, we determine the net subsidy during the period January 1, 1987 through December 31, 1987 to be 12.11 percent *ad valorem*.

Therefore, the Department will instruct the Customs Service to assess countervailing duties of 12.11 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1987 and on or before December 31, 1987.

Further, the Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 12.11 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.22 of the Commerce Regulations published in the Federal Register on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.22).

Dated: October 16, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-24909 Filed 10-20-89; 8:45 am]

BILLING CODE 3510-DS-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review of Final Determination Respecting Fresh, Chilled or Frozen Pork from Canada made by the U.S. International Trade Commission, which was filed by the Canadian Pork Council and its Members and Moose Jaw Packers (1974) Ltd. with the United States Section of the Binational Secretariat on October 13, 1989.

SUMMARY: On October 13, 1989, the Canadian Pork Council and its Members and Moose Jaw Packers (1974) Ltd. filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the final determination respecting fresh, chilled or frozen pork from Canada, ITC file number 701-TA-298, issued by the U.S. International Trade Commission and published in 54 Federal Register 37838 on September 13, 1989. The Secretariat has assigned Case Number USA-89-1904-11 to this Request for Panel Review. In addition to the first Request for Panel Review, Requests have also been filed by the Canadian Meat Council and its Members, Canada Packers, Inc., the Government of the Province of Alberta and the Gouvernement du Quebec.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Acting U.S. Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the U.S.-Canada Free-Trade Agreement ("Agreement") establishes a mechanism for replacing domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel will be established to act in place of national courts to expeditiously review the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and Government of Canada established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the Federal Register on December 30, 1988, (53 FR 53222). The panel review in this matter will be conducted in accordance with these Rules.

Rule 35(2) requires the Secretary to publish Notice of the receipt of a Request for Panel Review stating that a Request for Panel Review was filed with the United States Section of the Binational Secretariat on October 13, 1989, pursuant to Article 1904 of the Agreement.

Rule 35(1)(c) of the Rules provides that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is November 13, 1989);

(b) a Party, investigating authority or interested person that does not file a Complaint may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is November 27, 1989); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: October 17, 1989.

James R. Holbein,

Acting U.S. Secretary, FTA Binational Secretariat.

[FR Doc. 89-24908 Filed 10-20-89; 8:45 am]

BILLING CODE 3510-DA-M

National Oceanic and Atmospheric Administration

Emergency Striped Bass Research Study; Meeting

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

SUMMARY: The National Marine Fisheries Service and the U.S. Fish and Wildlife Service will hold a joint meeting to discuss progress on the Emergency Striped Bass Research Study as authorized by the amended Anadromous Fish Conservation Act (Pub. L. 96-118).

DATE: The meeting will convene on Thursday, December 14, 1989 at 10 a.m., and will adjourn at approximately 3:00 p.m. The meeting is open to the public.

ADDRESS: U.S. Department of Commerce, NOAA, National Marine

Fisheries Service, Main Conference Room (Lobby Level), Silver Spring Metro Center #1, 1335 East-West Highway, Silver Spring, Maryland, 20910.

For further information contact David G. Deuel, Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910. Telephone: (301) 427–2347.

Dated: October 16, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management.

[FR Doc. 89–24920 Filed 10–20–89; 8:45 am]

BILLING CODE 3510–22–M

Sea Grant Review Panel Meeting

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel members will provide and discuss follow-up reports of business transacted at the last Sea Grant Review Panel Meeting in the areas of artificial intelligence, budget status, the fellowship program, new panel member report, developing new business initiatives with the Sea Grant Program for enhancement of Department of Commerce goals, and new business including communications, technology transfer, coastal ocean program, regional participation, and seafood and science research. The panel members will also participate in a joint session with the Sea Grant Director's Council.

DATE: The announced meeting is scheduled during two days: Sunday, November 19, 1989, 12:45–3:15 p.m. and Monday, November 20, 1989, 9–11:45 p.m. and 2:15–4 p.m.

ADDRESS: Hotel Washington, Pennsylvania Avenue at 15th Street, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Shephard, National Sea Grant College Program, National Oceanic & Atmospheric Administration, 6010 Executive Boulevard, room 812, Rockville, Maryland 20852 (301) 443–8925.

SUPPLEMENTARY INFORMATION: The Panel, which consists of balanced representation from academia, industry, state government, and citizens groups, was established in 1976 by section 209 of the Sea Grant Improvement Act (Pub. L. 94–461, 33 U.S.C. 1128) and advises the Secretary of Commerce, Under Secretary, NOAA, and the Director of the National Sea Grant College Program with respect to operations under the act, and such other matters as the Secretary refers to the Panel for review and advice. The agenda for the meeting is:

Sunday, November 19, 1989—12:45–3:15 p.m.

NOAA/OAR Update and Budget Status
Reauthorization
Special Focus Program
Communications
Sea Grant Council Report
Technology Transfer
Coastal Ocean Program
Regional Participation

Monday, November 20, 1989—9 a.m.–11:45 p.m.

Seafood Science & Technology Research Decline
Strategic Initiatives
Marketing of Sea Grant
Business Initiatives Committee
Law & Policy Committee Report
New Technology Committee
Committee on National Office
Advisory Committee Network
Accidental Release of Non-Local Organisms

Monday, November 20, 1989—2:15 p.m.–4 p.m.

New Panel Member Report
North Carolina Recertification
Site Visits
Southern California
Frankenburg Report
New Business

The meeting will be open to the public.

Dated: October 13, 1989.

Ned A. Ostenso,

Assistant Administrator, Oceanic and Atmospheric Research.

[FR Doc. 89–24900 Filed 10–20–89; 8:45 am]

BILLING CODE 3510–12–M

Notice of Proposed Amendment of Foreign Fishing Permits for the Bering Sea and Aleutian Islands Groundfish Fishery

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

ACTION: Proposed Permit Amendment.

SUMMARY: NOAA proposes to amend foreign fishing permits for vessels of the Governments of Japan, the Republic of Korea, Iceland, the Peoples Republic of China, and the Union of the Soviet Socialist Republics. This amendment will add additional restrictions to the permits for vessels of all nations, except Poland, in order to limit the authorization of those vessels to receive additional pollock from the Bering Sea and Aleutian Islands area (BSAI) under any future 1989 reapportionment from reserves to joint venture processing (JVP). This amendment will not affect the current authorization for foreign vessels to receive groundfish from the JVP apportionment released on September 3, 1989. This amendment will not authorize Polish or any other foreign vessels to engage in directed fishing. Comments may be submitted on this proposal. This action is taken in accord with § 50 CFR 611.3(1) (3) and (4).

DATE: Comments must be received on or before November 22, 1989.

ADDRESS: Send comments to the Operations Support and Analysis Division (F/CM1), Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910; or telex comments to 467856 US COMM FISH CI. Mark envelopes "Permit Amendment".

FOR FURTHER INFORMATION CONTACT: Alfred J. Bilik, (301) 427–2337.

SUPPLEMENTARY INFORMATION: The President has indicated his desire to accord favorable treatment to Poland in recognition of the advancement of democratic principles under its new government. NOAA proposes to provide special consideration to Poland by ensuring that Polish vessels have an opportunity to receive 25,000 mt of JVP pollock from the BSAI. NOAA proposes to implement this decision by modifying the existing JVP permits for the BSAI for fishing vessels of all countries other than vessels of the Polish Peoples Republic. The permit authorizations for vessels of the Governments of Japan, the Republic of Korea, Iceland, the Peoples Republic of China and the Union of Soviet Socialist Republics to receive U.S. harvested Alaska groundfish in the BSAI are proposed to be amended under procedures of 50 CFR 611.3(1). The amendment will restrict vessels of these countries from receiving from the BSAI any part of an apportionment of pollock which may be specified for Polish vessels. The pollock is to be harvested by U.S. vessels in directed fisheries for Alaska pollock. The amount specified for Poland could only be received at-sea from U.S. fishing vessels and would not be available for directed fishing by Polish vessels. Regulations concerning the bycatch of prohibited species would continue to apply to all U.S. and foreign vessels.

The proposed amendments are designed to ensure that Polish vessels engaged in JVP operations have the opportunity to receive 25,000 mt of

pollock from the BSAI. The Regional Director for the Alaska Region will calculate the amount of pollock from the BSAI received by Polish vessels since September 3, 1989, and the additional amount necessary to ensure that Polish vessels have the opportunity to receive 25,000 mt, if available. If amounts of unapportioned pollock currently in reserve are unnecessary for domestic annual processing (DAP) needs, the Regional Director will release the amount necessary to ensure that Polish vessels have the opportunity to receive 25,000 mt of pollock and will specify that amount for Polish vessels engaged in JVP operations. The Regional Director may release all or part of the apportionment specified for Poland for receipt by permitted vessels of any nation only if he determines that, despite the opportunity, Polish vessels will be unable to receive the specified apportionment by the end of the 1989 fishing year.

This action will further the foreign policy interests of the United States as reflected in the recommendations of the Department of State. This action is taken consistent with the requirements of paragraph (1) of 50 CFR 611.3 and will not adversely impact the resources.

NOAA therefore proposes to amend permits of vessels of the Governments of Japan, the Republic of Korea, Iceland, the Peoples Republic of China and the Union of Soviet Socialist Republics by adding a restriction to the their respective authorizations to receive Alaska pollock JVP in the BSAI groundfish fishery. The restriction would read:

> This authorization will lapse on notification of this nation's representative by the Regional Director, Alaska Region, that the receipt of groundfish from U.S. vessels engaged in directed fishing for pollock in the BSAI is closed to vessels of the named nation. The implementation of this restriction will be based on a determination by the Regional Director that the balance of the JVP apportionment remaining during the 1989 fishing year is necessary to ensure that Polish vessels have an opportunity to receive 25,000 mt of pollock during the period from September 3, 1989, until December 31, 1989. The receipt of additional pollock by the vessel(s) named above from U.S. vessels following such notification constitutes a violation of these restrictions.

The Secretary of State will notify representatives of each nation whose vessels may be affected by the amendment proposed in this notice. Consistent with provisions of 50 CFR 611.3(1)(4), each nation, the owners of the involved vessels, and their representatives, other concerned Federal agencies and the public will be given 30 days from the date of publication in which to comment on this proposed action.

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting requirements.

Dated: October 17, 1989.

James E. Douglas,

Acting Assistant Administrator for Fisheries.

[FR Doc. 89-24980 Filed 10-20-89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; NMFS, Southwest Fisheries Center, (P77#35)

On July 20, 1989, Notice was published in the **Federal Register** (54 FR 30439) that an application has been filed by the Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038-0271 for a scientific research permit to take California sea lions (*Zalophus californianus*).

Notice is hereby given that on October 16, 1989, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit is based on a finding that the proposed taking is consistent with the purposes and policy of the Marine Mammal Protection Act. The Service has determined that this research satisfies the issuance criteria for scientific research permit. The taking is required to further a bona fide scientific purpose and does not involve unnecessary duplication of research. No lethal taking is authorized.

The Permit is available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, room 7324, Silver Spring, Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: October 16, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89-24901 Filed 10-20-89; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

DIA Defense Intelligence College Board of Visitors; Closed Meeting

AGENCY: Defense Intelligence Agency Defense Intelligence College.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92-463, as amended by section 5 of Public Law 94-409, notice is hereby given that a closed meeting of the DIA Defense Intelligence College Board of Visitors has been scheduled as follows:

DATES: Wednesday, 1 November 1989, and Thursday, 2 November 1989, from 0900 to 1600, and Friday, 3 November 1989, from 0900 to 1130..

ADDRESS: The DIAC, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Robert L. De Gross, Provost, DIA Defense Intelligence College, Washington, DC 20340-5485 (202/373-3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b (c) (1), title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA as to the successful accomplishment of the mission assigned to the Defense Intelligence College.

Dated: October 17, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-24892 Filed 10-20-89; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Meeting; Environmental Advisory Board

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), this notice sets forth the schedule and proposed agenda of the forthcoming meeting of the Chief of Engineers Environmental Advisory Board (EAB). The meeting is open to the public.

DATE: The meeting will be held from 8 a.m., Wednesday, November 15, 1989 to 10:30 a.m., Friday, November 17, 1989.

ADDRESS: The meeting will be held at the Radisson Admiral Semmes Hotel, 251 Government Street, Mobile, Alabama 36602.

FOR FURTHER INFORMATION CONTACT: Dr. William L. Klesch, Chief, Office of Environmental Policy, Office of the Chief of Engineers, Washington, DC 20314–1000, (202) 272–0166.

SUPPLEMENTARY INFORMATION: The schedule and proposed agenda of the 47th Meeting of the EAB, "Dredged Material Management; Wetlands Creation and Activities to Control Coastal Erosion," is:

November 15, 1989

0800–0815—Welcome, BG Bunker
0820–0845—Chief's Charge to EAB (Swear-in New EAB Members), LTG H.J. Hatch
0845–0900—EAB Reply to Chief's Charge, Dr. L. Eugene Cronin
0900–1000—Old and New Business, Special Brief on Cultural Activities in SWD, Status of Past Reports, Dr. William L. Klesch
1000–1015—Break
1015–1045—Dredging Program Overview, Mr. John P. Elmore
1045–1100—Questions and Answers, EAB
1100–1230—Lunch
1230–1330—Long Term Management Strategy (LTMS) for the Displacement of Dredged Material, Panel
Overview and Status of National Initiative, Mr. Norman R. Francingues
American Association of Port Authorities, Mr. Eric Stromberg
Mobile District, Mr. J. Patrick Langan
1330–1345—Qustions and Answers, EAB
1345–1445—Management of Contaminated Sediments, Panel
Overview and Issues, Dr. Robert M. Engler
Field Verification Program and Long Term Effects of Dredging Operations, Dr. Thomas M. Dillon
Experiences at New Bedford, MA, and the Great Lakes, Mr. Vyto L. Andreliunas and Mr. Jan A. Miller
Future Directions, Dr. Robert M. Engler
1445–1500—Questions and Answers, EAB
1500–1515—Break
1515–1630—Testing Procedures for Ocean and Inshore Displacement, Panel
Overview and Issues, Corps, Mr. David B. Mathis
Overview and Issues, EPA, Mr. David Davis
The Green Book, Status, Dr. Richard Peddicord
Corps Managment Strategy, Dr. Charles R. Lee
1630–1645—Questions and Answers, EAB
1645–1700—Public Comments, Dr. L. Eugene Cronin
1700—Adjourn.

November 16, 1989

0800–0915—SAD Dredging Issues, Panel
Overflow Dredging, Dr. Douglas G. Clarke
Seasonal Restrictions, Mr. Mark W. LaSalle
Thin Layer Displacement, Ms. Susan Ivester Rees
Cultural Resources, Ms. Dorothy H. Gibbens
Sea Turtle Demonstration, Dr. Terry Henwood
0915–0945—Questions and Answers, EAB
0945–1000—Break
1000–1100—Wetland Establishment, Restoration, and Management, Panel
Overview and Beneficial Issues of Dredged Material, Mr. Thomas Patin
Wetland Creation Experiences and Case Studies, Dr. Mary C. Landin
Survey and Workshop Results, Mr. Ellis J. Clarain
Future R&D Directions, Mr. Russel F. Theriol
1100–1130—Questions and Answers, EAB
1130–1300—Lunch
1300–1430—Coastal Erosion, Panel
Overview and Issues, Dr. James R. Houston
Shore Protection Methods, Dr. Thomas W. Richardson
National Underwater Berm Demo, Dr. Thomas W. Richardson, NMFS
State Issues and Problems:
Louisiana, Dr. Charles G. Groat
Florida, Mr. Tom Gardner
1430–1445—Questions and Answers, EAB
1445–1500—Public Comments, Dr. L. Eugene Cronin
1500—Adjourn.

November 17, 1989

0800–0900—Report of EAB to the Chief of Engineers, Dr. L. Eugene Cronin
0900–0915—Break
0915–1000—Response of the Chief of Engineers, LTG H.J. Hatch
1000–1030—Public Comments and Adjourn, Dr. L. Eugene Cronin
1030–1000—Headquarters Command Briefing for EAB (EAB only), Mobile District

Kenneth L. Denton,

Alternate Army Liaison Officer with the Federal Register.

[FR Doc. 89–24864 Filed 10–20–89; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement International Energy Program; Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of the Industry Supply Advisory Group (ISAG) to the International Energy Agency (IEA) will be held October 30–31, 1989, at the offices of the IEA, 2, rue Andre Pascal, Paris, France, beginning at 9 a.m. on October 30. The purpose of the meeting is to finalize the ISAG training program. The agenda for the meeting is under the control of the IEA Secretariat. It is expected that the following agenda will be followed.

1. Opening Remarks
2. Overview of IEA Emergency Measures/ Organization
3. How the IEA Allocation System Operates
4. Use of ISAG Formats
5. Use of Computerized Allocation System
6. Understanding Each Organization's Role
7. Analysis of Impact of Disruption Scenario
8. Voluntary Offer Process
9. Working Sessions

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, the meeting is open only to representatives of members of the ISAG, their counsel, representatives of the IEA Group of Reporting Companies, their counsel, employees of the IEA, employees of the Departments of Energy, Justice, and State, and the Federal Trade Commission and the General Accounting Office, representatives of committees of Congress, representatives of the Commission of the European Communities, and invitees of the ISAG or the IEA.

Issued in Washington, DC, October 16, 1989.

Stephen A. Wakefield,

General Counsel.

[FR Doc. 89–24935 Filed 10–20–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER89-124-000, et al.]

Carolina Power & Light Company, et al.; Electric rate, Small power production, and Interlocking Directorate filings

Take notice that the following filings have been made with the Commission:

1. Carolina Power & Light Co.

[Docket No. ER89-124-000]

October 11, 1989.

Take notice that on September 28, 1989, Carolina Power & Light Company (CP&L) filed revisions to Appendix A and Exhibit No. 1 to the Amendment to the Interchange Agreement between CP&L and Virginia Electric and Power Company (VaPow) dated August 5, 1988 (CP&L Rate Schedule FPC No. 96 and VaPow Rate Schedule FPC No. 95). These revisions were made pursuant to a Commission Staff request. The changes are requested to become effective on the date the Commission accepts this filing.

Comment date: October 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Tamal Atlantic

[Docket No. QF90-2-000]

October 11, 1989.

On October 3, 1989, Tamal Atlantic (Applicant), of 80 E. Sir Francis Drake Blvd., Suite 2A, Larkspur, California 94939 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination had been made that the submittal constitutes a complete filing.

The proposed small power production facility will be located at west side of Ocean Heights Avenue at Old River Road, Egg Harbor Township, New Jersey. The facility will consist of two steam generators and a steam turbine generator. The net electric power production capacity will be approximately 20 MW. The primary source of energy will be wood gas produced by the conversion of wood into low-Btu gas via SynGas gasification process.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

3. United Illuminating Co.

[Docket No. ER90-15-000]

October 11, 1989.

Take notice that on October 6, 1989, the United Illuminating Company (UI) tendered for filing a Unit Sales Agreement between UI and the Town of Braintree Electric Light Department (Braintree). The agreement provides for the sale to Braintree of capacity and associated energy from UI's New Haven Harbor Station. The parties request an effective date of November 1, 1989.

Copies of this filing were mailed or delivered to Braintree. UI further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: October 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. United Illuminating Company

[Docket No. ER90-12-000]

October 11, 1989.

Take notice that on October 4, 1989, the United Illuminating Company (UI) tendered for filing a Unit Sales Agreement between UI and Canal Electric Company (Canal). The agreement provides for the sale to Canal of capacity and associated energy from UI's New Haven Harbor Station. The parties request an effective date of November 1, 1989.

Copies of this filing were mailed or delivered to Canal. UI further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: October 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Arizona Public Service Co.

[Docket No. ER90-14-000]

October 11, 1989.

Take notice that on October 4, 1989, Arizona Public Service Company (APS or Company) tendered for filing a Supplemental Agreement No. 2 (Supplement) to the Wholesale Power Supply Agreement (FPC Rate Schedule No. 52) between APS and the Papago Tribal Utility Authority (PTUA).

The tendered Agreement provides for 6MWs of the PTUA's load to be served as instantaneously interruptible and priced accordingly. The unique purpose of this service is to maintain an expanded load of the PTUA's major customer, Cyprus Casa Grande Corporation, which operates a copper mine within the PTUA's service territory.

This Agreement is proposed to become effective when the FERC issues a final order.

Comment date: October 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Alaska Power Administration

[Docket No. EF89-1021-000]

October 11, 1989.

Take notice that on September 29, 1989, the Deputy Secretary of the Department of Energy, by Rate Order APA-9, confirmed and approved on an interim basis effective October 1, 1989, the Extension of Rate Schedule SN-F-3 applicable to power from Alaska Power Administration's Snettisham Project. The rate schedule which is being extended was previously confirmed and approved on March 5, 1987 for a period fo 2 years, 11 months, Docket No. EF87-1021-000.

The Department requests approval by the Commission of the extension of the rate for a 2-year period ending September 30, 1991. The rate schedule is submitted for confirmation and approval on a final basis pursuant to authority vested in the Commission by Delegation Order No. 0204-108.

Comment date: October 31, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Tamal Tinton Falls

[Docket No. QF90-1-000]

October 11, 1989.

On October 3, 1989, Tamal Tinton Falls (Applicant), of 80 E. Sir Francis Drake Blvd., Suite 2A, Larkspur, California 94939 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed small power production facility will be located at 3230 Shafto Road, Tinton Falls, New Jersey 07724. The facility will consist of two steam generators and a steam turbine generator. The net electric power product capacity will be approximately 20 MW. The primary source of energy will be wood gas produced by the conversion of wood into low-Btu gas via SynGas gasification process.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

8. United Illuminating Co.

[Docket No. ER90-13-000]

October 11, 1989.

Take notice that on October 4, 1989, the United Illuminating Company (UI) tendered for filing a Unit sales

Agreement between UI and the Massachusetts Municipal Wholesale Electric Company (MMWEC). The agreement provides for the sale to MMWEC of capacity and associated energy from UI's New Haven Harbor Station. The parties request an effective date of November 1, 1989.

Copies of this filing were mailed or delivered to MMWEC. UI further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: October 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Western Area Power Administration

[Docket No. EF90–5181–000]

October 11, 1989.

Take notice that on October 3, 1989, the Deputy Secretary of the Department of Energy, by Rate Order No. WAPA–40, did confirm and approve on an interim basis, to be effective on the first day of the October 1989 billing period, Western Area Power Administration's (Western) Power Rate Schedule L–F1 for the Loveland Area Projects (LAP): The Fryingpan-Arkansas Project (Fry-Ark), and the Pick-Sloan Missouri Basin Program—Western Division (P–SMBP–WD). The power rates will be in effect pending the Commission's approval of them or substitute rates, on a final basis for a 5-year period of time or until suuperseded.

The fiscal year 1987 power repayment studies indicated that the existing revenue returns were not sufficient to satisfy the cost-recovery criteria for either project through the appropriate study periods. The initial Rate Schedule L–F1 will yield adequate revenues to satisfy these criteria. Since this is the initial rate for the LAP, we cannot compare this rate to the existing rates for the projects. However, the total revenue return of the rates are compared as follows:

Loveland Area Projects

REVENUE RETURN

Project	Existing rate	Proposed rate	Absolute change	Percentage change
Fry-Ark	$9,000,000	$9,242,000	$242.000	+2.7
P–SMBP–WD	18,811,682	20,603,222	1,791.540	+9.5
LAP	27,811,682	29,845,222	2,033,540	+7.3

The Administrator of Western certifies that the rates are consistent with applicable laws and that they are the lowest possible rates to customers consistent with sound business principles. The rate schedule is submitted by the Deputy Secretary for confirmation and approval on a final basis for a 5-year period, pursuant to authority vested in the Federal Energy Regulatory Commission by Delegation Order No. 0204–108, as amended.

Comment date: October 31, 1989, in accordance with Standard Paragraph E end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–24881 Filed 10–20–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF90–3–000]

LUZ Development and Finance Corp.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

October 16, 1989.

On October 3, 1989, LUZ Development and Finance Corporation (Applicant), of 924 Westwood Boulevard, Suite 1000, Westwood, California 90024, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located approximately thirty one miles west of Barstow, California, near the junction of U.S. Highway 395 and California Highway 58 at Kramer Junction, California. The facility will consist of AC to DC and DC to AC converters, and electro-chemical battery and control system. The maximum net electric power production capacity of the facility will be 30 megawatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–24889 Filed 10–20–89; 8:45 am]

Billing Code 6717–01–M

[Docket No. QF85–148–003]

Wadham Energy Limited Partnership, a California Limited Partnership; Application for Commission Recertification of Qualifying Status of a Small Power Production Facility

October 13, 1989.

On October 3, 1989, Wadham Energy Limited Partnership, A California Limited Partnership (Applicant) of 3510 Unocal Place, Santa Rosa, California, 95403 submitted for filing an application for recertification of a facility as a

qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Colusa County, about five miles south of Williams, California. The facility will consist of a biomass-fired steam generator and a steam turbine generator. The primary energy source of the facility will be biomass in the form of rice hulls and rice straw. The net electric power production capacity of the facility will be approximately 26.5 MW.

The certification for the original application was issued on December 15, 1987 (41 FERC ¶ 62,245). Instant recertification is requested due to change of ownership. Wadham Energy Company, Inc. (Wadham) is the sole general partner. AT&T Credit Corporation is the sole limited partner. Wadham is a wholly-owned subsidiary of Oxford Energy Inc. (OEI). OEI is a wholly-owned subsidiary of Oxford Energy Company (Oxford). CMS Generation Co. (CMS) currently owns 49.85% of Oxford's Common Stock. CMS is indirectly owned by CMS Energy Corporation, an Electric Utility holding Company.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties in the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24893 Filed 10-20-89; 8:45 am]

BILLING CODE 3810-01-M

[Project No. 10710-001 Washington]

Washington Water Power Co.; Surrender of Preliminary Permit

October 16, 1989.

Take notice that Washington Water Power Company, permittee for the Monroe Street Second Powerhouse Project No. 10710, to be located on the Spokane River in Spokane County, Washington, has requested that its preliminary permit be terminated. The preliminary permit was issued on April 14, 1989, and would have expired on March 31, 1992.

The permittee filed the request on September 28, 1989, and the preliminary permit for Project No. 10710 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24890 Filed 10-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-230-001]

El Paso Natural Gas Co.; Compliance Filing

October 16, 1989.

Take notice that on October 6, 1989, El Paso Natural Gas Company (El Paso) filed workpapers in compliance with the Commission's order dated September 29, 1989.

El Paso states that these workpapers contain interest computations on revised rates and charges.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practices and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before October 23, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24882 Filed 10-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-10-000]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

October 16, 1989.

Take notice that Equitrans, Inc. (Equitrans) on October 11, 1989, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheet to its FERC Gas Tariff, Original Volume No. 1, to be effective November 1, 1989.

Second Revised Sheet No. 177C

Equitrans requests authority to track the recovery of firm transportation charges assessed to it by Texas Eastern Transmission Corporation ("TETCO") under Rate Schedule FT-1. At present Equitrans is a customer of TETCO under Rate Schedule DCQ. On September 29, 1988, the Commission approved a joint settlement filed by TETCO in Docket Nos. RP85-177-000, *et al.* which, among other things, will allow TETCO's DCQ customers to replace DCQ service with firm sales sevice under Rate Schedule CD-1, standby service and the option to convert a portion or all of their CD-1 entitlements to firm transportation under Rate Schedule FT-1. Prior to November 1, 1989, Equitrans will enter into a new ten (10) year sales service agreement with TETCO under its new CD-1 sales service and convert a portion of its sales entitlements to firm transportation.

Commission orders in *Equitrans, Inc.*, Docket No. TA89-1-24-000, Letter Order issued August 31, 1989, pp.2-3, *Carnegie Natural Gas Co.*, 47 FERC 61,379, 62,289-90 (1989), and *CNG Transmission Corp.*, 45 FERC 61,361, 62,361-62 (1988) authorized the tracking of standby costs in PGA filings. Equitrans is hereby requesting the same treatment be afforded to FT-1 costs, i.e., that they be tracked in Equitrans' PGA on an as-billed basis, and these charges be included as a separately identified component in Equitrans' rate. Pursuant to § 154.51 of the Commission's regulations, Equitrans also requests that the Commission grant any waivers that may be necessary to permit Second Revised Sheet No. 177C to become effective on November 1, 1989, the same day that the option for TETCO's customers to convert from DCQ to CD-1 becomes effective.

Equitrans states that a copy of its filing has been served upon its customers, interested state commissions, and upon each party on the service list of Docket No. CP86-676-000.

Any person desiring to be heard or to protest said filing should file a motion to

intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24883 Filed 10-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-2-37-000]

Northwest Pipeline Corp.; Annual Charges

October 16, 1989.

Take notice that on September 11, 1989, Northwest Pipeline Corporation (Northwest), filed a letter pursuant to § 154.38(d)(6) of the Commission's regulations stating that Northwest will file no changes to its ACA surcharge.

Northwest states that applying its 1989 system average of 1015 Btu per cubic foot of gas to the .17¢ per Mcf surcharge factor results in a surcharge per MMBtu of .17¢ which equates to Northwest's currently effective ACA surcharge.

Northwest requests that the Commission grant any waivers it may deem necessary for the acceptance of the filing.

Any person desiring to be heard or to protest filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 23, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any protestant a party to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24886 Filed 10-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA88-4-37-010; RP89-1-013]

Northwest Pipeline Corp.; Compliance Filing

October 16, 1989.

Take notice that on October 10, 1989, Northwest Pipeline Corporation (Northwest), filed Sixth Revised Sheet No. 201 and Ninth Revised Sheet No. 201 to its FERC Gas Tariff, Original Volume No. 1-A, to be effective July 1, 1986 and July 1, 1987, respectively.

Northwest states that this filing is made in response to an August 25, 1989 Office of Pipeline and Producer Regulation letter. Northwest states that these tariff sheets contain rates from which the ANR Pipeline Company crediting adjustments are derived.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before October 23, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24884 Filed 10-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-23-004 and RP89-182-002]

Northern Natural Gas Co., Division of Enron Corp.; Filing

October 16, 1989.

Take notice that on October 6, 1989, Northern Natural Gas Company, Division of Enron Corp., tendered for filing to become a part of Northern's FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet:

First Revised Sheet No. 52f.12b

Northern states that this tariff sheet is submitted in compliance with the Commission's September 22, 1989 Order Granting Rehearing wherein the Commission directed Northern to modify its FT-1 Rate Schedule to reflect present Commission Policy by allowing shippers to certify that they have title to the gas to be transported or a contractual right to acquire title at the time the shipper requests transportation service.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before October 23, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24885 Filed 10-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER89-342-000]

Pacific Gas & Electric Co.; Filing

October 12, 1989.

Take notice that on September 20, 1989, Pacific Gas and Electric Company (PG&E) tendered for filing a rate schedule change to Rate Schedule FERC No. 79, for service provided by PG&E to Western Area Power Administration (Western) pursuant thereto. This filing amends PG&E's previous filing in FERC Docket No. ER89-342-000, reflecting the resolution by the parties of issues raised by Western in this docket concerning the calculation of the energy rates. PG&E states that copies of the filing have been served upon Western and the California Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 365.214). All such motions or protests should be filed on or before October 20, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretry.

[FR Doc. 89-24887 Filed 10-20-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-2-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 16, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on October 11, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Substitute Seventh Revised Sheet No. 68
Substitute Seventh Revised Sheet No. 69
Substitute Seventh Revised Sheet No. 70
Substitute Seventh Revised Sheet No. 71

Texas Eastern states that this filing is being made to track modifications to Texas Gas Transmission Corporation's (Texas Gas) Order No. 500 fixed monthly surcharge in compliance with the Commission's order on August 18, 1989 in Texas Eastern's Docket No. TM89-8-17-000.

Texas Eastern states that it filed tariff sheets on July 20, 1989 to recover take-or-pay costs filed by Texas Gas which flow-through a demand surcharge by Tennessee Gas Pipeline Company (Tennessee). Texas Eastern's July 20, 1989 filing was accepted by the Commission on August 18, 1989 in Docket No. TM89-8-17-000 to be effective August 1, 1989. On August 25, 1989 Texas Gas filed tariff sheets, which were approved by the Commission on September 22, 1989, tracking a revision by Tennessee to the demand surcharge. The revised tariff sheets reduce the total principal amount allocated to Texas Eastern from $42,923 to $41,084, to be amortized over the six month period beginning August 1, 1989.

Texas Eastern states that the tariff sheets proposed for filing herein are being filed solely to track revisions made by Texas Gas on August 25, 1989 and the resulting reduction in the total principal amount allocated to Texas Eastern. Substitute Seventh Revised Sheet Nos. 68 through 71 set forth the monthly principal amount plus the allocation factor for carrying costs that each Texas Eastern customer will be required to pay in order to recover Texas Gas's take-or-pay charges billed to Texas Eastern pursuant to Texas Gas's filing on August 25, 1989. Workpapers setting forth Texas Eastern's determination of the allocation factor for the principal amount (which include a predetermined carrying charge) and a breakdown of the total and monthly principal amounts (which include a predetermined carrying charge) each Texas Eastern customer will be required to pay are set forth under appendix A of the filing.

Texas Eastern states that in tracking Texas Gas's methodology, Texas Eastern has given recognition to purchases by Texas Eastern's Rate Schedule SGS customers under Rate Schedule I in the determination of the base and deficiency periods to the extent these customers did not request Rate Schedule I gas in lieu of Rate Schedule SGS gas, but were given the benefit of the lower I rate. This methodology is consistent with the methodology used and approved by the Commission in Texas Eastern's previous filings.

The proposed effective date of the above tariff sheets is August 1, 1989.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 23, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24888 Filed 10-20-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 89-65-NG]

Amoco Energy Trading Corp.; Application To Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to export natural gas to Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on September 15, 1989, of an application filed by Amoco Energy Trading Corporation (AETC) requesting blanket authorization to export from the United States to Canada up to 200,000 Mcf of natural gas per day or up to 73 Bcf of natural gas per year over a two-year period beginning on the date of first delivery. AETC intends to transport the gas through existing pipeline facilities and will advise the DOE of the date of first delivery. AETC intends to submit quarterly reports detailing each transaction.

The application is filed with the Office of Fossil Energy under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 e.d.t., November 22, 1989.

ADDRESS: Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Larine A. Moore, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H-087, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478.

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: AETC, a Delaware corporation with its principal place of business in Chicago, Illinois, is a wholly-owned subsidiary of Amoco Production Company, which is a wholly-owned subsidiary of Amoco Company, which is wholly-owned by Amoco Corporation. Amoco Corporation is an integrated company engaged in the exploration, production, refining, transportation, and marketing of oil, natural gas and other hydrocarbons. AETC intends to sell natural gas pursuant to freely negotiated contracts at competitive prices. AETC cannot at this time identify the parties purchasing the natural gas that AETC proposes to export because no sales contracts have been executed.

This export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangements. Parties opposing this arrangement bear the burden of overcoming this assertion.

All parties should be aware that if this blanket export application is granted, the authorization may permit the export of the gas at any international border point where existing transmission facilities are located. In addition, the total amount of authorized volumes may be designated for the term rather than a daily or yearly limit, in order to provide the applicant with maximum flexibility of operations.

AETC indicates in its application that it may request confidential treatment of the quarterly reports that DOE requires importers to file if the application is granted. All parties should be aware that the DOE's disclosure policy and regulations implementing the Freedom of Information Act (*see* 10 CFR Part 1004) require information in the possession of the Department to be made available to the public to the fullest extent possible. In accordance with policy and regulation, while the DOE examines requests for confidentiality on a case-by-case basis, parties making such requests bear the burden of justifying confidential treatment. The DOE emphasizes that public participation has been a cornerstone of the Department's import and export policy and program, and limiting access to transaction details necessarily impairs the public's ability to comment on proposed arrangements. The DOE also emphasizes that, in the case of blanket arrangements such as AETC proposes, limited confidentiality is afforded by the quarterly reporting requirements since transaction information is not required to be filed until 30 days after the end of each calendar quarter.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 29, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed at the above address. It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and response filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of AETC's application is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on October 18, 1989.

Clifford P. Tomaszewski,

Acting Director, Natural Gas Office, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–24936 Filed 10–20–89; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 89–61–NG]

Western Gas Processors, Ltd., Application To Import Natural Gas From and Export Natural Gas to Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application for blanket authorizations to import natural gas from and export natural gas to Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on September 5, 1989, of an application filed by Western Gas Processors, Ltd. (WGP) for blanket authorization to import up to 100,000 MMBtu (approximately 100,000 Mcf) of Canadian natural gas and export up to 100,000 MMBtu of domestic natural gas to Canada. The application requests that the import/export authority be approved for spot and short-term sales for a two-year period commencing on the date of first delivery. WGP intends to utilize

existing pipeline facilities for transportation of the volumes to be imported and exported, and indicates it will submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, requests for additional procedures and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., November 22, 1989.

ADDRESS: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478.

FOR FURTHER INFORMATION:

Thomas Dukes, Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–094, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9590.

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: WGP, a Colorado Limited Partnership, with its principal place of business in Denver, Colorado, proposes to import and export natural gas, either for its own account or as an agent for the account of others, for short-term, spot sales to either United States or various Canadian customers. According to the application, the authority requested by WGP contemplates the importation of competitive Canadian natural gas supplies for consumption in U.S. markets, and the exportation of domestically produced natural gas for consumption in Canadian markets. According to WGP, the specific terms of each import and export transaction would be freely negotiated on an individual basis to reflect market conditions.

In support of its application, WGP asserts that a domestic natural gas surplus currently exists and that its export transactions will benefit U.S. suppliers who might not otherwise have a market for their excess gas. With respect to Canadian gas, WGP states that the short-term nature of the sales will minimize reliance on its blanket imports. WGP also states that its proposal is in the public interest since it does not require construction of any new facilities that may pose potential environmental impacts.

WGP asks that the DOE grant its blanket import/export request on an expedited basis. A decision on WGP's request for expedited treatment will not be made until all responses to this notice are received and evaluated. The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested import and export authority. The applicant asserts that this import/export arrangement will be competitive and in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures:

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above. They must be filed no later than 4:30 p.m., e.s.t., November 22, 1989.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties under this notice, in accordance with 10 CFR 590.316.

A copy of WGP's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The

docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 18, 1989.

Clifford P. Tomaszewski,

Acting Director, Natural Gas Office, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-24937 Filed 10-20-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3673-9]

Khoury Trailer Park Drum Site; Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), The Environmental Protection Agency (EPA) has agreed to settle claims for past response costs at the Khoury Trailer Park Drum Site, Fort Valley, Georgia, with Fort Valley Oil Company, Inc., and F. Herbert Hiley, Jr. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Carolyn McCall, Investigation Support Assistant, Investigation and Cost Recovery Unit, Site Investigation and Support Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street, NE., Atlanta, GA 30365, (404) 347-5059.

Written comments may be submitted to the person above by 30 days from date of publication.

Dated: October 12, 1989.

Patrick M. Tobin,

Director, Waste Management Division, EPA Region IV.

[FR Doc. 89-24922 Filed 10-20-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3674-1]

1987 Chesapeake Bay Agreement; Proposal for Review

A draft Baywide Fishery Management Plan for striped bass, prepared pursuant to the 1987 Chesapeake Bay Agreement by the Living Resources Subcommittee of the Chesapeake Bay Program, is now available for public review. Comments will be accepted through November 21, 1989. Comments should be sent to Mr. Pete Jensen, Maryland Department of Natural Resources, Tidewater Fisheries, Tawes State Office Building C-2, Annapolis, MD 21401.

To obtain a copy of the draft plan, call Mr. Jensen at 301/974-3558 or Mr. David Packer, EPA Chesapeake Bay Liaison Office, 301/266-6873. For additional information, contact Mr. Jensen.

Charles S. Spooner,

Director, Chesapeake Bay Liaison Office.

[FR Doc. 89-24921 Filed 10-20-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of August 22, 1989

In accordance with § 271.5 of its Rules Regarding Availability of Information (12 CFR 271, *et seq.*), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on August 22, 1989.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that economic activity has continued to expand at a moderate pace in recent months. In July, total nonfarm payroll employment rose appreciably further after a large advance in June, and the civilian unemployment rate, at 5.2 percent, remained close to its average level in earlier months of the year. Industrial production edged higher in July, continuing the slower growth observed since the beginning of the year. Retail sales have grown at a moderate pace in recent months. Housing starts rose slightly further in July following a large gain in June. Recent indicators of business capital spending suggest slower growth after the substantial increase in the first half of the year. The nominal U.S. merchandise trade deficit narrowed considerably in June and for the second quarter as a whole was about unchanged from a substantially reduced average value in the first quarter. Partly reflecting reductions in energy prices, increases in consumer prices moderated in June and July. The latest wage data suggest no change in prevailing trends.

Interest rates show mixed changes on balance since the Committee meeting on July 5-6. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies has risen on balance over the intermeeting period.

M2 and M3 grew markedly in July, lifting expansion of M2 thus far this year to around the lower end of the Committee's annual range, and keeping M3 somewhat above the lower bound of the Committee's range.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives, the Committee at its meeting in July reaffirmed the ranges it had established in February for growth of M2 and M3 of 3 to 7 percent and 3-½ to 7-½ percent, respectively, measured from the fourth quarter of 1988 to the fourth quarter of 1989. The monitoring range for growth of total domestic nonfinancial debt also was maintained at 6-½ to 10-½ percent for the year. For 1990, on a tentative basis, the Committee agreed in July to use the same ranges as in 1989 for growth in each of the monetary aggregates and debt, measured from the fourth quarter of 1989 to the fourth quarter of 1990. The behavior of the monetary aggregates will continue to be evaluated in the light of movements in their velocities, developments in the economy and financial markets, and progress toward price level stability.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. Taking account of progress toward price stability, the strength of the business expansion, the behavior of the monetary aggregates, and developments in foreign exchange and domestic financial markets, slightly greater reserve restraint might or slightly lesser reserve restraint would be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with growth of M2 and M3 over the period from June through September at annual rates of about 9 and 7 percent, respectively. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that reserve conditions during the period before the next meeting are likely to be associated with a federal funds rate persistently outside a range of 7 to 11 percent.

By order of the Federal Open Market Committee, October 13, 1989.

Normand Bernard,

Assistant Secretary, Federal Open Market Committee.

[FR Doc. 89-24874 Filed 10-20-89; 8:45 am]

BILLING CODE 6210-01-M

[1] Copies of the record of policy actions of the Committee for the meeting of August 22, 1989, are available upon request to The Board of Governors of the Federal Reserve System, Washington, DC 20551.

FEDERAL TRADE COMMISSION

[Dkt. 9230]

The Hensley Group, et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting

unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a promoter of timeshare and other real estate property interests from representing that a consumer has won a specified prize when he or she has not won the specified prize. The proposed order would require respondents to disclose any applicable costs immediately following reference to the prize.

DATE: Comments must be received on or before December 22, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Eileen Harrington, FTC/H–238, Washington, DC 20580, (202) 326–3127.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Hensley Group, by its duly authorized officer, and H. Lloyd Hensley, individually and as an officer of The Hensley Group, ("respondents") and counsel for the Federal Trade Commission enter into this agreement in accordance with the Commission's rules governing consent order procedures. The parties agree that:

1. The Hensley Group, is a Virginia corporation with its principal office and place of business located at 4701 A Eisenhower Avenue, Alexandria, Virginia 22304.

H. Lloyd Hensley is an officer of The Hensley Group. He formulates, directs and controls the acts and practices of The Hensley Group. His address is the same as that of The Hensley Group.

2. Respondents have been served with a copy of the complaint issued by the Federal Trade Commission charging them with violations of Section 5 of the Federal Trade Commission Act.

3. Respondents admit all the jurisdictional facts set forth in the Commission complaint in this proceeding.

4. Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the complaint.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondents, (a) issue its decision containing the following order to cease and desist in disposition of the proceeding and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondents, address as stated in this agreement shall constitute service. Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Respondents have read the complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered, That respondents, The Hensley Group, a corporation, its successors and assigns, and its officers, and H. Lloyd Hensley, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from representing, directly or by implication, that a consumer has won a specified prize, award, gift, bonus, premium, or any other good or service which is similarly described when in fact the consumer has not won the specified prize, gift, bonus, premium, or other good or service similarly described.

II

It is further ordered, That respondents, The Hensley Group, a corporation, its successors and assigns, and its officers, and H. Lloyd Hensley, individually and as an officer of said corporation, and respondents, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from representing directly or by implication to any consumer that they will receive a prize, award, gift, bonus, premium, or any other good or service which is similarly described, without disclosing fully, in type of equal size to that used to identify such good or service and immediately following each good or service thus represented, any cost that the consumer must pay to receive such good or service.

III

It is further ordered, That respondents, The Hensley Group, a corporation, its successors and assigns, and H. Lloyd Hensley, individually and as an officer of said corporation, shall

for three years after the date the representation was last made maintain and upon request make available to the Federal Trade Commission for inspection and copying accurate records of (1) all advertising, promotional or sales materials containing representations regarding prize or gift offerings and (2) all prizes or gifts awarded pursuant to such offerings.

IV

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the Order.

V

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of 10 years from the date of service of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

VI

It is further ordered, That respondents shall, within sixty (60) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with all requirements of this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement for a proposed consent order from The Hensley Group and its president, H. Lloyd Hensley. The Hensley Group is a promoter of timeshare and other real estate property interests. Its principal place of business is located at 4701 A Eisenhower Avenue, Alexandria, Virginia 22304.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments of interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that in numerous instances, The Hensley Group and H. Lloyd Hensley have made false and misleading representations that a named consumer has won one or more specified prizes. The complaint also alleges that in numerous instances, the Hensley Group and H. Lloyd Hensley have made false and misleading representations that consumers will receive one or more prizes at no cost, where additional costs must be paid by consumers.

The proposed consent order would prohibit The Hensley Group and H. Lloyd Hensley from representing that a consumer has won a specified prize when he or she has not won the specified prize. The proposed consent order would also require that The Hensley Group and H. Lloyd Hensley disclose any applicable costs immediately following reference to the prize.

The proposed order would require The Hensley Group and H. Lloyd Hensley to retain accurate records for three (3) years of all advertising and promotional materials containing representations regarding prize or gift offerings, and records of all prizes and gifts awarded. The proposed order would require The Hensley Group and H. Lloyd Hensley to notify the Commission of any proposed change in the corporation which may affect compliance with the order, and to file a compliance report within 60 days after service of the order. Finally, the proposed order would require H. Lloyd Hensley to notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment for a period of ten (10) years from the date of service of the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,
Secretary.

[FR Doc. 89-24938 Filed 10-20-89; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

RF-Induced Body Current and Absorbed Power Determinations Meeting: Cancellation

The Centers for Disease Control (CDC) is cancelling the meeting of the National Institute for Occupational Safety and Health (NIOSH); RF-Induced Body Current and Absorbed Power Determinations scheduled for October 24, 1989. The meeting was announced by notice in the **Federal Register** of October 2, 1989 (54 FR 40526).

FOR FURTHER INFORMATION CONTACT: David L. Conover, Ph.D., NIOSH, CDC, 4676 Columbia Parkway (C27), Cincinnati, Ohio 45226, Telephone: Commercial: (513) 533-8482, FTS: 684-8482.

Dated: October 17, 1989.

Elvin Hilyer,
Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89-24905 Filed 10-20-89; 8:45 am]
BILLING CODE 4160-19-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-89-2069; FR-2712-N-01]

Committee on Housing for Handicapped Families; meeting

AGENCY: Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of meeting of the Federal Advisory Committee on Housing for Handicapped Families.

SUMMARY: This notice announces the second meeting of the Federal Advisory Committee on Housing for Handicapped Families. The meeting will be held on November 6, 1989.

FOR FURTHER INFORMATION CONTACT: Margaret Milner, Office of Elderly and Assisted Housing—Housing for Handicapped People, Office of Multifamily Housing Programs, 451 Seventh Street SW., room 6114, Washington, DC 20410-8000; telephone: (202) 755-3287 (voice) or (202) 755-6600 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 162 of the Housing and Community Development Act of 1987 requires the Secretary to adopt distinct standards and procedures for development of housing for handicapped families under the section 202 program that reflect the difference between such housing and housing for elderly families also developed under section 202. In adopting these standards, the Secretary is directed to ensure adequate participation by representatives of the disability community through the provisions available under the Federal Advisory Committee Act. In compliance with the Act, an announcement of intent to establish the Committee was published in the Federal Register on January 24, 1989.

In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. I, section 10(a)(2), announcement is made of the following meeting:

The Federal Advisory Committee on Housing for Handicapped Families will meet on Monday, November 6, 1989. The meeting will convene at 9:45 a.m. at the Department of Housing and Urban Development, Room 10233, 451 Seventh Street SW., Washingotn, DC 20410–8000. The meeting is open to the public. Names of committee members may be obtained by calling (202) 755–3287.

The Committee will assist and advise the Department in implementing the legislation, as the Department adopts distinct standards and procedures for the allocation of funds and the processing of applications for loans and assistance payments under the new program.

The agenda will include a discussion of development cost limits for group homes, a review of Advisory Committee recommendations and their impact on the final rule, an analysis of the Fiscal Year 1989 funding round, and recommendations for program evaluation studies. The final agenda will be available at the meeting.

Authority: Section 202 of the Housing Act of 1959, 12 U.S.C. 1701q; section 10 of the Federal Advisory Committee Act, 5 U.S.C. App. 1.

Dated: October 17, 1989.

Peter Monroe,

Acting General Deputy, Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 89–24903 Filed 10–20–89; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–010–00–4320–02]

Bakersfield District Grazing Advisory Board meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Bakersfield District Grazing Advisory Board meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. Law 92–463) and the Federal Land Policy and Management Act (Pub. Law 94–579) that the Bakersfield District Grazing Advisory Board will meet Friday, November 17, 1989 from 10 a.m. to 3 p.m. in Room 224 of the Federal Building, 800 Truxtun Avenue, Bakersfield, California.

SUPPLEMENTAL INFORMATION: The agenda for the meeting will include discussion of FY 89 project accomplishments, FY 90 planned projects, and allotment management planning in the District.

The meeting is open to the public. Interested persons may make oral statements, or file written statements for consideration by the Board. Anyone wishing to make an oral statement must notify, in writing, the Bakersfield District Manager (Bureau of Land Management, 800 Truxtun Avenue, Room 311, Bakersfield, CA 93301) by November 15, 1989.

Summary minutes of the meeting will be maintained in the Bakersfield District Office, and will be available for inspection, during business hours, within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Tim Burke, District Range Conservationist, Bureau of Land Management, 800 Truxtun Avenue, Room 311, Bakersfield, CA 93301 (805) 861–4191.

Dated: October 13, 1989.

Nancy Cotner,

Associate District Manager.

[FR Doc. 89–24865 Filed 10–20–89; 8:45 am]

BILLING CODE 4310–40–M

[CO–050–4830–12]

Canon City District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 94–579 that the Canon City District Advisory Council (DAC) meeting will be held Wednesday, November 8, 1989, 10:30 a.m. to 5 p.m. and Thursday, November 9, 1989, 8 a.m. to 12 noon, at the Holiday Inn, 333 Santa Fe Avenue, Alamosa, Colorado. The meeting agenda will include:

1. Update on the Arkansas River Recreation Management Plan.
2. Discussion of the draft San Luis Resource Management Plan/ Environmental Impact Statement.
3. Briefing on the preliminary Royal Gorge Resource Management Plan/ Environmental Impact Statement.
4. Reports from Area Managers on current programs.
5. Public presentations to the council (open invitation).

The meeting is open to the public. Persons interested may make oral presentations to the council at 11:30 a.m. on November 8 or they may file written statements for the council's consideration. The District Manager may limit the length of oral presentations depending on the number of people wishing to speak.

ADDRESS: Anyone wishing to make an oral or written presentation to the council should notify the District Manager, Bureau of Land Management, P.O. Box 311, 3170 East Main, Canon City, Colorado 81212 by November 7, 1989.

FOR FURTHER INFORMATION CONTACT: Ken Smith (719) 275–0631.

SUPPLEMENTARY INFORMATION: Summary of minutes of the meeting will be available for public inspection and reproduction during regular working hours at the District Office approximately 30 days following the meeting.

Donnie R. Sparks,

District Manager.

[FR Doc. 89–24916 Filed 10–20–89; 8:45 am]

BILLING CODE 4310–JB–M

[WY–920–09–4111–15; WYW91347]

Proposed Reinstatement of Terminated Oil and Gas Lease

October 12, 1989.

Pursuant to the provisions of Public Law 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW91347 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at

rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW91347 effective August 1, 1989, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Beverly J. Poteet,

Acting Supervisory Land Law Examiner.

[FR Doc. 89-24867 Filed 10-20-89; 8:45 am]

BILLING CODE 4310-22-M

National Park Service

Cruise Ship Authorizations Within Glacier Bay National Park; Availability of Report

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the National Park Service has studied the issue of cruise ship authorizations within Glacier Bay National Park and has preliminarily decided to adopt an alternative that will increase opportunities for competitive allocation of vessel entries into Glacier Bay. This matter only concerns allocation of existing Glacier Bay cruise ship entries, not the permitted number of such entries. A final decision in this matter will be made after receipt and consideration of written public comment.

DATES: Comments on the National Park Service recommendation must be submitted on or before the sixtieth day following publication of this notice.

ADDRESSES: Copies of the National Park Service preliminary decision and the Task Force report are available from: National Park Service, Concessions Division, 1100 "L" Street, NW., Room 3207, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Wendy Mann of the National Park Service Concessions Division at the address given above; telephone 202/343-1550.

Dated: September 22, 1989.

James M. Ridenour,

Director, National Park Service.

[FR Doc. 89-24877 Filed 10-20-89; 8:45 am]

BILLING CODE 4310-70-M

Santa Fe National Historic Trail Advisory Council; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92-463, that a meeting of the Santa Fe National Historic Trail Advisory Council will be held at 8:30 a.m., in the Hays Tavern at the Hays House Restaurant, 112 West Main Street, Council Grove, Kansas.

The Santa Fe National Historic Trail Advisory Council was established pursuant to Public Law 90-543 establishing the Santa Fe National Historic Trail to advise the National Park Service on such issues as preservation of trail routes and features, public use, standards for posting and maintaining trail markers, as well as administrative matters.

The matters to be discussed include:

—National Park Service revisions to the Draft Comprehensive Management and Use Plan.

—Initial plan implementation objectives.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with David Gaines, Project Coordinator.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact David Gaines, Project Coordinator, Santa Fe National Historic Trail, P.O. Box 728, Santa Fe, New Mexico 87504-0728, telephone 505/988-6779. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of the Project Coordinator, located in Room 346, Pinon Building, 1220 South St. Francis Drive, Santa Fe, New Mexico.

Dated: October 17, 1989.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 89-24907 Filed 10-20-89; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029-0049), Washington, DC 20503, telephone 202-395-7340.

Title: Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors, 30 CFR part 822.

OMB approval number: 1029-0049.

Abstract: This section requires the permittee to install, maintain and operate a monitoring system in order to provide specific protection for alluvial valley floors. This information is needed to ensure that the agricultural utility and production of the alluvial valley floor is maintained.

Bureau Form Number: None.

Frequency: Semi-annually.

Description of Respondents: Coal Mining Operators.

Estimated Completion Time: 20 hours.

Annual Responses: 64.

Annual Burden Hours: 1,280.

Bureau Clearance Officer: Andrew F. DeVito 202-343-5954.

Dated: September 21, 1989.

Annetta L. Cheek,

Chief, Regulatory Development and Issues Management.

[FR Doc. 89-24866 Filed 10-20-89; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-167 (Sub-No. 1095X)]

Notice of Exemption; Consolidated Rail Corp.; Abandonment Exemption—in Lancaster and Chester Counties, PA

Applicant has filed a notice of exemption under 49 CFR 1152, subpart F—*Exempt Abandonments* to abandon about 66.5 miles of railroad line in Lancaster and Chester Counties, PA: (1) between the clearance point of the switch to Green Giant in Parkesburg, near milepost 1.1, and its connection to the Port Road Branch at CP "Port" in Manor Township, near milepost 33.7 (about 32.6 miles); and (2) between its connection to Amtrak at CP "Park" in Parkesburg, near milepost 0.0, and its connection to the Port Road Branch at

CP "Port" in Manor Township, near milepost 33.9 (about 33.9 miles).

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 22, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by November 2, 1989.[3]

Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by November 13, 1989, 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:

John J. Paylor, Consolidated Rail Corporation, Room 1138, Six Penn Center Plaza, Philadelphia, PA 19103.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 27, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 17, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–24924 Filed 10–20–89; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

NATIONAL COMMISSION ON MIGRANT EDUCATION

Meeting Panel; Meeting

ACTION: Notice of meeting.

Summary: The National Commission on Migrant Education will hold its second meeting on Saturday, November 4, 1989. The Commission was established by Public Law 100–297, April 28, 1988.

Date, Time, and Place: Saturday, November 4, 1989, 9 a.m.–4 p.m., The Barclay Hotel, BAROQUE room, 237 S. 18th Street, Philadelphia, Pennsylvania 19103.

Status: Open meeting except for initial one and one-half hours which will be closed under 5 U.S.C. section 552 b(c) (2) and (6) as incorporated under section 10(d) of the Federal Advisory Committee Act (5 U.S.C. App 1), for the purpose of discussing hiring of staff and considering internal personnel rules and practices.

Agenda: The open meeting will be devoted to general discussion on operating procedures, study, scope, and schedule.

For Additional Information: Contact Nancy Watson, 301–492–5336, National Commission on Migrant Education, 8120 Woodmont Avenue, Fifth Floor, Bethesda, Maryland 20814.

Linda Chavez,

Chairman.

[FR Doc. 89–24940 Filed 10–20–89; 8:45 am]

BILLING CODE 6820–DE–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 89–73]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee.

DATES: November 7, 1989, 8:30 a.m. to 5:30 p.m., November 8, 1989, 8:30 a.m. to 5 p.m., and November 9, 1989, 8:30 a.m. to 3 p.m.

ADDRESSES: NASA Headquarters, Room 226A, 600 Independence Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph K. Alexander, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–1430).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Committee will meet to discuss status of Office of Space Science and Applications programs, Space Station issues and future Committee tasks. The Committee is chaired by Dr. Berrien Moore and is composed of 24 members. The meeting will be open to the public up to the capacity of the room (approximately 45 including Committee members). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the participants.

Type of Meeting: Open.

Agenda:

Tuesday, November 7

8:30 a.m.—Opening Remarks.
8:45 a.m.—Office of Space Science and Applications (OSSA) Program Status.
10:15 a.m.—Committee Discussion.
11 a.m.—Information Systems Strategic Plan.
1:15 p.m.—Exploration Initiative: Overview.
1:45 p.m.—View from OSSA: Precursor Missions, Impacts on OSSA Strategic Plan, FY 90/91 Impacts.
2:30 p.m.—Role of Exploration Science Working Group.
2:45 p.m.—Exploration Requirements for Space Station.
3:15 p.m.—Committee Discussion.
3:45 p.m.—Space Station Program Status.
4:30 p.m.—OSSA Space Station Planning Impacts.
5 p.m.—Committee Discussion.
5:30 p.m.—Adjourn.

Wednesday, November 5

8:30 a.m.—Committee Business.
8:45 a.m.—Division Subcommittee Reports.
10:45 a.m.—Solar Systems Exploration Program Overview.
12 Noon—The Neptune Encounter.
1:30 p.m.—OSSA Strategic Planning.
3:40 p.m.—Committee Discussion.
5 p.m.—Adjourn.

Thursday, November 9

8:30 a.m.—Writing Group Work Sessions.
10:45 a.m.—Committee Discussion of Draft Statements.
1:30 p.m.—Committee Discussion With Dr. Fisk.
3 p.m.—Adjourn.

Dated: October 16, 1989.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-24899 Filed 10-20-89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Visual Artists Organizations Section) to the National Council on the Arts will be held on November 13-16, 1989, from 9 a.m.-9 p.m. and November 17, 1989, from 9 a.m.-5 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: October 16, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-24917 Filed 10-20-89; 8:45 am]

BILLING CODE 7537-01-M

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of title 5, United States Code.

1. *Date:* November 16-17, 1989.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications submitted for Humanities Projects in Media, for the Division of General Programs, for projects beginning after April 1, 1990.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 89-24930 Filed 10-20-89; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Generic Letter (GL) 89-13 Service Water System Problems Affecting Safety-Related-Equipment

SUMMARY: The United States Nuclear Regulatory Commission (USNRC) is planning to hold four public meetings to discuss Generic Letter (GL) 89-13, "Service Water System Problems Affecting Safety-Related Equipment." The purpose of these meetings is to discuss the guidance contained in Generic Letter 89-13 with operators of commercial nuclear power plants and near term operating license applicants of nuclear power plants. The NRC staff plans to make a brief presentation on the contents of the Generic Letter at each meeting. However, the main focus of these meetings will be to discuss questions received from licensees and applicants.

DATE AND LOCATION: These meetings will be held from 10 a.m.-5 p.m. on the following dates at the following locations:

November 28, 1989, Philadelphia Airport Hilton Inn, 10th & Packer Avenue, Philadelphia, PA 19148, (215) 755-9500.
November 30, 1989, The Westin Peachtree Plaza, Peachtree at International Blvd., Atlanta, GA 30343-9986, (404) 659-1400.

December 5, 1989, Rosemont O'Hare Conference Center, 5555 North River Road, Rosemont, IL 60018, (312) 692–2220 (across the street from Raddison Suite Hotel, O'Hare Airport), 5500 North River Road, Rosemont, IL 60018, (312) 678–4000.

December 7, 1989, The Registry Hotel, 2303 Quebec Street, Denver, CO 80207, (303) 321–3333.

FOR FURTHER INFORMATION CONTACT: Angela T. Chu, U.S. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555. Telephone (301) 492–1429.

SUPPLEMENTARY INFORMATION: These meetings are intended to be workshops where technical personnel from nuclear power plants or utility corporate offices may obtain information on expected responses to the Generic Letter. In order to assist NRC staff in preparing for these meetings, individuals planning to attend are requested to forward questions on the Generic Letter to their respective NRC Project Manager and to indicate the particular meeting they will attend. As time permits, additional questions will be solicited from the audience. Opportunities will be provided for the public to ask questions although priority will be given to nuclear utility personnel.

For the Nuclear Regulatory Commission.

Angela T. Chu,

Project Engineer, Project Directorate I–3, Division of Reactor Projects I.

[FR Doc. 89–24526 Filed 10–20–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 70–25]

Rockwell International Corp., Rocketdyne Division; Establishment of Temporary Local Public Document Room

Notice is hereby given that the Nuclear Regulatory Commission (NRC) has established a temporary local public document room (LPDR) for Rockwell International Corporation, Rocketdyne Division's Santa Susana Field Laboratory.

The LPDR will be maintained for the duration of proceedings on Rockwell International Corporation's request to renew the special material license for this facility (Special Material License Number SNM–21).

Members of the public may now inspect and copy documents and correspondence related to these proceedings at the Chatsworth Branch Library, 21052 Devonshire Street, Chatsworth, CA 91311. The library is open on the following schedule: Monday through Thursday 1 p.m. to 8 p.m.; Friday 10 a.m. to 5:30 p.m.; and Saturday 9 a.m. to 1 p.m.

For further information, interested parties in the Chatsworth area may contact the LPDR directly through Cecelia Riddle, telephone number (818) 341–4276/4278. Parties outside the service area of the LPDR may address their requests for records to the NRC's Public Document Room, 2120 L Street NW., Lower Level, Washington, DC 20555, telephone number (202) 634–3273.

Questions concerning the NRC's local public document room program or the availability of documents should be addressed to Ms. Teresa D. Linton, LPDR Information Services Librarian, Freedom of Information Act/Local Public Document Room Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone number (800) 638–8081 toll-free.

Dated at Bethesda, Maryland, this 16th day of October 1989.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 89–24927 Filed 10–20–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–382]

Louisiana Power and Light Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–38, issued to Louisiana Power and Light Company (the licensee), for operation of the Waterford Steam Electric Station, Unit No. 3 located in St. Charles Parish, Louisiana.

The amendment would revise the Technical Specification (TS) on boron dilution and charging pumps—operating to permit changing plant operation from Mode 3 to Mode 2 by deborating the reactor coolant system. This change corrects the actions required by License Amendment No. 48, issued on December 14, 1988 which are correct for startup by pulling control element assemblies but inadvertently precluded startup by deboration.

The conflict with the TS issued by Amendment No. 48, which would preclude reactor startup by deboration, was first discovered by reactor operators. Discussions within the licensee organization began on correcting the conflict by license amendment but no immediate urgency was deemed necessary. During a subsequent management review, the licensee staff learned that the upcoming startup followng the ongoing refueling would use deboration to reach critically. This method is best for determining certain physics parameters for operation in Cycle 3 and 4. The license notified the NRC staff of the urgent need for the license amendment, arranged a special Safety Review Committee meeting to approve the request, and submitted the proposed TS change promptly thereafter. The license currently plans to enter Mode 2 on November 15, 1989 which will not allow the full 30 days for comments on the proposed action. A delay in issuing the amendment will, on the current restart schedule, delay the restart.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In order to perform reactor startup physics tests by deborating the reactor coolant system, the licensee must examine the current boron dilution analysis and assumptions. The current TS based on the approved analysis assumes the dilution alarms are not operable and that an additional 30 minutes is required to analyze samples. This results in the requirement that charging pumps are not operating. However, for the reactor startup by deborating to occur, the charging pumps must be available. The licensee has chosen to revise the assumption for the approved boron dilution analysis to achieve pump operation; this condition would require the two dilution alarms to be operable. The TS change is to add a condition for dilution alarms and pumps operable. There is no change to the dilution analysis methods and all conservatisms and margins remain as before. The proposed change to the TS would also allow the plant to operate in

the condition found acceptable before Amendment No. 48 was issued in December 1988.

The dilution analysis methods for Waterford 3 remain unchanged; the assumption for the analysis have been corrected for the case where dilution alarms and charging pumps are operable. The analysis results do not significantly change the conservatisms found acceptable for Waterford nor does the change in operation differ to any extent from that previously found acceptable. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will involve an operational condition for dilution alarms and pumps operable and this condition was found acceptable for Waterford 3 at startup. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The current analysis includes a 30 minute delay for coolant sample analysis because the dilution alarms are not operable. With the two dilution alarms operable, the 30 minutes is not required by the analysis. The proposed change is analyzed to the acceptable methods, therefore, it does not involve a significant reduction in a margin of safety.

Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the Federal Register notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 7, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at The University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30-days, the Commission will make a final determination on the issue of no significant hazards considerations. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the

Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Frederick J. Hebdon: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 5, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Dated at Rockville, Maryland, this 16th day of October 1989.

For the Nuclear Regulatory Commission.

David L. Wigginton,

Project Manager, Project Directorate IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–24925 Filed 10–20–89; 8:45 am]

BILLING CODE 7590–01–M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of public meeting.

SUMMARY: The Physician Payment Review Commission will hold a public meeting on Thursday, October 26, 1989, from 9 a.m. to 5:30 p.m. and on Friday, October 27, 1989, beginning at 8:30 a.m. The meeting will be held at the Embassy Row Hotel, 2015 Massachusetts Avenue, NW., in the Wintergarden meeting room. Among the topics to be discussed are: Commission plans for refining the relative value scale, an update on the Commission's work on practice costs, payment of limited license practitioners, physician payment under Medicaid, antitrust issues in physicians' collective responses to expenditure targets and financial protection for beneficiaries. A copy of the agenda can be obtained from the Commission office the week of the meeting.

ADDRESS: The Commission office is located in Suite 510, 2120 L Street NW., Washington, DC. The telephone number is 202/653–7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, 202/653–7220.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 89–24897 Filed 10–20–89; 8:45 am]

BILLING CODE 6820–SE–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated October 17, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0088.

Form Number: None.

Type of Review: Extension.

Title: Foreign Assembler's Declaration (with Endorsement by the Importer).

Description: Endorsement is used to substantiate a claim for duty-free treatment of U.S. fabricated components sent abroad for assembly and subsequently returned to the United States. This is a recordkeeping requirement pursuant to 19 CFR 162.1c with a retention period of 5 years after date of related entry.

Respondents: Individuals or households, Small businesses or organizations.

Estimated Number of Respondents: 2,730.

Estimated Burden Hours Per Response/Recordkeeping: 50 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping/ Reporting Burden: 283,469 hours.

Clearance Officer: Dennis Dore (202) 535–9267, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–24879 Filed 10–20–89; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review.

Date: October 17, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2224, 15th and

Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0702.
Form Number: Form 8023.
Type of Review: Revision.
Title: Corporate Qualified Stock Purchase Elections.
Description: Form 8023 is used by corporations that acquire a corporation to treat that acquisition as an acquisition of assets. IRS uses Form 8023 to determine if the selling corporation reports the sale of its assets on its income tax return and to determine if the purchasing corporation has properly made the election.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 201.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping, 8 hours, 22 minutes.
Learning about the law or the form, 1 hour, 12 minutes.
Preparing and sending the form to IRS, 1 hour, 23 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping/ Reporting Burden: 2,199 hours.

OMB Number: 1545–0797.
Form Number: None.
Type of Review: Extension.
Title: Organizations Under Common Control; Eighty Percent Control Test for a Brother-Sister Controlled Group.
Description: The Income Tax Regulations relating to the definition of a brother-sister controlled group of corporations or businesses are amended to reflect a recent Supreme Court decision. Amendments will apply retroactively. However, taxpayers may elect prospective effect in certain circumstances.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 2.
Estimated Burden Hours Per Response: 1 hour, 30 minutes.
Frequency of Response: One-time election.
Estimated Total Reporting Burden: 3 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–24878 Filed 10–20–89; 8:45 am]

BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

Receipt of Request for Import Restrictions from the Government of Guatemala Under the Convention on Cultural Property Implementation Act

Pursuant to section 303(f)(1) of the Cultural Property Implementation Act (19 U.S.C. 2602(f)(1)), notice is hereby given that the United States Government is in receipt of a request under section 303(a)(3) from the Government of Guatemala, a State Party to the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The request from Guatemala is for U.S. import restrictions on certain endangered archaeological materials to assist Guatemala in protecting its cultural patrimony.

Dated: October 13, 1989.

Eugene P. Kopp,

Acting Director, United States Information Agency.

[FR Doc. 89–24914 Filed 10–20–89; 8:45 am]

BILLING CODE 8230–01–M

United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held in Paris on October 30–31, 1989. The Commission will consult with Public Affairs Officers on the effectiveness of U.S. Information Agency programs in the context of the changing political and economic situation in Europe.

Please call Gloria Kalamets, (202) 485–2468 for further information.

Dated: October 16, 1989.

Ledra L. Dildy,

Management Analyst, Federal Register Liaison.

[FR Doc. 89–24915 Filed 10–20–89; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 203
Monday, October 23, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

October 18, 1989.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-49), 5 U.S.C. 552B:

DATE AND TIME: October 25, 1989, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Item listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Power Agenda, 904th Meeting—October 25, 1989, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 3195-030, Sayles Hydro Associates
CAP-2.
Project No. 9248-003, Town of Telluride, Colorado
CAP-3.
Project Nos. 8256-009 and 010, Electro-Technologies, Ltd.
CAP-4.
Project Nos. 2911-011 and 3015-005, 2742-010 and 2743-008, Alaska Power Authority
CAP-5.
Project Nos. 1744-000 and 003, Utah Power & Light Company
CAP-6.
Project No. 3109-001, Eugene Water & Electric Board
CAP-7.
Docket Nos. ER89-633-000, ER89-228-000, ER89-125-000 and ER89-66-000, Canal Electric Company
CAP-8.
(A) Docket No. ER89-475-000, Pacific Gas and Electric Company
(B) Docket No. ER89-512-000, Pacific Gas and Electric Company
CAP-9.
Omitted
CAP-10.
ER89-491-002, Canal Electric Company
CAP-11.
Docket No. ER84-348-012, American Electric Power Service Corporation
CAP-12.
Docket No. ER84-31-001, Central and South West Services, Inc.
CAP-13.
Docket No. ER89-265-001, Arizona Public Service Company
CAP-14.
Docket No. QF87-274-004, Union Carbide Corporation
CAP-15.
Docket No. ER85-596-001, New England Power Company
CAP-16.
Omitted
CAP-17.
Docket No. EL89-44-000, Cajun Electric Power Cooperative, Inc. v. Gulf States Utilities Company

Consent Miscellaneous Agenda

CAM-1.
Docket No. RM87-21-001, Revision of Freedom of Information Act Rules
CAM-2.
Docket No. RM89-12-000, Final Regulations Clarifying the Filing Obligations for Part 284 Transportation and Sale of Gas
CAM-3.
Docket No. RM89-16-000, Final Regulations Implementing the Natural Gas Wellhead Decontrol Act of 1989
CAM-4.
Docket No. GP89-31-000, Kansas Corporation Commission
CAM-5.
Docket No. GP89-40-000, Oil Conservation Division of the State of New Mexico
CAM-6.
Docket No. GP86-54-001, ANR Pipeline Company v. Wagner & Brown
Docket No. GP83-48-001, Producer's Gas Company v. Southport Exploration, *et al.* & Kaiser-Francis
Docket No. GP83-49-001, Natural Gas Pipeline Company of America v. John A. Masek, *et al.*
Docket No. RM83-55-001, Associated Gas Distributors
Docket No. GP84-57-001, Transcontinental Gas Pipe Line Corporation v. Koch Industries
Docket No. GP85-1-001, Transcontinental Gas Pipe Line Corporation v. Felmont Oil Corporation and Case Pomery Oil Corporation
Docket No. GP85-10-001, Southern Natural Gas Company v. Pogo Producing Company
Docket No. GP85-11-001, Sea Robin Pipeline Company v. Pogo Producing Company
Docket No. GP85-33-001, KN Energy Inc v. Joe Gray, *et al.*
Docket No. GP86-39-001, ANR Pipeline Company v. Northwestern Life Insurance Company
Docket No. GP86-55-001, ANR Pipeline Company v. Hamilton Brothers, *et al.*
Docket No. GP87-13-001, ANR Pipeline Company v. Helmerich & Payne, Inc.
Docket No. GP87-21-001, ANR Pipeline Company v. Plains Resources, Inc.
Docket No. GP87-54-001, Transcontinental Gas Pipeline Corporation
Docket No. GP88-12-001, Colorado Interstate Gas Company v. RJB Gas Pipeline Company
Docket No. GP88-15-000, ANR Pipeline Company v. Maguire Oil Company *et al.*
Docket No. GP88-16-000, Colorado Interstate Gas Company v. Chemco, *et al.*
CAM-7.
Docket No. GP89-35-001, Jennings Exploration Company
CAM-8.
Docket No. GP89-30-000, Realitos Energy Corporation
CAM-9.
Docket No. GP88-26-000, Rocky Mountain Natural Gas Company v. Jack J. Grynberg, individually, and as general partner for the Greater Green River Basin Drilling Program: 72-73
CAM-10.
Docket No. GP89-38-000, Corinne B. Grace, Complainant, v. El Paso Natural Gas Company, Respondent

Consent Gas Agenda

CAG-1.
Docket Nos. RP89-160-003 and 004, Trunkline Gas Company
CAG-2.
Docket No. RP89-241-000, Algonquin Gas Transmission Company
CAG-3.
Omitted
CAG-4.
Docket No. RP89-244-000, East Tennessee Natural Gas Company
CAG-5.
Omitted
CAG-6.
Docket No. RP89-248-000, Mississippi River Transmission Corporation
CAG-7.
Docket No. RP89-250-000, Columbia Gas Transmission Corporation
Docket No. RP89-249-000, Columbia Gulf Transmission Company
CAG-8.
Docket No. RP89-251-000, Alabama-Tennessee Natural Gas Company
CAG-9.
Docket Nos. RP89-254-000, Transwestern Pipeline Company
CAG-10.
Omitted
CAG-11.
Omitted
CAG-12.

Docket No. RP90-4-000, Transwestern Pipeline Company
CAG-13.
Docket Nos. TA90-1-38-000, 001 and RP89-218-000, Ringwood Gathering Company
CAG-14.
Docket Nos. TA90-1-41-000 and 001, Paiute Pipeline Company
CAG-15.
Docket No. TA90-1-51-000, Great Lakes Gas Transmission Company
CAG-16.
Docket No. TA90-1-58-000, Texas Gas Pipe Line Corporation
CAG-17.
Docket No. RP89-245-000, Pauite Pipeline Company
CAG-18.
Docket No. RP89-243-000, ANR Pipeline Company
CAG-19.
Docket Nos. RP89-178-066 and RP88-191-014, Tennessee Gas Pipeline Company
CAG-20.
Docket No. RP89-141-002, Sea Robin Pipeline Company
CAG-21.
Docket Nos. RP88-141-001, 003 and TQ88-3-2-000, East Tennessee Natural Gas Company
CAG-22.
Docket No. TA89-1-55-001, Questar Pipeline Company
CAG-23.
Docket Nos. TA85-1-16-007 and TA85-2-16-007, National Fuel Gas Supply Corporation
CAG-24.
Docket Nos. CP88-587-005, 006, and 007, Distrigas Corporation, Distrigas of Massachusetts Corporation
CAG-25.
Docket No. RP89-70-000, Stingray Pipeline Company
CAG-26.
Docket Nos. TA89-1-28-000 and RP88-262-000, Panhandle Eastern Pipe Line Company
CAG-27.
Docket No. TA89-1-63-001, Carnegie Natural Gas Company
CAG-28.
Docket Nos. TA89-1-22-002 and RP89-204-001, CNG Transmission Corporation
CAG-29.
Docket No. TM89-2-43-001, Williams Natural Gas Company
CAG-30.
Docket Nos. CP83-254-332 and CP83-335-252, Williston Basin Interstate Pipeline Company
CAG-31.
Docket Nos. RP89-12-006 and TM89-3-25-002, Mississippi River Transmission Corporation
CAG-32.
Docket Nos. RP89-214-001 and TM89-5-21-001, Columbia Gas Transmission Corporation
CAG-33.
Docket No. RP89-160-001, Trunkline Gas Company
CAG-34.
Docket No. RP89-161-001, ANR Pipeline Company
CAG-35.
Docket Nos. RP85-177-063, CP88-136-008 and RP88-67-014, Texas Eastern Transmission Corporation
CAG-36.
Docket No. RP89-135-001, Arkla Energy Resources
CAG-37.
Docket No. RP89-137-002, Northwest Pipeline Corporation
CAG-38.
Docket Nos. RP85-177-062 and CP88-136-002, Texas Eastern Transmission Corporation
CAG-39.
Docket Nos. RP89-45-005, RP89-127-002 and RP89-193-002, ANR Pipeline Company
CAG-40.
Omitted
CAG-41.
Docket No. RP89-173-000, Questar Pipeline Company
CAG-42.
Docket No. CP89-1281-000, Natural Gas Pipeline Company of America
CAG-43.
Docket No. RP87-34-000, North Alaskan Pipeline Company
CAG-44.
Docket Nos. RP87-62-000 and RP86-148-000, Pacific Gas Transmission Company
CAG-45.
Docket Nos. ST89-3765-000 and ST89-3949-000, Enogex, Inc.
CAG-46.
Docket Nos. ST89-2401-000, ST89-2402-000, ST89-2403-000 and ST89-4270-000, Utah Gas Service Company
CAG-47.
Docket Nos. ST89-3702-000, ST89-3752-000, ST89-3950-000 and ST89-4069-000, Louisiana Resources Company
CAG-48.
Docket Nos. ST85-956-003, ST85-1572-001, ST86-6-001, ST86-1010-000, ST86-1064-000, ST86-1647-000, ST86-1792-000, ST86-2087-000, ST86-2505-000, ST86-430-000, ST87-588-000, ST87-589-000, ST87-1126-000, ST87-1525-000, ST87-1526-000, ST87-1527-000, ST87-1974-000, ST87-2399-000, ST87-3708-000, ST87-3709-000, ST87-3710-000, ST87-3711-000, ST87-3874-000, ST87-4257-000, ST88-585-000, ST88-1440-000 and ST88-1441-000, Acadian Gas Pipeline System
Docket Nos. ST88-5599-001, ST88-5761-001, ST88-5762-001, ST88-5763-001, ST88-5764-001, ST88-5765-001, ST88-5766-001, ST88-5767-001, ST88-5768-001, ST88-5769-001 and ST88-5770-001, Gulf South Pipeline Company
CAG-49.
Docket No. ST88-5804-001, Acacia Natural Gas Corporation
CAG-50.
Docket Nos. RI88-281-000, RI88-282-000, RI88-283-000, RI88-284-000, RI88-963-000, RI88-964-000, RI88-965-000, RI88-966-000, RI88-967-000, RI88-968-000, RI88-969-000, RI88-970-000, RI88-971-000, RI88-972-000, RI88-973-000, RI88-974-000, RI88-975-000, RI88-976-000, RI88-977-000, RI88-978-000, RI88-979-000, RI88-980-000, RI88-981-000 and RI88-982-000, Exxon Corporation
Docket Nos. RI88-1114-000, RI88-1115-000, RI88-1116-000, RI88-1117-000, RI88-1118-000, RI88-1119-000, RI88-1120-000, RI88-1121-000, RI88-1122-000, RI88-1123-000, RI88-1124-000, RI88-1125-000, RI88-1126-000, RI88-1127-000, RI88-1128-000, RI88-1129-000, RI88-1130-000, RI88-1131-000, RI88-1132-000, RI88-1133-000, RI88-1134-000, RI88-1135-000, RI88-1136-000, RI88-1137-000, RI88-1138-000, RI88-1139-000, RI88-1140-000, RI88-1141-000, RI88-1142-000, RI88-1143-000, RI88-1144-000, RI88-1145-000, RI88-1146-000, RI88-1147-000, RI88-1148-000, RI88-1149-000, RI88-1150-000, RI88-1151-000, RI88-1152-000, RI88-1153-000 and RI88-1154-000, ARCO Oil and Gas Company
Docket Nos. RI88-1207-000, RI88-1208-000, RI88-1209-000, RI88-1210-000, RI88-1211-000, RI88-1212-000 and RI88-1213-000, Semedan
CAG-51.
Omitted
CAG-52.
Docket No. CI89-465-000, Union Pacific Fuels, Inc.
CAG-53.
Docket No. CP88-805-001, Great Lakes Gas Transmission Company
CAG-54.
Omitted
CAG-55.
Docket No. CP88-542-001, Great Lakes Gas Transmission Company
CAG-56.
Omitted
CAG-57.
Docket Nos. CP88-490-003 and CP89-548-003, Panhandle Eastern Pipe Line Company
CAG-58.
Docket No. CP89-3-003, Panhandle Eastern Pipe Line Company
CAG-59.
Docket No. CP87-238-001, Ozark Gas Transmission System
CAG-60.
Docket No. CP82-433-004, Northwest Pipeline Corporation
CAG-61.
Docket No. CP85-538-003, ANR Pipeline Company
Docket No. CP85-349-002, Northwest Pipeline Corporation
CAG-62.
Omitted
CAG-63.
Docket No. CP88-332-004, El Paso Natural Gas Company
CAG-64.
Docket No. CP89-2209-000, Colorado Interstate Gas Company
CAG-65.
Docket No. CP89-60-000, Southcoast Transmission Corporation
CAG-66.
Docket No. CP89-636-000, Columbia Gas Transmission Company
CAG-67.
Omitted
CAG-68.
Docket No. CP88-413-000, Texas Gas Transmission Corporation
CAG-69.
Omitted
CAG-70.

Docket No. CP89-1314-000, East Tennessee Natural Gas Company
Docket Nos. CP89-1866-000 and CP89-1884-000, Chattanooga Gas Company
Docket No. CP88-28-003, Nora Transmission Company

CAG-71.
Omitted

CAG-72.
Docket No. CP89-378-000, Transco Gas Supply Company

CAG-73.
Docket No. CP89-256-000, Transcontinental Gas Pipe Line Corporation

CAG-74.
Docket No. CP88-301-000, Texas Eastern Transmission Corporation

CAG-75.
Docket No. CP89-783-000, Panhandle Eastern Pipe Line Company

CAG-76.
Docket Nos. CP89-1122-000 and CP79-251-000, El Paso Natural Gas Company

CAG-77.
Docket Nos. CP89-1280-000 and CP86-17-000, Colorado Interstate Gas Company

CAG-78.
Docket No. CP87-92-006, Texas Eastern Transmission Corporation

CAG-79.
Docket No. RP89-255-000, Texas Eastern Transmission Corporation

CAG-80.
Docket No. CP89-1721-000, Southern Natural Gas Company

CAG-81.
Docket Nos. RP89-45-000, RP89-127-000 and RP89-193-000, ANR Pipeline Company

CAG-82.
Docket No. TA89-1-24-001, Equitrans, Inc.

CAG-83.
Docket Nos. CP88-464-001 and CP88-509-001, Michigan Consolidated Gas Company-Utility Division
Docket No. CP89-1233-001, CNG Transmission Corporation v. Michigan Consolidated Gas Company-Utility Division

CAG-84.
Docket No. CP89-509-001, National Fuel Gas Supply Corporation

I. Licensed Project Matters

P-1.
Project Nos. 8142-005, 006, 007 and 014, Henwood Associates, Inc. Order on rehearing of May 2, 1989 order.

II. Electric Rate Matters

ER-1.
Docket No. EC89-5-001, Southern California Edison Company and San Diego Gas and Electric Company. Order on rehearing.

Miscellaneous Agenda

M-1.
Docket No. RM87-33-001, Hydroelectric Relicensing Regulations Under the Federal Power Act. Order on rehearing of Final Rule.

M-2.
Docket No. RM89-7-000, Regulations Governing Submittal of Proposed Hydropower License Conditions and Other Matters. Notice of Proposed Rulemaking.

M-3.
Reserved

M-4.
Reserved

M-5.
Omitted

I. Pipeline Rate Matters

RP-1.
Docket Nos. RP85-209-021, RP86-93-007, RP86-158-010, RP86-246-003, RP87-34-007, RP88-8-009, RP88-27-013, RP88-264-005, RP88-92-014, RP88-265-004, RP88-263-010, RP88-42-006, RP89-138-000, CP88-6-004, CP88-440-001, CP87-527-001, CP88-329-001, CP88-478-001 and IN86-5-011, United Gas Pipe Line Company, concerning rehearing of order on settlement.

RP-2.
Docket Nos. RP86-168-000, *et al.*, RP86-15-000, *et al.*, RP87-55-000, *et al.*, RP88-43-000, *et al.*, RP88-56-000, *et al.*, RP88-119-000, RP88-187-000, *et al.*, RP86-207-000, *et al.*, RP89-116-000, CP83-452-034, RP89-181-000, TA81-1-21-000, *et al.*, TA81-1-21-022, TA82-1-21-001, TA82-1-21-024, TA82-1-21-027, TA87-4-21-000, TA87-4-21-002, TA87-5-21-000, *et al.*, TA88-2-21-000, TA89-1-21-000, TC79-127-000, TC86-21-000, TQ88-1-21-000, TQ88-2-21-000, TQ89-1-21-000, TQ89-2-21-000, TQ89-3-21-000, TQ89-4-21-000, TM89-2-21-000, TM89-3-21-000 and TM89-4-21-000, Columbia Gas Transmission Corporation
Docket Nos. RP86-167-000, *et al.*, RP86-14-000, *et al.*, and RP89-94-000, Columbia Gulf Transmission Company, concerning settlement involving restructuring of services and service levels.

RP-3.
Docket Nos. CP88-434-000 and RP88-185-000, El Paso Natural Gas Company, concerning gas inventory charge application.

II. Producer Matters

CI-1.
Reserved

III. Pipeline Certificate Matters

CP-1.
Docket Nos. CP88-6-002 and RP88-8-008, United Gas Pipe Line Company. Order on rehearing of order issuing a blanket certificate authorizing the brokering of pipeline capacity.

Lois D. Cashell,
Secretary.

[FR Doc. 89-25057 Filed 10-19-89; 3:42 pm]
BILLING CODE 6718-21-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice if hereby given that at 2:12 p.m. on Tuesday, October 17, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider matters relating to the possible closing of certain insured banks.

In calling the meeting, the Board determined, on motion of Director Robert L. Clarke (Comptroller of the Currency), seconded by Director M. Danny Wall (Director of the Office of Thrift Supervision), concurred in by Chairman L. William Seidman, 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 by authority of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: October 18, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,
Deputy Executive Secretary.

[FR Doc. 89-24991 Filed 10-19-89; 11:33 am]
BILLING CODE 6714-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-89-35]

TIME AND DATE: Friday, October 27, 1989 at 10:00 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, D.C. 20436.

STATUS: Open to the public:

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
   a. Certain Aramid Fiber Honeycomb; Unexpanded Block or Slice Precursor of such Aramid Fiber Honeycomb; and Carved or Contoured Blocks or Bonded Assemblies of such Aramid Fiber Honeycomb (D/N 1529)
   b. Certain Bath Accessories (D/N 1530)
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Dated: October 18, 1989.

Kenneth R. Mason,
Secretary.

[FR Doc. 89-25001 Filed 10-19-89; 11:33 am]
BILLING CODE 7020-02-M

Corrections

Federal Register
Vol. 54, No. 203
Monday, October 23, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP89-2064-000, et al.]

Colorado Interstate Gas Company, et al.—Natural Gas Certificate Filings

Correction

In notice document 89-23504 beginning on page 41139 in the issue of Thursday, October 5, 1989, make the following correction:

On page 41143, in the second column, under **16. United Gas Pipe Line Company**, the docket number should read "[Docket No. CP89-2164-000]".

BILLING CODE 1505-01-D

SMALL BUSINESS ADMINISTRATION

13 CFR Part 124

Minority Small Business and Capital Ownership Development Program

Correction

In rule document 89-19500 beginning on page 34692 in the issue of Monday, August 21, 1989, make the following correction:

§ 124.318 [Corrected]

On page 34739, in the second column, in § 124.318(b), in the fourth line, "existed" should read "exited".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-010-09-4212-13; CA 23722]

Realty Action; Proposed Land Exchange in Monterey, Fresno and San Benito Counties, CA

Correction

In notice document 89-12892 beginning on page 23289 in the issue of Wednesday, May 31, 1989, make the following correction:

On page 23289, in the second column, under "Selected Public Land", the 31st line should read "Sec. 24, NW¼, W½ NE¼, N½ SW¼, 960.00".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-89-49]

Special Local Regulations for Marine Events; Trump Castle World Championships; Atlantic Ocean, off Atlantic City, NJ

Correction

In proposed rule document 89-18445 beginning on page 32453 in the issue of Tuesday, August 8, 1989, make the following correction:

§ 100.35-0549 [Corrected]

On page 32454, in the third column, in § 100.35-0549(a) introductory text, in the last line, "39°25.8" should read "39°24.8"

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-181-AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

Correction

In proposed rule document 89-22710 beginning on page 39394 in the issue of Tuesday, September 26, 1989, make the following correction:

§ 39.13 [Corrected]

On page 39395, in the third column, in § 39.13, under "Airbus Industrie", in the third line, "A300-75-157" should read "A300-57-157".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. NM-181-AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

Correction

In proposed rule document 89-22711 beginning on page 39396 in the issue of Tuesday, September 26, 1989, make the following correction:

§ 39.13 [Corrected]

On page 39398, in the first column, in paragraph E.2.a. in the third line, "13,000" should read "13,100".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-131-AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

Correction

In proposed rule document 89-21817 beginning on page 36241 in the issue of Friday, September 15, 1989, make the following correction:

§ 39.13 [Corrected]

On page 36242, in the third column, in the first paragraph, in the last line, "1,500" should read "11,500".

BILLING CODE 1505-01-D

federal register

Monday
October 23, 1989

Part II

Department of Education

34 CFR Parts 200, 201, and 203

Chapter 1—Migrant Education Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 200, 201, and 203

RIN 1810-AA48

Chapter 1—Migrant Education Program

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The U.S. Secretary of Education (Secretary) issues final regulations implementing Subpart 1 of Part D, Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended, which provides financial assistance to State educational agencies to meet the special educational needs of migratory children. In implementing Subpart 1, the Secretary makes applicable appropriate portions of the Education Department General Administrative Regulations (EDGAR).

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of §§ 201.11, 201.13, 201.16, 201.17, 201.20, 201.25, 201.30, 201.35, 201.36, 201.44, 201.47, 201.51, 201.52, 201.55, and 201.56. Sections 201.11, 201.13, 201.16, 201.17, 201.20, 201.25, 201.30, 201.35, 201.36, 201.44, 201.47, 201.51, 201.52, 201.55, and 201.56 will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Mr. Joseph P. Bertoglio, Office of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2145, FOB #6, Washington, DC 20202-6135. Telephone: (202) 732-4758.

SUPPLEMENTARY INFORMATION:

Background

On April 28, 1988, the President signed into law the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Pub. L. 100-297. Principal themes of this new legislation are the promotion of access to quality education for educationally disadvantaged students and excellence in education for the Nation as a whole.

In keeping with these themes, title I of the Hawkins-Stafford Act amends the Elementary and Secondary Education Act of 1965 (ESEA) to include a number of new and reauthorized Federal education programs. One of these programs is Chapter 1 of title I of the ESEA, which reauthorizes programs previously contained in chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA). Subpart 1 of part D of Chapter 1, which these regulations implement, provides financial assistance to State educational agencies to meet the special educational needs of migratory children of migratory agricultural workers or migratory fishers. This assistance is provided to improve the educational opportunities of those children by helping them succeed in the regular school program, attain grade-level proficiency, and improve their achievement in basic and more advanced skills.

On January 26, 1989, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (54 FR 3924). The preamble to the NPRM included discussion of the provisions enacted by the Congress to strengthen and improve the program. The preamble also included a summary of other significant changes resulting from reauthorization.

Major Changes from the NPRM

In response to the Secretary's invitation in the NPRM, the Department received 4,829 letters from State and local educational agency officials, teachers, parents, students, organizations, and members of Congress. The comments addressed significant issues that concerned nearly all aspects of funding, planning, designing, implementing, and evaluating State programs and local projects under this part. Many commenters expressed concern for what they perceived as the NPRM's inadequate adaptation of general Chapter 1 statutory requirements to the special character and nature of the Migrant Education Program. Others objected to what appeared to them to be a proposal to transform the program into one that operated at the local, rather than the State, level. Many commenters requested changes in the proposed regulations to rectify these and other concerns so that, from their perspective, the final regulations would be more appropriate for the Migrant Education Program.

In these final regulations, the Secretary has considered these comments and responded in ways that balance the concerns of State and local school officials, parents, and others with the statutory purposes of the program and the needs of the migratory children to be served. The following sections provide a brief summary of the final regulations that are significantly different from the regulations proposed in the NPRM.

Submission of a Project Application to the SEA (§ 201.17)

As proposed, the regulations would have required, among other things, a general description of the project a local educational agency (LEA) would conduct. In keeping with the special character of the Migrant Education Program, and the statutory priority on statewide services to currently migratory children, the final regulations also require the LEA or other operating agency to provide separate narrative and budget information on services needed to address the unmet needs of currently migratory children residing within the area served by the project. The State educational agency (SEA) will use this information to ensure that the amount of its subgrants throughout the State (§ 201.25) is at least enough to pay the cost of projects designed to meet the unmet needs of all significant concentrations of currently migratory children.

Other changes involved information regarding the LEA's compliance with the maintenance of effort and comparability requirements. Section 201.17(c)(1) would have required the LEA annually to update its application by submitting data showing it had maintained fiscal effort. In response to a numher of comments concerned with data burden, the regulations have been revised to require submission of the data only if the SEA does not already have that information.

Furthermore, the proposed § 201.18(a)(2) (Approval of a project application for a subgrant) would have required that before it could approve an application for a subgrant, an SEA had to determine that the LEA's salary structure, if implemented, would result in compliance with the comparability requirement in § 201.44. These regulations delete that provision and instead require only that an LEA that applies for a subgrant under § 201.17 have on file with the SEA a written assurance that it has established and implemented district-wide salary schedules, which ensure that migratory children will be provided comparable levels of services from State and local funds.

Amount Available for an SEA Grant (§ 201.20)

1. Proposed Changes in Summer School Adjustment

There are two major changes concerning the amount available for a grant. First, the proposed regulations would have required a new two-tier system for making adjustments in the statistics the Migrant Student Record Transfer System (MSRTS) generates for the Secretary on the number of migratory children estimated annually to reside in a State on the basis of the number of children enrolled in summer school programs. As proposed, children participating in non-intensive instructional projects would have generated only half the supplemental residency credit as children participating in intensive instructional projects, with the definition of "instructional" project tied to a minimum number of hours of daily or weekly instruction.

Under section 1201 of the Act, the count of each State's migratory children affects the size of its allocation of program funds and of the allocation of funds to each of the other States. Reactions to the Secretary's proposal were varied and intense. Many felt that it did not sufficiently address the needs of SEAs that operate intensive summer school projects, principally for currently migratory children. Many others felt that the proposal would undermine innovative State summer programs that had proven worthwhile. Still others generally favored the proposal. Commenters on both sides favored caution and further study. In response to the comments, the Secretary has withdrawn the proposed summer school formula rule so that the issue can be further reviewed within the framework of developing one that is better keyed to the summer school needs of currently migratory children. The Secretary anticipates that this effort will culminate in the publication of another proposed summer school adjustment formula. Until a new proposal is developed, the Department will maintain the current formula that assigns equal credit to all migratory children based on the number of days they are enrolled in any SEA summer school project.

2. Special Enrollment Procedures for Children Recruited at Stopover Sites

The proposed regulations also provided that children enrolled in MSRTS at stopover sites while they are en route to other locations could be enrolled as residents of the stopover State only for the limited period of residency at the project site.

Many commenters favored the proposal as a way to prevent States that operate projects at stopover sites from reaping financial rewards through the allocation system, which credits the State for child residency if children recruited at the sites are not recruited in the States to which they move. Other commenters felt strongly that the stopover sites were being singled out unfairly since their recruitment and enrollment practices comport with the nationwide system for assigning residency credit to each State, and that the projects provided so many benefits that their continued funding was imperative. In response to comments, the Secretary has adopted the proposal in the final regulations, but with clarifying language that would limit its applicability to situations in which the "other locations" are in other States.

In addition the Secretary intends, in consultation with and with the approval of the States, to seek continued funding for the stopover site projects through grants or contracts provided under section 1203 of the Act, the Migrant Education Coordination Program.

3. Five Percent Rate of Error in Eligibility Determinations

The proposed regulations further provided that, for purposes of determining State allocations, the data SEAs submit on their migratory children not exceed five percent of the total number of children the SEA identified as State residents. In response to a number of comments, the error rate provision has been deleted from § 201.20 but retained in § 201.30 with new language that clarifies that the SEA is responsible for monitoring its own determinations to ensure that the number of ineligible students the SEA has enrolled in the MSRTS does not exceed a five percent margin of error.

Amount of Subgrant (§ 201.25)

The proposed regulations would have required an SEA to emphasize, in calculating the amount of its LEA subgrants, the numbers and needs of currently migratory children whom the LEA would serve, and the costs of project activities the LEA would implement to meet their needs. Many commenters objected to any special requirement that the needs of currently migratory children be specifically considered in determining the amount of a subgrant. While rejecting the proposal that an SEA can legitimately tie the subgrant amount to the total number of migratory children, currently and formerly, who reside in the project area, the Secretary has revised § 201.25 to permit an SEA flexibility in calculating subgrants, provided it has ensured that operating agencies in the State have sufficient funds to pay the costs of projects designed to meet the unmet needs of all significant concentrations of the State's currently migratory children.

Service Priorities (§ 201.31)

The proposed regulations would have retained the existing requirement that all currently migratory children be given priority over formerly migratory children in the receipt of all Migrant Education Program services. Commenters stated that the proposal imposed undesirable rigidity in the program by precluding the provision of services to formerly migratory children with plainly greater needs than currently migratory children. In response, § 201.31 has been revised to repeat the statutory requirement that currently migratory children be given priority "in consideration of programs and projects" that are offered to migrant students. This new provision is then incorporated by reference into § 201.32 (Annual needs assessment) to permit projects to be designed around these migratory children plainly in greatest need.

Annual Needs Assessment (§ 201.32)

Many commenters stated that, as proposed, § 201.32 inappropriately required that all migrant education projects assess needs on the basis of educationally related objective criteria even though, because of student mobility and the kinds of summer school projects in which migrant students enroll, these forms of objective criteria cannot feasibly be used. In response, § 201.32 reiterates that all projects assess needs on the basis of educationally related objective criteria, but projects serving currently migratory children do not have to rely upon the results of written or oral tests, if it is not reasonably possible to use them. In order to avoid the need, in some projects, for constantly assessing individual student's needs, § 201.31 also clarifies that projects that serve currently migratory children may assess needs only during periods of peak enrollment.

State Rulemaking and Other SEA Responsibilities (§ 201.46)

Many commenters interpreted proposed requirements in § 201.46 on State rulemaking procedures and limitations as undermining the Migrant Education Program as a State-operated program. Commenters expressed strong reservations about the new authority they believed the regulations gave to individual LEAs over operation of the

program. While the proposed regulations stemmed from section 1451 of the Act, which applies on its face to all Chapter 1 programs, commenters argued that the proposed regulations were far more prescriptive than appropriate in view of the requirement in section 1202(a)(3) of the Act that only the provision's "basic objectives" should apply to the Migrant Education Program.

As proposed, § 201.46(c) did provide that the limitations on State rulemaking would apply unless State regulations or policies are needed to implement SEA responsibilities in the approved State application, the Chapter 1 statute, or program regulations. The Secretary believes that, as drafted, this exception to the section 1451 limitations was sufficient to permit SEAs to continue operating the Migrant Education Program, unimpeded, as a State-operated program. However, § 201.46 has been further modified to clarify the applicability of the section 1451 limitations only to matters that the SEA, which by law operates the State's migrant education programs and projects, has reserved for LEA decisionmaking.

Evaluation (§§ 201.51 Through 201.56)

While recognizing the special nature of migratory student population, the proposed regulations would have required specific and detailed evaluation assessments and data collection procedures very similar to those required of LEAs for their basic chapter 1 program. In response to comments, the regulations concerning evaluation have been revised to provide greater flexibility in measuring the educational progress of migratory students. For example, they permit instructional projects serving students enrolled throughout the school year to use the results of national or State normed achievement tests without regard to an appropriate non-project comparison group. For other projects, while use of a non-project comparison group is still necessary, use of testing instruments is only required if it is feasible to do so.

Applicability of EDGAR (§ 201.2)

In order to provide additional guidance and to ensure that Chapter 1 funds are spent only for authorized program purposes, the Secretary proposed to make certain provisions of the Education Department General Administrative Regulations (EDGAR) applicable to programs under this part and has determined that in the final regulations those provisions will apply to programs under this part.

In determining which provisions of EDGAR will apply, the Secretary carefully balanced the need for basic program accountability with the important principle of minimum Federal interference in State and local affairs. In particular, the final regulations allow States to use their own procedures to ensure accountability with respect to matters governed by two Office of Management and Budget (OMB) circulars: A–102 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), currently codified for programs of the Department of Education in 34 CFR part 80; and A–87 (Principles for Determining Costs Applicable to Grants and Contracts with State and Local Governments) as amended on January 28, 1981. Only if a State chooses not to apply its own procedures would the provisions in these circulars apply to the Chapter 1—Migrant Education Program.

If a State wishes to use its own procedures instead of those in the two OMB circulars as implemented in EDGAR, its procedures must meet the three general criteria in § 201.2(a)(4). The State's procedures do not have to be submitted to the Secretary for approval, but must be available for Federal inspection. If a State did not implement its own written requirements by July 1, 1989, but wishes to develop them, the requirements in part 80 will apply until the State's written requirements are adopted. In the event a State's requirements are determined to be insufficient, the enforcement provisions in part E of the General Education Provisions Act (GEPA) apply, including the due process provisions in that part.

The Secretary wishes to emphasize that States have complete discretion, provided they meet the general criteria in § 201.2, to use their own procedures instead of the procedures in the two OMB circulars. Moreover, Circular A–102 has recently been revised to permit States to apply their own procedures to implement that circular, thereby giving them considerable flexibility in determining appropriate standards for accountability at the local level. Circular A–87 is currently being revised.

In addition, the final regulations make applicable specified provisions in part 76 (State-Administered Programs); part 77 (Definitions that Apply to Department Regulations); part 78 (Education Appeal Board); part 79 (Intergovernmental Review of Department of Education Programs and Activities); part 81 (General Education Provisions Act—Enforcement); and part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)). Parts 79 and 85 were inadvertently omitted from the NPRM for this program. The Secretary believes that these regulations are the minimum necessary for ensuring basic accountability without imposing undue paperwork and additional administrative burdens on SEAs and LEAs.

Several of the applicable provisions in part 76 contain cross-references to 34 CFR part 74, which was superseded by part 80 on October 1, 1988 with respect to State and local governments. The outdated cross-references in part 76 to part 74 (now part 80) are not intended to make any provisions of part 80 applicable to programs under this part that a State has not, on its own, decided to apply.

Technical Amendments to Parts 200 and 203

The regulations in part 200 (Chapter 1 Program in Local Educational Agencies) and part 203 (Chapter 1 Program for Neglected or Delinquent Children) are amended to reflect the applicability of part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)). A discussion of how part 85 applies to these programs is included in the appendix to these regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 4,829 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix to these final regulations. Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Executive Order 12606

The Secretary certifies that these regulations have been reviewed in accordance with Executive Order 12606 and that they do not have a significant

negative impact on family formation, maintenance, and general well-being. To the contrary, the Chapter 1—Migrant Education Program supports and strengthens the family by containing strong parental involvement requirements. Specifically, an SEA and its LEAs must develop, in coordination with parents of participating children in regular school year programs, activities and procedures to: inform parents about the Chapter 1—Migrant Education Program; support the efforts of parents, including training parents to work with their children at home; train teachers and other staff to work effectively with parents; consult with parents on an ongoing basis; and provide opportunities for the full participation of parents who lack the literacy skills or whose native language is not English. Migrant Education Program funds may be used to support these activities.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Waiver of Proposed Rulemaking

These regulations include amendments to final regulations in 34 CFR part 200 (Chapter 1 Program in Local Educational Agencies) and 34 CFR part 203 (Chapter 1 Program for Neglected or Delinquent Children) referencing the applicability of 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)) to those parts. These amendments were not published with the notice of proposed rulemaking.

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, part 85 applies to parts 200 and 203 as a matter of law. Therefore, the Secretary has determined, under 5 U.S.C. 553(b)(B), that proposed rulemaking on the amendments to §§ 200.5 and 203.5 is unnecessary and contrary to the public interest.

List of Subjects

34 CFR Part 200

Administrative practice and procedure, Elementary and secondary education, State-administered programs.

34 CFR Part 201

Children, Coordination, Education, Eligibility, Evaluation, Grant programs—education, Identification and recruitment, Local educational agencies, Migrant student record transfer system, Migratory children, Migratory workers, Needs assessment, Priorities, Reporting and recordkeeping requirements, Special educational needs, State educational agencies, Subgrants.

34 CFR Part 203

Education of disadvantaged, Juvenile delinquency, Neglected.

Dated: October 13, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.010, Chapter 1 Program in Local Educational Agencies; 84.011, Migrant Education Basic State Formula Grant Program; and 84.013, Chapter 1 Program for Neglected or Delinquent Children.)

The Secretary amends title 34 of the Code of Federal Regulations by amending parts 201, 200, and 203 as follows:

1. The title, table of contents, and authority citation for part 201 are revised to read as follows:

PART 201—CHAPTER 1—MIGRANT EDUCATION PROGRAM

Subpart A—Applying for Chapter 1 Migrant Education Programs Funds

Authority: 20 U.S.C. 2761–2782, unless otherwise noted.

2. In § 201.1, paragraph (a) is amended by adding "(including migratory agricultural dairy workers)" after the word "workers" and the undesignated introductory text and authority citation are revised to read as follows:

§ 201.1 Purpose.

The Migrant Education Program, authorized by sections 1201 and 1202 of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 is designed to—

* * * * *

(Authority: 20 U.S.C. 2781)

3. Section 201.2 is revised to read as follows:

§ 201.2 Regulations that apply.

The following regulations apply to the Chapter 1—Migrant Education Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 76 (State-Administered Programs) as follows:

(i) Subpart A (General), except for § 76.3 (ED general grant regulations apply to these programs).

(ii) Sections 76.125 through 76.137 (Consolidated Grant Applications for Insular Areas).

(iii) Section 76.401 (Disapproval of an application—opportunity for a hearing).

(iv) Subpart F (What Conditions Must be Met by the State and its Subgrantees?), except for the following sections:

(A) Sections 76.580 through 76.581 (Coordination).

(B) Sections 76.650 through 76.662 (Participation of Students Enrolled in Private Schools).

(C) Section 76.684 (Day care services).

(D) Section 76.690 (Energy conservation awareness).

(v) Subpart G (What Are the Administrative Responsibilities of the State and Its Subgrantees?), except for the following sections:

(A) Sections 76.770 through 76.772 (State Administrative Responsibilities).

(B) Section 76.780 (A State shall adopt complaint procedures).

(C) Section 76.781 (Minimum complaint procedures).

(D) Section 76.782 (An organization or individual may file a complaint).

(vi) Subpart H (What Procedures Does the Secretary Use to Get Compliance?).

(2) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR part 78 (Education Appeal Board).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), unless a State formally adopts its own written fiscal and administrative requirements for expending and accounting for all funds received by SEAs and LEAs under this part. These requirements must be available for Federal inspection and must—

(i) Be sufficiently specific to ensure that funds received under this part are used in compliance with all applicable statutory and regulatory provisions;

(ii) Ensure that funds received under this part are only spent for reasonable and necessary costs of operating programs under this part; and

(iii) Ensure that funds received under this part are not used for general expenses required to carry out other responsibilities of State or local governments.

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements For Drug-Free Workplace (Grants)).

(b) The regulations in this part 201.

Authority: 20 U.S.C. 2781, 2831)

4. In § 201.3, paragraph (a) is revised; paragraph (b) is amended by adding new introductory language; in the definition of "Formerly migratory child", the word "and" is added at the end of paragraph (1), paragraph (2) is removed, and paragraph (3) is redesignated as paragraph (2); the definition of "Migratory agricultural worker" is amended by adding the words "(including dairy work)" before the period at the end of the definition; new definitions for "Act", "Chapter 1", "Children", "Fiscal Year", and "Preschool children" are added in alphabetical order; and the authority citation is revised to read as follows:

§ 201.3 Definitions for this program.

(a) *Definitions in the Elementary and Secondary Education Act.* The following terms used in this part are defined in section 1471 of the Act:

Equipment
Free public education
Local educational agency (LEA)
Parent
Parent advisory council
Secretary
State educational agency (SEA)

(b) *Other definitions.* In addition to the terms defined in the applicable regulations listed in § 201.2, or referred to in paragraph (a) of this section, the following definitions apply to this part:

Act means Elementary and Secondary Education Act of 1965, as amended.

* * * * *

Chapter 1 means Chapter 1 of Title 1 of the Act.

Children means—

(1) Persons up through age 21 who are entitled to a free public education through grade 12: and

(2) Preschool children.

Fiscal Year means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30—or another 12-month period normally used by the SEA for recordkeeping.

* * * * *

Preschool children means children who are—

(1) Below the age and grade level at which the agency provides free public education; and

(2) Of the age or grade level at which they can benefit from an organized instructional program provided in a school or instructional setting.

(Authority: 20 U.S.C. 2781, 2782, 2831)

5. Section 201.10(a) is amended by adding the words "subgrants or other" after the words "or through" and revising the authority citation for § 201.10 to read as follows:

(Authority: 20 U.S.C. 2781)

6. Section 201.11 is amended by redesignating paragraph (b) as paragraph (c) and revising the second sentence of newly designated paragraph (c) to read: "During subsequent years, the SEA's application must incorporate any updating reports arising from significant changes in the number or needs of children to be served, or the services to be provided.", by revising paragraph (a), adding new paragraphs (b) and (d), and revising the authority citation to read as follows:

§ 201.11 Documents an SEA must submit to receive a grant.

(a) *General.* An SEA that wishes to receive funds under this part for an SEA program designed to meet the special educational needs of migratory children shall submit and annually update an application to the Secretary that meets the requirements in section 1202(a) of the Act.

(b) *SEA assurances.* The SEA shall also provide assurances, which will remain in effect for the duration of its participation in the program under this part, that the SEA will—

(1) Meet the requirements in section 435(b)(2) and (5) of the General Education Provisions Act (GEPA) as they relate to fiscal control and fund accounting procedures;

(2) Meet the requirements of section 1202(a)(5) of Chapter 1 that provision be made for the preschool educational needs of migratory children;

(3) Carry out the evaluation requirements in §§ 201.51 through 201.56; and

(4) Ensure that its subgrantee agencies comply with all applicable statutory and regulatory requirements.

* * * * *

(d) *Further updating of information in the application.* If, during the course of

the project year, there are significant changes in number or needs of the children to be served or the services to be provided, the SEA shall submit a description of those changes to the Secretary together with the impact of the changes on the chapter 1 migrant education budget, program, and projects.

(Authority: 20 U.S.C. 1232d(b)(2), (5), 2722, 2729(b), 2781, 2782, 2731, 2838(c))

§ 201.12 [Removed and Reserved]

7. Section 201.12 is removed and reserved.

§ 201.13 [Amended]

8. The authority citation for § 201.13 is revised to read as follows:

(Authority: 20 U.S.C. 2781, 2782)

§ 201.16 [Amended]

9. Section 201.16 is amended by removing "LEA" in the heading and the text and adding, in its place, the words "operating agency", adding the words "developed in consultation with teachers and parents, and that is" before the word "specific", and revising the authority citation to read as follows:

(Authority: 20 U.S.C. 2722, 2781)

10. Section 201.17 is amended by revising the section heading, paragraphs (a), (b), (c)(1), and the authority citation to read as follows:

§ 201.17 Submission of a project application to the SEA.

(a) *Frequency of submission.* An LEA, or other operating agency, shall submit a project application to the SEA for a period of not more than three fiscal years, including the first fiscal year for which a subgrant would be made under that application.

(b) *Contents of the application.* The project application must include—

(1) Information consistent with the SEA's approved application regarding—

(i) The operating agency's separate annual assessments of the educational needs of its currently and formerly migratory children and the selection of children with the greatest needs (consistent with the service priorities in § 201.31);

(ii) A description of the local Chapter 1 migrant education project to be conducted and how those projects will meet the general instructional program goals the SEA has established. The description must contain—

(A) A separate summary of the project's components that are designed to meet the unmet needs of the currently migratory children expected to be served; and

(B) An estimate of the number of currently migratory children expected to participate in each component; and

(iii) A description of the desired outcomes in terms of basic and more advanced skills that participating children are expected to master and in terms of related support services the LEA will provide;

(2) A budget for the expenditure of Chapter 1—Migrant Education Program funds that, to the extent possible, separately summarizes the estimated costs of project components that would benefit the currently migratory children the agency plans to serve;

(3) Assurances that—

(i) The programs and projects described in the application have been planned and will be carried out in a manner consistent with the requirements in §§ 201.35 and 201.36; and

(ii) If appropriate, the agency has established procedures to ensure comparability of services as required by § 201.44;

(4) The assurances in section 436(b)(2) and (b)(3) of GEPA as they relate to fiscal control and fund accounting procedures; and

(5) Information the SEA needs to ensure that—

(i) The operating agency's project comports with activities described in the SEA's approved application submitted under § 201.11;

(ii) The operating agency complies with the assurances in paragraphs (b)(3) and (c)(1) of this section; and

(iii) The SEA has data, if those data are not otherwise available to the SEA, that the LEA has maintained effort in accordance with § 201.41.

(c) * * *

(1) Data showing that the LEA, if it annually provided services for migratory children, has maintained fiscal effort under § 201.41, if those data are not otherwise available in the SEA;

* * * * *

(Authority: 20 U.S.C. 2722, 2781, 2782)

11. Section 201.18 is amended by revising paragraph (a) and the authority citation to read as follows:

§ 201.18 Approval of a project application for a subgrant.

(a) *Standards for approval.* An SEA may approve an LEA's, or other operating agency's, application for a subgrant only if—

(1) The application meets the requirements of § 201.17 and is consistent with the content of the approved SEA application; and

(2) The SEA first determines that the LEA—

(i) Maintained fiscal effort in accordance with § 201.40; or

(ii) If the LEA failed to maintain fiscal effort, has modified or updated its application to take into account any required reduction in the indirect costs that otherwise could be charged to its subgrant.

* * * * *

(Authority: 20 U.S.C. 2781, 2782, 2831)

12. Section 201.20 is amended by removing "141 of Title I" in paragraph (a)(1), and adding, in its place, "1201 of Chapter 1 and the funds appropriated for grants to States under that section"; removing "141(b)(1) of Title I" in paragraph (a)(2), and adding, in its place, "1201(b)(1) of Chapter 1"; removing the words "children aged five to seventeen" in paragraph (a)(2), and adding, in their place, the words "children (as defined in § 201.3) aged three through twenty-one"; adding a new paragraph (a)(3); removing "141(b) of Title I" in paragraph (b), and adding, in its place, "1201(b) of Chapter 1"; and revising the authority citation to read as follows:

§ 201.20 Amount available for an SEA grant.

(a) * * *

(3) If, regardless of funding source, a project exists that is designed to assist migrant families who are in transit to locations in other areas to obtain temporary or seasonal employment in an agricultural or fishing activity, the SEA may enroll migratory children who pass through the project site in the MSRTS or other system as a resident of the project's State only as follows:

(i) For a child in transit to a location in another State where the employment will be sought, the SEA may enroll the child as a resident of the SEA's own State only for the period the child resides at the project site.

(ii) For a child in transit to a location within its own State where employment will be sought, the State may enroll the child as a resident of the SEA's own State without restriction.

* * * * *

(Authority: 20 U.S.C. 2781, 2782, 2831)

13. In § 201.21, paragraph (b)(2) is amended by removing "554(a)(2) of Chapter 1 or Section 141 of Title I" and adding, in its place, "1201 of Chapter 1" and the authority citation is revised to read as follows:

(Authority: 20 U.S.C. 2781, 2782)

14. The authority citation for § 201.22 is revised to read as follows:

(Authority: 20 U.S.C. 2781, 2782)

15. Section 201.23 is revised to read as follows:

§ 201.23 Amount available for State administration.

(a) Except for programs under Part C of Chapter 1 and as provided in paragraph (b) of this section, an SEA shall use funds received under section 1404(a) of the Act for the proper and efficient performance of its duties under Chapter 1.

(b) The SEA may not use more than 15 percent of the funds referred to in paragraph (a) of this section for indirect costs.

(Authority: 20 U.S.C. 2781, 2782, 2824)

16. The authority citation for § 201.24 is revised to read as follows:

(Authority: 20 U.S.C. 2782)

17. Section 201.25 is revised to read as follows:

§ 201.25 Amount of a subgrant.

(a) In determining the amount of a subgrant to an LEA or other operating agency, the SEA shall first consider the relative needs of all operating agencies in the State that would operate migrant education projects in terms of—

(1) The numbers of currently and formerly migratory children with identified special educational needs who reside within the area served by the LEA, or other agency, in sufficient concentrations to warrant implementation of a migrant education project designed to meet those needs; and

(2) The nature, scope, and cost of the proposed projects designed to meet the needs of these currently migratory children, as described in the operating agency's approved subgrant application;

(b) Before distributing any Migrant Education Program funds to pay the supplemental costs of projects that arise because of the participation of formerly migratory children, the SEA shall ensure that the amount of each sub-grant to be awarded will be at least enough to pay the costs of projects designed to meet the unmet special educational needs of all significant concentrations of currently migratory children residing in the areas the LEA serves.

(c) Provided the amount of each subgrant satisfies the requirement of paragraph (b) of this section, the SEA shall determine the amount of a subgrant to an LEA, using procedures it considers appropriate, based on—

(1) The total number of migratory children who—

(i) Are expected to be served by the project; or

(ii) Are estimated to reside in the area served by the agency that operates the project;

(2) The nature, scope, and cost of the proposed project;

(3) The availability of funds and services from other sources; and

(4) Any other relevant criteria developed by the SEA, consistent with the service priorities in § 201.31, including the SEA's priorities concerning ages and grade levels of children to be served, areas of the State to be served, and types of services to be provided.

(Authority: 20 U.S.C. 2781, 2782, 2831)

18. Section 201.30 is amended by removing the last sentence of paragraph (b), adding new paragraphs (c), (d), and (e), and revising the authority citation to read as Follows:

§ 201.30 Eligibility of a child to participate.

* * * * *

(c) The SEA and its operating agencies are responsible for implementing procedures that ensure the correctness of the information on which they and the MSRTS or other system rely. In doing so, the SEA shall—

(1) Ensure that the information is recorded on any certificate of eligibility, including the one developed by the Secretary, that contains the minimum information needed to determine eligibility. If the child's eligibility was determined under § 201.20(a)(3)(i) (relating to recruitment at special stopover sites), the SEA shall also record the length of time the child was expected to reside at the stopover site; and

(2) Implement a process to ensure that the completed certificate of eligibility contains accurate information in sufficient detail to explain to an independent reviewer the basis for the determination that the child is a currently or formerly migratory child under § 201.3.

(d) In the event of an audit of the State's eligibility determinations, the Secretary considers those determinations as well as statistics on the full-time equivalent (FTE) number of migratory children residing in the State to be correct if the total number of children whom the SEA has identified as migratory were correctly identified within a five percent margin of error.

(e) In implementing procedures under paragraph (c) of this section, the SEA is responsible for ensuring that no child who is found to be ineligible for the Migrant Education Program is counted as migratory. However, the SEA is not responsible for auditing its determinations for correctness within the five percent margin of error.

(Authority: 2781, 2782, 2831)

19. Section 201.31 is revised to read as follows:

§ 201.31 Service priorities.

(a) Children (aged 3 through 21) who have been determined to be currently migratory must be given priority over formerly migratory children in the consideration of all programs and activities that the SEA, LEA, or other operating agency offers pursuant to its approved application for Migrant Education Program funds.

(b) If, in order to provide migrant education instructional services to preschool and regular school-aged currently migratory children, it would be necessary to provide day care or similar services to children aged two years or younger who are currently migratory children (or migrant education preschool services to currently migratory children three years of age or over who are not enrolled in instructional programs), and no funds—except Chapter 1—Migrant Education Program funds—are available for that purpose, an SEA or an operating agency may provide day care services to those children as if those children had a higher priority than formerly migratory children.

(Authority: 20 U.S.C. 2782)

20. Section 201.32 is revised to read as follows:

§ 201.32 Annual needs assessment.

(a) An SEA and any operating agency that receives Chapter 1 migrant education funds shall design and improve their migrant education programs and projects through use of an annual assessment of educational needs. Subject to the special rules for preschool projects in paragraph (c) of this section, in implementing the annual assessment of educational needs, the SEA or operating agency shall on the basis of the best available information—

(1) Identify migrant children or, if this is not possible, the specific characteristics of the children who are expected to reside in the area served by the SEA or operating agency and who are eligible to be counted as migratory children under § 201.20(a);

(2) Identify the general instructional areas and grade levels in which the program or project will focus;

(3) Establish educational criteria that—

(i) Are consistent with the requirements of paragraphs (b) and (c) of this section; and

(ii) For each grade level and instructional area, will be used to select

migratory children to participate in the program or project;

(4) To the extent possible, uniformly apply the criteria required in paragraph (a)(3) of this section to particular grade levels;

(5) Select for services those migratory children, consistent with the service priorities in § 201.31, who have the greatest need for Migrant Education Program services; and

(6) Determine—

(i) The special educational needs of migratory children expected to participate with sufficient specificity to permit concentration on those needs; and

(ii) The resources, such as personnel, instructional materials, and library resources, necessary to meet those special educational needs.

(b) In formulating and applying the educational criteria pursuant to paragraphs (a) (3) and (4) of this section, the SEA and operating agency—

(1) Shall consider the differing needs, if any, among—

(i) Currently migratory children based on the effect of migrations on the continuity of their education; and

(ii) Formerly migratory children based on the effect of former migrations on their educational development; and

(2) With regard to currently migratory students, may conduct its annual needs assessment on the basis of the latest available information relevant to the needs of the children expected to be present at periods of peak enrollment.

(c) The educational criteria referred to in paragraph (a)(3) of this section must be—

(1) For currently migratory children, the most appropriate educationally related objective criteria including, if reasonably possible, the results of written or oral tests; and

(2) For formerly migratory children, educationally related objective criteria, including the results of written or oral tests.

(d) The SEA or operating agency may skip currently or formerly migratory children in greatest need of special assistance if their special educational needs are being met with services provided under other Federal, State, or local programs.

(e) Only paragraphs (a) (1), (2), and (5), and (d) of this section apply to projects the SEA or operating agency establishes to meet the preschool educational needs of migratory children.

(Authority: 20 U.S.C. 2724, 2782)

§ 201.33 [Removed and Reserved]

21. Section 201.33 is removed and reserved.

22. Section 201.34 is amended by removing "Section 402 of the Job Training Partnership Act of 1982 and under the Community Services Block Grant Act of 1981" and adding, in its place, "section 418A of the Higher Education Act, section 402 of the Job Training Partnership Act, the Education of the Handicapped Act, the Community Services Block Grant Act, the Head Start Program, the Migrant Health Program, and all appropriate programs of the Departments of Education, Labor, and Agriculture", and revising the authority citation to read as follows:

(Authority: 20 U.S.C. 2782)

23. Section 201.35 is revised to read as follows:

§ 201.35 Requirements for parent involvement.

(a) *General.* State and local agencies that receive Chapter 1—Migrant Education Program funds shall design and implement their programs and projects in consultation with the parents of the children to be served, and shall carry out programs, activities, and procedures for the involvement of parents in their migrant education programs and projects.

(b) *Parent advisory councils.* (1) State and local agencies implementing programs extending for the duration of the school year shall establish a parent advisory council. The council must have a majority of members who are parents (or guardians) of children to be served by the migrant education program or projects and, if feasible, who are elected by the parents of children to be served;

(2) The SEA shall establish procedures to ensure that—

(i) The SEA and the State's operating agencies appropriately consult with, and solicit information from, councils representative of parents of migratory children in the planning, operation, and evaluation of a program or local project; and

(ii) Compliance with this provision at the State and local levels is documented annually in the State or local agency's application for funds or updating information.

(c) *Parental involvement.* Each SEA and operating agency shall, in a manner consistent with paragraphs (a) through (c) and (e) of 34 CFR 200.34, involve parents in meaningful consultation in the design and implementation of the programs and projects.

(Authority: 20 U.S.C. 2726, 2782)

24. In Subpart C a new § 201.36 is added to read as follows:

§ 201.36 General program requirements.

In developing and implementing its migrant education program and projects, the SEA shall ensure that—

(a) (1) The children selected for services are those with the greatest need for special assistance—

(i) Consistent with the service priorities in § 201.31; and

(ii) As determined, to the maximum extent possible, using the educational criteria required by § 201.32 (annual needs assessment); and

(2) The special educational needs of these children are sufficiently specified to permit the SEA to concentrate on meeting those needs;

(b) The size, scope, and quality of the program and projects offered are sufficient to give reasonable promise of substantial progress toward meeting the special educational needs of the migrant children being served;

(c) The results of evaluations are used to improve the provision of services to eligible migrant children by either—

(1) Disapproving an application to continue a project in a succeeding year if the project is not making substantial progress toward meeting the educational goals of the project and this part; or

(2) Approving changes in the project that will enable the SEA to meet those goals;

(d) Services are provided to all significant concentrations of eligible migratory children enrolled in private schools, consistent with the service priorities in § 201.31, in accordance with the basic objectives of section 1017 of the Act;

(e) The SEA allocates time and resources for frequent and regular coordination of the curriculum under the migrant education program with the regular instructional program; and

(f) In the case of children participating in the migrant education program who are also of limited English proficiency or are handicapped—

(1) The SEA provides maximum coordination between services provided under the migrant education program and other services that are provided to address children's handicapping conditions or limited English proficiency; and

(2) The SEA's coordination activities are designed to increase program effectiveness, eliminate duplication, and reduce fragmentation of services for migratory children.

(Authority: 20 U.S.C. 2722, 2724, 2729, 2782, 2831)

25. A new subpart D containing §§ 201.40 through 201.50, inclusive, is added to part 201 to read as follows:

SUBPART D—ADMINISTRATIVE AND FISCAL REQUIREMENTS

§ 201.40 Prohibition against using Chapter 1 funds to provide general aid.

An LEA or other operating agency that has received assistance from an SEA may use Chapter 1 funds provided under this part only for projects that are designed and implemented to meet the special educational needs of migratory children who are identified and selected for services in accordance with the provisions in this part.

(Authority: 20 U.S.C. 2781, 2782)

§ 201.41 Maintenance of effort.

(a) (1) *Basic standard.* Before an SEA may provide an LEA a subgrant for the operation of a migrant education project, the SEA must find either that the LEA's combined fiscal effort per student or its aggregate expenditures of State and local funds with respect to the provision of free public education for the preceding fiscal year was not less than 90 percent of the LEA's combined fiscal effort per student or the aggregate expenditures of State and local funds for the second preceding fiscal year.

(2) *Meaning of preceding fiscal year.* For purposes of determining maintenance of effort, the "preceding fiscal year" is the Federal fiscal year, or 12-month period most commonly used in a State for official reporting purposes, prior to the beginning of the Federal fiscal year in which funds are available.

Example: For funds first made available on July 1, 1989, if a State is using the Federal fiscal year, "the preceding fiscal year" is the Federal fiscal year 1988 (which began on October 1, 1987) and the "second preceding fiscal year" is fiscal year 1987 (which began on October 1, 1986). If a State is using a fiscal year that begins on July 1, 1989, the "preceding fiscal year" is the 12-month period ending on June 30, 1988 and the "second preceding fiscal year" is the 12-month period ending on June 30, 1987.

(3) *Expenditures*—(i) *To be considered.* In determining an LEA's compliance with the maintenance of effort requirement, the SEA shall consider the LEA's expenditures from State and local funds for free public education. These include expenditures for administration, instruction, attendance, health services, pupil transportation, plant operation and maintenance, fixed charges, and net expenditures to cover deficits for food services and student body activities.

(ii) *Not to be considered.* The SEA may not consider the following expenditures in determining the LEA's compliance with the maintenance of effort requirement:

(A) Any expenditures for community services, capital outlay, or debt service.

(B) Any expenditures made from funds provided under Chapter 1 and Chapter 2 of Title I of the Act or Chapter 1 and Chapter 2 of the ECIA.

(b) *Failure to maintain effort.* (1) If an LEA fails to maintain effort as provided in paragraph (a) of this section, and a waiver under § 201.42 is not granted, the SEA shall reduce the LEA's subgrant with respect to the amount allowed for its indirect costs under 34 CFR 76.563 by 50 percent.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year in which the LEA failed to maintain effort, the SEA shall consider the LEA's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the LEA) for the third preceding fiscal year.

Example: In Federal fiscal year 1990, an LEA fails to maintain effort because its fiscal effort in the preceding fiscal year (1988) (see example in paragraph (a)(2) of this section) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1987). In assessing whether the LEA maintained effort during the next fiscal year (1991), the SEA may consider the LEA's fiscal effort in the second preceding fiscal year (1988) (the year that caused the LEA's failure to maintain effort) to be no less than 90 percent of the LEA's expenditure in the prior fiscal year (1987).

(Authority: 20 U.S.C. 2728, 2782, 2831)

§ 201.42 Waiver of the maintenance of effort requirement.

(a) (1) An SEA may waive, for one fiscal year only, the maintenance of effort requirement applying to an LEA in § 201.41, if the SEA determines that a waiver would be equitable due to exceptional or uncontrolled circumstances. These circumstances include, but are not limited to, the following:

(i) A natural disaster.

(ii) A precipitous and unforeseen decline in the financial resources of the LEA.

(2) An SEA may not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(b) (1) If the SEA grants a waiver under paragraph (a) of this section, the SEA may not reduce the amount of migrant education funds the LEA is otherwise entitled to receive.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year for which the waiver was granted, the SEA shall consider the LEA's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the LEA) for the third preceding fiscal year.

Example: In fiscal year 1990, an LEA secures a waiver because its fiscal effort in the preceding fiscal year (1988) (see example in § 201.41 (a)(2)) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1987) due to exceptional or uncontrollable circumstances. In assessing whether the LEA maintained effort during the next fiscal year (1991), the SEA may consider the LEA's expenditures for the second preceding fiscal year (1988) (the year for which the LEA needed a waiver) to be no less than 90 percent of the LEA's expenditures in the prior fiscal year (1987).

(Authority: 20 U.S.C. 2728, 2782, 2831)

§ 201.43 Supplement, not supplant.

(a) Except as provided in § 201.45(a)(1), an agency that receives migrant education funds available under this part may use those funds only to supplement and, to the extent practicable, increase the level of non-Federal funds that would, in the absence of migrant education funds, be made available for the education of pupils participating in migrant education projects, and in no case may migrant education funds be used to supplant those non-Federal funds.

(b) To meet the requirement in paragraph (a) of this section, an LEA is not required to provide services under this part through the use of a particular instructional method or in a particular instructional setting.

(Authority 20 U.S.C. 2728, 2782, 2831)

§ 201.44 Comparability.

(a) Except as provided in paragraph (b) of this section and § 201.45, an LEA may receive Migrant Education Program funds only if the LEA uses State and local funds to provide services to students receiving Migrant Education Program services that, taken as a whole, are at least comparable to services being provided to students, enrolled in the same grade levels of all of the LEA's schools, which are not receiving Migrant Education Program-funded services.

(b) (1) An LEA is considered to have met the comparability requirements in paragraph (a) of this section, if it either—

(i) Files with the SEA a written assurance that it has established and implemented—

(A) A district-wide salary schedule;

(B) A policy to ensure equivalence among schools in teachers, administrators, and auxiliary personnel; and

(C) A policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies; or

(ii) Establishes and implements other measures for determining compliance as the SEA may approve.

(2) In determining compliance with paragraph (a) of this section, an LEA does not need to consider unpredictable changes in student enrollment or personnel assignments that occur after the beginning of a school year.

(c) (1) An LEA shall develop written procedures to ensure compliance with paragraph (a) of this section.

(2) The written procedures ensuring compliance with paragraph (a) of this section must include a process for demonstrating that State and local funds are used to provide services to students receiving Migrant Education Program services that are at least comparable to the services provided to students in the same grades who are not receiving Migrant Education Program funds.

(d) An LEA shall maintain annual records documenting compliance with paragraph (a) of this section.

(e) In accordance with the rulemaking requirements in § 201.46, an SEA may establish standards to ensure that an LEA's policies under paragraph (c) of this section result in the provision of equivalent staffing, materials, and supplies among the schools of the LEA.

(f) (1) The SEA shall monitor each LEA's compliance with the comparability requirements.

(2) If an LEA is found not to be in compliance with the comparability requirements, the amount to be withheld or repaid is the amount or percentage by which the LEA failed to comply with the measures established under paragraph (b) of this section.

(Authority: 20 U.S.C. 2728(c), (d), 2782, 2831)

§ 201.45 Excluding special State and local funds from supplement, not supplant and comparability determinations.

(a) *General rule.* (1) For the purpose of determining compliance with the supplement, not supplant requirement in § 201.43 and the comparability requirement in § 201.44, an LEA may exclude State and local funds spent in carrying out the following types of programs:

(i) Special State programs designed to meet the special educational needs of migratory children, including compensatory education for migratory children, that the Secretary has determined in advance under paragraph (b) of this section meet the requirements in section 1018(d)(1)(8) of the Act.

(ii) Special local programs designed to meet the special educational needs of migratory children, including compensatory education for migratory children, that the SEA has determined in advance under paragraph (c) of this section meet the requirements in section 1018(d)(1)(B) of the Act.

(2) For the purpose of determining compliance with the comparability requirements in § 201.44 only, an LEA may also exclude State and local funds spent in carrying out the following types of programs:

(i) Bilingual education for children of limited English proficiency.

(ii) Special education for handicapped children.

(iii) State phase-in programs that the Secretary has determined in advance under paragraph (b) of this section meet the requirements in section 1018(d)(2)(B) of the Act.

(b) *Secretarial determination regarding State programs.* (1) In order for an LEA to exclude State and local funds spent on State programs under paragraphs (a)(1)(i) and (a)(2)(iii) of this section, an SEA shall request the Secretary to make an advance determination of whether—

(i) A special State program under paragraph (a)(1) of this section meets the requirements in section 1018(d)(1)(B) of the Act; and

(ii) A State phase-in program under paragraph (a)(2)(iii) of this section meets the requirements in section 1018(d)(2)(B) of the Act.

(2) Before making the determination, the Secretary requires the SEA to submit copies of the State law and implementing rules, regulations, orders, guidelines, and interpretations that the Secretary may need to make the determination.

(3) The Secretary makes the determination in writing and includes the reasons for the determination.

(4) If there is any material change in the pertinent State law affecting the program, the SEA shall submit those changes to the Secretary.

(c) *SEA determination regarding local programs.* (1) In order for an LEA to exclude State and local funds spent on a special local program under paragraph (a)(1)(ii) of this section, the LEA shall request the SEA to make an advance determination of whether that program meets the requirements in section 1018(d)(1)(B) of the Act.

(2) Before making a determination, the SEA shall require the LEA to submit copies of the State law and implementing rules, regulations, orders, guidelines, and interpretations that the SEA may need to make the determination.

(3) The SEA shall make the determination in writing and include the reasons for its determination.

(4) If there is any material change in the pertinent local requirements affecting the program, the LEA shall submit those changes to the SEA.

(Authority: 20 U.S.C. 2728 (b), (c), (d), 2782)

§ 201.46 State rulemaking and other SEA responsibilities.

(a) An SEA is responsible for ensuring that the agencies that receive Chapter 1—Migrant Education Program funds in the State comply with all statutory and regulatory provisions applicable to Chapter 1.

(b)(1) Except as provided in paragraph (c) of this section, Chapter 1 does not preempt, prohibit, or encourage State rules, regulations, or policies issued pursuant to State law.

(2) If a State issues rules, regulations, or policies, they must be consistent with the provisions of the following:

(i) The Chapter 1 statute.

(ii) The regulations in this part.

(iii) Other applicable Federal statutes and regulations.

(iv) The SEA application approved under § 201.13.

(c)(1) Unless needed to implement SEA responsibilities in its approved State application or in the Chapter 1 - Migrant Education Program statute or regulations, a State may not issue rules, regulations, or policies that limit LEAs' decisions affecting funds received under this part regarding—

(i) Grade levels to be served;

(ii) Basic skill areas to be addressed;

(iii) Instructional settings, materials, or teaching techniques to be used;

(iv) Instructional staff to be employed, as long as the staff meets State certification and licensing requirements for education personnel; or

(v) Other essential support services.

(2) For purposes of this section, decisions concerning the planning, implementation, and evaluation of migrant education programs and projects conducted at the local operating agency level are not "LEA decisions" unless the SEA determines that the LEA or other operating agency has authority to make these decisions.

(d) The imposition of any State rule or policy relating to the administration and operation of the Chapter 1—Migrant Education Program, including those based on State interpretation of any Federal law, regulation, or guideline, must be identified as a State-imposed requirement.

(e)(1)(i) Except as provided in paragraphs (e)(1)(ii) and (e)(1)(iii) of this section, if a State issues major rules or

regulations relating to the administration or operation of programs funded under this part, the State shall convene a State committee of practitioners to review before publishing any major proposed or final rule or regulation.

(ii) In an emergency situation in which a major rule or regulation must be issued within a very limited time to assist agencies with the operation of programs under this part, the State—

(A) May issue the regulation without consulting the committee of practitioners; but

(B) Shall immediately thereafter convene the State committee of practitioners to review the emergency rule or regulation prior to issuance in final form.

(iii) The State shall ensure that the committee of practitioners reviews non-major rules or regulations before publication.

(2) If a State does not issue rules or regulations relating to the administration or operation of programs under this part but issues policies that the SEA and local operating agencies are required to follow, the State must comply with the requirements in this section for issuing rules and regulations.

(3)(i) The committee of practitioners must include—

(A) Administrators;

(B) Teachers;

(C) Parents;

(D) Member of local boards of education; and

(E) Representatives of private school children; and

(ii) A majority of the committee must be representatives of LEAs or other operating agencies.

(iii) SEAs are encouraged to request from appropriate organizations recommendations for membership on the committee.

(Authority: 20 U.S.C. 2782, 2831, 2851)

§ 201.47 Complaint procedures for an SEA.

(a) An SEA shall adopt written procedures for—

(1) Receiving and resolving any complaint that the SEA or an LEA is violating a Federal statute or regulations that apply to programs under this part;

(2) Reviewing an appeal from a decision of an LEA with respect to a complaint; and

(3) Conducting an independent on-site investigation of a complaint if the SEA determines that an on-site investigation is necessary.

(b) An SEA shall include in its complaint procedures—

(1) A time limit of 60 calendar days after the SEA receives a complaint—

(i) If necessary, to carry out an independent on-site investigation; and

(ii) To resolve the complaint;

(2) An extension of the time limit under paragraph (b)(1) of this section only if exceptional circumstances exist with respect to a particular complaint; and

(3) The right to request the Secretary to review the final decision of the SEA.

(c) An organization or individual may file a written signed complaint with an SEA. The complaint must include—

(1) A statement that the SEA or an LEA has violated a requirement of a Federal statute or regulations that apply to the Chapter 1—Migrant Education Program; and

(2) The facts on which the statement is based.

(Authority: 20 U.S.C. 2831(a))

§ 201.48 Allowable costs using program funds.

(a) To administer its migrant education program for migratory children, an SEA may use the funds made available for the State migrant education program under § 201.21 only to perform those functions that are unique to the migrant education program or that are the same or similar to the functions performed by LEAs in the State under 34 CFR part 200.

(b) These functions include, but are not limited—

(1) Statewide identification and recruitment of eligible migratory children;

(2) Interstate and intrastate coordination of the State migrant education program and its local projects with other State programs and local projects;

(3) Coordinating project level activities with other public and private agencies;

(4) Implementing the migrant student record transfer system;

(5) Processing reports that are submitted by the operating agencies to the SEA;

(6) Maintaining inventories of property acquired with Migrant Education Program funds;

(7) Negotiating awarding of contracts; and

(8) Evaluating activities of the State migrant education program, other than the design of evaluation report forms and final preparation of the SEA's evaluation report to the Secretary.

(Authority: 20 U.S.C. 2781, 2782, 2831)

§ 201.49 Persons to be assigned non-Chapter 1 duties.

(a) An LEA may assign public school personnel paid entirely with migrant education funds to limited supervisory duties that may provide some benefit to children not participating in the migrant education project if—

(1) Similarly situated personnel at the same school site, who are not paid with Chapter 1—Migrant Education Program funds, are assigned these duties; and

(2) The time spent by Chapter 1 personnel on these duties does not exceed the least of the following:

(i) The proportion of total work time that similarly situated non Chapter 1 personnel at the same school site spend performing these duties.

(ii) One period per day.

(iii) Sixty minutes per day.

(b) The amount of time referred to in paragraph (a)(2) of this section may be calculated on a daily, weekly, monthly, or annual basis.

(c) The duties in paragraph (a) of this section need not be limited to classroom instruction, but may include, but are not limited to, the following:

(1) Supervision of halls, playgrounds, lunchrooms, study halls, bus loading and unloading, and homerooms.

(2) Participation as a member of a school or district curriculum committee.

(3) Participation in the selection of regular curriculum materials and supplies.

(Authority: 20 U.S.C. 2853)

§ 201.50 Prohibition against considering payments under the Migrant Education Program in determining State aid.

A State may not take into consideration payments under the Migrant Education Program in determining—

(a) The eligibility of an LEA for State aid; or

(b) The amount of State aid to be paid to an LEA for free public education.

(Authority: 20 U.S.C. 2854)

26. A new subpart E containing §§ 201.51 through 201.56, inclusive, is added to part 201 to read as follows:

Subpart E—Evaluation

§ 201.51 Evaluation and demographic reports.

(a) *Operating agency evaluations.* (1) An operating agency shall evaluate, at least once every three years, the overall progress, including the educational progress, of migratory children who participate in its Chapter 1 migrant education projects, in terms of basic and more advanced skills that all children are expected to master. Progress must be measured—

(i) Against the desired outcomes described in the operating agency's application; and

(ii) Except for Chapter 1 migratory children in preschool, kindergarten, and first grade, in terms of student achievement in accordance with the national standards in § 201.53.

(2) (i) The operating agency shall determine whether improved performance of the Chapter 1 formerly migratory children, participating in a full school year program at least two years, is sustained over a period of more than 12 months.

(ii) To make this determination, an operating agency shall assess performance of the same children for at least two consecutive 12-month periods, provided these children continue to be enrolled in the schools of the LEA.

Example: An LEA provides Chapter 1 migrant education services during the 1989–90 school year. The LEA measures the gains made by participating children on a spring-spring testing cycle (spring 1989, 1990). To determine whether improved performance is sustained over the period of more than 12 months, the LEA measures the performance again in the spring of 1991.

(3) The operating agency shall report its evaluation results to the SEA at least once during each three-year application cycle.

(b) *SEA evaluations.* (1) An SEA shall evaluate, at least every two years, the Chapter 1—Migrant Education Program in the State on the basis of the local evaluations conducted under paragraph (a) of this section and sections 1107 and 1202(a)(6) of the Act.

(2) The SEA shall ensure that its biennial evaluation report is representative of the statewide program.

(3) The SEA shall inform its operating agencies, in advance, of the specific data that will be needed and how the data may be collected.

(4) The SEA shall—

(i) By a date established by the Secretary, submit its evaluation to the Secretary; and

(ii) Make public the results of the evaluation.

(5) The SEA may require the operating agencies to evaluate the effect of the Chapter 1 migrant education projects on the children's achievement in basic and more advanced skills within the regular program, including, but not limited to, writing, science, history, or other subjects.

(c) *SEA's annual performance report.* (1) An SEA shall annually—

(i) Collect the evaluation and demographic data as required by section 1019 of the Act and specified by the Secretary for the SEA's annual performance report; and

(ii) Submit those data to the Secretary in that report.

(2) An LEA shall provide to the SEA any data needed by the SEA to complete its annual report.

(Authority: 20 U.S.C. 2722, 2729, 2781, 2782, 2835, 2852)

§ 201.52 Evaluation information to be collected.

(a) In assessing their programs and projects, the SEAs and operating agencies shall conduct evaluations that assess the overall progress of perticipating migratory children in grades 2 through 12, including educational progress, in terms of instructional services and support services.

(b) The evaluation design for the regular school year instructional project must include—

(1) Objective measures of the educational progress of project participants (including educational achievement in basic skills) as measured, if possible, over a 12-month testing interval through the use of appropriate forms and levels of national or State normed achievement tests. If this is not possible, the SEA or operating agency may use other acceptable measures of educational progress of migratory children, such as changes in attendance patterns, dropout rates, and other objectively applied indicators of student achievement compared to the performance of an appropriate non-project comparison group, as defined in § 201.54; and

(2) A measure for determining whether, for formerly migratory children who have been served under this part in a full school year program for at least two years, improved performance is sustained for at least one additional year.

(c) The evaluation design for the summer school instructional project must include—

(1) Objective measures of the educational progress of project participants (including educational achievement in basic skills) over the project performance period; and

(2) To the extent possible, a means of comparing project outcomes to those of an appropriate non-project comparison group.

(d) During either the regular or summer terms, the evaluation design for any support-service components must include—

(1) Measures of the effects of the project on participants that are consistent with the defined support services objectives. (For example, changes in student attendance rates may be an appropriate measure of the effect of guidance and counseling services.); and

(2) If possible, a means of comparing project outcomes to the performance of an appropriate non-project comparison group.

(Authority: 20 U.S.C. 2729, 2782, 2831, 2835)

§ 201.53 General technical standards for evaluation.

SEAs and local operating agencies shall comply with the following technical standards in designing and implementing procedures for the evaluation of Chapter 1 migrant education projects:

(a) *Representativeness of evaluation findings.* The evaluation results must be computed so that the findings apply to the persons served in projects under the program. This may be accomplished by including in the evaluation either all or a representative sample of persons, schools, agencies, or projects.

(b) *Reliability and validity of evaluation instruments.* The evaluation instruments used must consistently and accurately measure progress toward accomplishing the objectives of the project, and must be appropriate considering factors such as the age, grade, mobility, language, degree of language fluency, and background of the persons served by the project.

(c) *Soundness of evaluation procedures.* The evaluation procedures must minimize error by providing for proper administration of the evaluation instruments, accurate scoring and transcription of results, and the use of analysis and reporting procedures that are appropriate for the data obtained from the evaluation.

(d) *Valid assessment of project outcomes.* The evaluation procedures must provide for accurate and objective measurement of the progress made by project participants towards defined project objectives.

(Authority: 20 U.S.C. 2729, 2782, 2831, 2835)

§ 201.54 Non-project comparison groups.

(a) To fulfill the requirement for a non-project comparison group, appropriate comparison groups consist of persons who are as similar as possible in age, grade, language, degree of language fluency, previous achievement level, and other relevant background variables.

(b) To fulfill the requirements of § 201.52(b) and (c), SEAs and operating agencies, to the extent possible, must use appropriate forms and levels of national or State normed achievement tests.

(Authority: 20 U.S.C. 2729, 2782, 2831, 2835)

§ 201.55 Submission of sampling plans.

(a) If an SEA wishes to use sampling in its evaluation of programs conducted under this part, the SEA shall submit, for prior approval by the Secretary, a proposed sampling plan designed to ensure that evaluations will be on a representative sample of its operating agencies in any school year.

(b) The Secrerary approves a sampling plan that will provide reliable and representative data under this subpart.

(c) (1) The SEA shall review its sampling plan at least once every three years.

(2) If, based on this review or other circumstances, the sampling plan requires changes, the SEA shall request reapproval of the plan by the Secretary.

(Authority: 20 U.S.C. 2835)

§ 201.56 Use of evaluation results for program improvement.

SEAs and operating agencies must ensure that the results of their evaluations are used to improve services provided to the children in their Chapter 1 migrant education programs and projects.

(Authority: 20 U.S.C. 20 U.S.C. 2729, 2782)

PART 200—CHAPTER 1 PROGRAM IN LOCAL EDUCATIONAL AGENCIES

27. The authority citation for part 200 continues to read as follows:

Authority: 20 U.S.C. 2701–2731, 2821–2838, 2851–2854, 2891–2901, unless otherwise noted.

28. Section 200.5 is amended by adding a new paragraph (a)(6) to read as follows:

§ 200.5 What regulations apply to the Chapter 1 LEA program?

* * * * *

(a) * * *

(6) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

* * * * *

PART 203—CHAPTER 1 PROGRAM FOR NEGLECTED OR DELINQUENT CHILDREN

29. The authority citation for part 203 continues to read as follows:

Authority: 20 U.S.C. 1232(b)(2), (5), 2721(a), 2724(b), 2728(a), (b), (d), 2729(b), 2801–2804, 2811–2812, 2824(a), (b), 2831(a), 2835(a), (d), 2838(a), (b), (c), 2851, 2853, 2891, unless otherwise noted.

30. Section 203.5 is amended by adding a new paragraph (a)(6) to read as follows:

§ 203.5 What regulations apply?

* * * * *

(a) * * *

(6) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

* * * * *

Note: The following Appendix will not be codified in the Code of Federal Regulations.

As used in the following discussion, the phrase "Migrant Education Program" refers to the Chapter 1—Migrant Education Program established in sections 1201 and 1202 of the Elementary and Secondary Education Act of 1965, as amended (Pub. L. 100–297).

Appendix—Analysis of Comments and Changes

General Comments

Commenters generally expressed concern about two aspects of the proposed part 201 regulations. First, many commenters believed that proposed regulations did not adequately take into account the special characteristics and nature of the Migrant Education Program that make it different from the regular Chapter 1 Program in LEAs. These commenters objected particularly to what they considered to be a failure to properly interpret the statutory requirement in section 1202(a)(3) of the Act that migrant education programs and projects "be administered and carried out in a manner consistent with the basic objectives of section 1011 (other than subsection (b)), sections 1012, 1014, and 1018, and subpart 2 of part F." They considered the proposed regulations, in adopting conforming language from proposed regulations for the Chapter 1 Program in LEAs (34 CFR part 200) to be overly detailed in ways that did not consider differences between the two Chapter 1 programs.

Many commenters also expressed strong concern that, in various respects, the proposed regulations appeared to transform the Migrant Education Program from one that has always been State-operated and -administered to one that was increasingly LEA-operated and -administered. Commenters singled out for criticism the State rulemaking provisions in proposed § 201.46. That provision, derived from section 1451 of the Act, whose "basic objectives" apply to the Migrant Education Program by virtue of section 1202(a)(3) of the Act, was nearly identical to the comparable provision proposed in 34 CFR 200.70 of the October 21, 1988 notice of proposed rulemaking (NPRM) for the Chapter 1 Program in LEAs. Although it contained the statutory limitations on the authority of SEAs unilaterally to establish rules or policies, paragraph (e) of the proposed § 201.46 expressly precluded the applicability of those limitations if the SEA was acting to "review and approve an LEA's or operating agency's application or to ensure that the use of Chapter 1—Migrant Education Program funds is in accordance with applicable requirements." Commenters provided no comment on § 201.46(e), but objected to the other requirements as inconsistent with the Migrant Education Program as State-operated and -administered.

Discussion: In responding to these and other comments, the Secretary has paid particular attention to the special nature and character of the Migrant Education Program as a program intended to be State-operated and -administered, and designed to serve a unique population of educationally deprived children. Specific regulatory issues are discussed in the following section-by-section analysis. However, the Secretary first offers the following analytic framework surrounding the overriding issues of (1) treatment of the "basic objectives" language in the Act, (2) differences between the Chapter 1—Migrant Education Program and the Chapter 1 Program in LEAs, and (3) the relationship between section 1451 of the Act and the Migrant Education Program, that guided consideration of the comments.

A. *The link between requirements governing the Migrant Education Program and the "basic objectives" of specified requirements governing the Chapter 1 Program in LEAs.* Congress has offered no guidance on what it considers to be the "basic," rather than the "secondary" objectives. The Secretary therefore has not attempted to define the "basic objectives" of each applicable statutory provision in sections 1011, 1012, 1014, 1018 and subpart 2 of part F of the Act that are linked by section 1202(a)(3) of the Act to the Migrant Education Program, believing that this effort will quickly lead to an intractable quagmire. In order to address the responsibilities of SEAs and operating agencies with regard to the "basic objectives" of those statutory provisions, the Secretary instead has determined that these regulations should interpret those applicable requirements in ways that make sense for the Migrant Education Program, given its special character.

B. *Differences between the Migrant Education Program and the Chapter 1 Program in LEAs.* In adapting provisions governing the Chapter 1 Program in LEAs to the Migrant Education Program, the Secretary considered the major differences between the target populations for the two groups and the ways the two programs are conducted. These differences are interrelated, and are reflected in many of the regulations governing the administration and operation of migrant education programs and projects.

Characteristics of participating children: The Chapter 1 Program in LEAs serves educationally deprived children who reside in low-income areas. These children generally participate in supplemental Chapter 1 programs for which they have been selected on the basis of certain educationally related objective criteria concerning their academic performance. In the course of a year, some of these children may move to another attendance area in either the same school district or another school district. However, regardless of its importance to individual children, their transiency is not a factor in either their selection to participate in the Chapter 1 Program in LEAs or the design of projects to meet their needs.

On the other hand, children who participate in the Migrant Education Program are selected because they have moved between school districts (for reasons related to the migratory employment of a family member) and have special educational needs that may arise as a result of those moves. These factors, combined with the statutory priority, in section 1202(b) of the Act, that currently migratory children be given priority "in the consideration of programs and activities," combine to create differences in the ways that the two programs operate.

Moreover, programs operated under the Migrant Education Program, unlike those operated under the Chapter 1 Program in LEAs, must be designed around the differences among migratory children. For example, some currently migratory children may move across school district boundaries one or more times during the regular school term, and so need programs that are designed to meet special educational needs tied to the effects of both school disruption and their families' migratory and employment experiences. Other currently migratory children may move either over the summer when the regular school term is not in session or near the beginning or end of regular school terms, and so need programs that are designed to meet special educational needs tied to their families' migratory and employment experiences, but not directly to any school disruption. Formerly migratory children experience no immediate school disruption. However, some may need programs that address educational needs similar to those of currently migratory children, while others may be sufficiently removed from the effects of previous migrations to be without need of special Migrant Education Program services. Program regulations must be sufficiently flexible to ensure that migrant education projects can adequately address the varying needs of these and other migratory children.

Duration and Location of Projects: Related to the population served is the duration and location of local programs. Projects and activities funded by the Chapter 1 Program in LEAs operate in a cohesive way in one location over the course of the entire school year, including summers. Many SEAs operate migrant education projects whose principal, if not sole, components are summer projects that try to complement the regular school programs operated in other locations from which currently migratory students, who may appear without warning, have moved. Moreover, SEAs may operate these projects in areas that normally do not have a regular summer school program.

Assessing Student Performance: The two programs also differ significantly in terms of the ease with which students' needs and performance can be recorded and assessed. Projects that serve populations of mobile children who enroll and withdraw at different times may encounter more problems than others in utilizing what otherwise would be standard means of determining needs and measuring gains.

SEA Responsibilities: Unlike the Chapter 1 Program in LEAs, the Migrant Education Program by statute is State-operated and -administered. The SEA bears responsibility in the Migrant Education Program for coordinating projects throughout the State that serve children migrating from place to place, and ensuring that appropriate projects exist to meet the needs of migratory children on a statewide basis. While the SEA typically utilizes the resources of LEAs and other local operating agencies to assist it in operating migrant education projects, it retains responsibility for the administration, implementation, and operation of all migrant education projects in the State.

C. *The issue of continued SEA control over the State migrant education program presented by section 1451 of the Act.* Although the Migrant Education Program is State-operated, section 1451 of the Act places some limitations on the SEA's authority to direct unilaterally all aspects of its migrant education programs and projects. In particular, while section 1451(a)(1) contains general authority for States to issue regulations that are not inconsistent with Federal requirements, section 1451(a)(2) expressly states: "(2) State rules or policies may not limit local school districts' decisions regarding the grade levels to be served; the basic skills areas (such as reading, mathematics, or language arts) to be addressed; instructional settings, materials, or teaching techniques to be used; instructional staff to be employed (as long as such staff meet State certification and licensing requirements for educational personnel); or other essential support services (such as counseling and other pupil personnel services) to be provided as part of the programs authorized under this chapter."

Furthermore, section 1451(b) specifically provides that "[b]efore publication of any proposed or final State rule or regulation pursuant to this chapter, each such rule shall be reviewed by a State committee of practitioners * * *." Both paragraphs (a)(2) and (b) explicitly refer to their applicability to all programs under "this chapter" and so apply to the Migrant Education Program. While section 1202(a)(3) of the Act provides that migrant education programs and projects must "be administered and carried out in a manner consistent with the basic objectives of" section 1451, the Secretary is bound by the express language of section 1451 to give that provision applicability to the Migrant Education Program.

As the discussion of specific comments on proposed § 201.46 explains, the Secretary has sought to reconcile the special nature of the State-operated Migrant Education Program with the strictures imposed by section 1451(a)(2) by focusing on what, under the program, are construed to be LEA decisions and what are construed to be SEA decisions.

Changes: Modifications to the proposed regulations are noted following the discussion of each specific comment.

Section 201.3 Definitions for this Program

Comment: One commenter recommended that the definition of "migratory agricultural worker" specify that both dairy work and poultry processing are agricultural activities.

Discussion: The definition of a "migratory agricultural worker" includes persons who move across school district boundaries to enable them to obtain temporary or seasonal employment in an agricultural activity "including dairy work." Dairy work was included in the proposed regulations in response to sections 1201(a), 1202(b)(1), and 1202(b)(5) of the Act, in which Congress expressly provides that the Migrant Education Program meet the special educational needs of children of migratory agricultural dairy workers. Congress did not specifically address poultry processing. However, that activity (like dairy work) is already considered to be an "agricultural activity" under § 201.3(b)(1), so no corresponding change in the existing definition of "migratory agricultural worker" is necessary for poultry processing.

Changes: None.

Comment: Three widely varying comments were received regarding that part of the definition of "currently migratory child" that requires a "move." One commenter urged the Department to define a "move" as establishing residency in the new location, so that children whose only move across school district boundaries occurs on weekends could no longer be recruited as migrant children. Another commenter believed that since the term "move" already entailed establishment of a new residence, and children passing through stopover sites did not establish residency at them, compliance with the definition would eliminate any need for a rule, like that proposed in § 201.20(a)(3), to limit the residency days States accrue on behalf of children recruited at those sites. The third commenter simply recommended that the word "move" not be defined in regulations.

Discussion: The Secretary is aware of isolated situations in which children have qualified for participation in the Migrant Education Program solely because they have traveled with their parents away from their permanent residence for very brief and infrequent weekend (or holiday) periods. While some may interpret the current regulatory definitions as entailing establishment of a new residence, the definitions do not differentiate between the moves of weekend or overnight duration or overnight situations of children the commenters described, and the moves of children who travel from their homes for long periods of time.

The regulations do not define a move. Nor, despite the second commenter's opinion, do they contain standards for determining how brief inter-district moves that have little connection with conditions of migrancy, might justify precluding particular children from eligibility for the Migrant Education Program. Rather, the regulations permit any child to be counted and served by the Migrant Education Program for up to six full years (one as a currently migratory child and five as a formerly migratory child) provided only that he or she has made at least one move, regardless of duration, across school district boundaries to enable the child, or child's parent or guardian, to obtain temporary or seasonal employment in an agricultural or fishing activity.

The Secretary agrees with the first commenter that the lack of a regulatory definition of "move" creates the potential for

abuse. Children who travel away from home only for brief and infrequent intervals, such as occasional weekends, encounter little, if any, disruption in their lives or education. Still, program definitions permit them to be counted and served by the Migrant Education Program for up to six years in the same manner as children who suffer the tangible effects of migratory lifestyles, thereby diverting services and resources from programs for truly migratory children. Moreover, under the statutory formula in section 1201(b) of the Act for allocating Migrant Education Program funds, these children will generate the same amounts of program funding for their States as will children who encounter serious and lengthy dislocations. Given these factors, the need exists to articulate reasonable minimum standards for determining when brief and infrequent moves would be non-qualifying.

Nevertheless, the NPRM did not propose to define the term "move," because section 1202(c) of the Act requires the Secretary to continue to use the existing regulatory definition of "currently migratory child." This definition refers simply to the need for a "move" to be made across school district or, in States comprising a single school district, administrative area boundaries. While the Secretary has not previously regulated on the allowable minimum duration of a "move," section 1202(c) does not necessarily preclude the Secretary from protecting the Migrant Education Program's integrity by interpreting the word "move" in such a way as to withhold eligibility from those with little connection with migrancy. However, the May 1988 proposal offered by the Office of Migrant Education, in draft nonregulatory guidance, to establish a minimum duration for a qualifying move or series of moves engendered widespread criticism from State officials and others who claimed the proposed non-mandatory guidance was both administratively cumbersome and inconsistent with the statutory freeze on the existing definitions. Given the intensity of this response, the Secretary is not now prepared to regulate in this area without a clearer direction from Congress that the Secretary should do so.

Changes: None.

Comment: One commenter asked whether the existing broad definition of "move" applied even in the case of preschool children who either might not yet be attending school or might be attending the same Head Start or other preschool program even after making a move across school district boundaries. The commenter noted that these children did not suffer any educational disruption, and so perhaps should not be eligible to be considered as currently migratory children.

Discussion: Under the program definitions in § 201.3, which Congress froze by virtue of section 1202(a) of the Act, a child who has moved between school districts may be counted and served as a currently migratory child even if the child suffers no educational disruption as a result of the move. Presumably, if a preschool child either had no educational need or had needs that were already being met, the State educational agency (SEA) would not spend Migrant Education Program funds on the child's account.

Changes: None.

Comment: One commenter recommended that the Secretary define the terms "temporary employment" and "seasonal employment" as they are used in the definition of a "currently migratory child."

Discussion: An Office of Migrant Education proposal to expand its existing interpretations of these terms was included in its May 1988 and January 1989 drafts of new nonregulatory guidance. Any final interpretations will be included in the policy manual that the Secretary will issue pursuant to section 1436 of the Act. In view of the many varieties of temporary or seasonal employment, the Secretary believes that the policy manual, rather than regulations, is the appropriate vehicle for providing non-binding definitions of temporary or seasonal employment.

Changes: None.

Section 201.10 Eligibility of an SEA to Participate as a Grantee

Comment: None.

Discussion: Section 1201(a) of the Act specifically permits an SEA to operate its State's migrant education program through LEAs and, as proposed, § 201.10 would have continued to authorize the SEA to make subgrants only to LEAs.

The Secretary does not believe that the Congress intended to preclude an SEA from operating its migrant education program through non-LEA operating agencies that in particular situations may be better equipped than LEAs to meet the needs of migratory children. As a result, because there is no reason to distinguish in the subgrant process between an LEA and any other operating agency, the Secretary has determined that § 201.10 should expressly permit an SEA to make subgrants with both LEAs and non-LEA operating agencies.

Changes: Section 201.10 has been modified accordingly. Consistent with this change, §§ 201.16 (Documents that an operating agency must submit to apply for a subgrant), 201.17 (Submission of a project application to the SEA), 201.18 (Approval of a project application for a subgrant), and other appropriate portions of these regulations have also been changed so that they apply to any local operating agency that applies for or receives a subgrant from the SEA.

Section 201.11 Documents an SEA Must Submit to Receive a Grant

Comment: One commenter stated that proposed § 201.11(b)(2), which requires the SEA's application to include an assurance regarding the circumstances under which preschool children "may" be served, appears to conflict with section 1202(a)(5) of the Act, which requires the application to contain an assurance that provision "will be made" for the preschool educational needs of migrant children. Despite the apparently mandatory language of the statute, the commenter recommended retention of the permissive language proposed in § 201.11(b)(2) in order to give State and local program administrators greater flexibility in determining how Migrant Education Program services should be distributed.

Discussion: Section 1202 (a)(5) of the Act requires each SEA application to contain an adequate assurance that "in planning and carrying out programs and projects" for migratory children, "provision will be made for the preschool needs of migratory children." The Secretary agrees that the permissive language proposed in § 201.11(b)(2) is inconsistent with the mandatory language in the statute.

Changes: Section 201.11(b)(2) has been changed to require the SEA's application to contain an assurance that meets "the requirements of Section 1202(a)(5) of Chapter 1 that provision be made for the preschool educational needs of migratory children."

Comment: One commenter stated that given the cost of complying with the statutory requirement that SEAs meet the preschool educational needs of migratory children, SEAs would have difficulty meeting their responsibilities to provide adequate continuity in education for school-aged migratory children. Another commenter, citing the importance of preschool educational services for migratory children, urged the Secretary to adopt standards that would require SEAs to provide both "child development" (i.e., instructional) and traditional "day care" (i.e., basic care) services.

Discussion: The requirements in sections 1202(a)(5) and 1202(b) of the Act direct each SEA to provide for the preschool "educational needs" of currently migratory children, as it does for the special educational needs of school-aged children and youth under the age of 22, before giving consideration to programs that will meet the needs of the State's formerly migratory children. Congress thereby has required that the uses of Migrant Education Program funds be shifted, to some extent, from addressing the continuing educational needs of school-aged formerly migrant children to addressing the needs of currently migratory children, ages 3 through 5, for "educational" services.

While the Secretary does not believe the regulations need to reflect an expansive definition of the term "preschool educational needs," the Secretary considers the statutory phrase "educational needs" to encompass needs for both child development and day care services. However, SEAs need not use Migrant Education Program funds to support preschool programs that provide these services for children who (1) have no special educational needs, (2) have needs that are being met through programs funded from other sources, or (3) pursuant to § 201.36 (General program requirements), do not reside in concentrations large enough to permit a project "of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting" the preschool needs of the children whom the project would serve.

Changes: None.

Section 201.17 Submission of a Project Application to the SEA

Comment: A number of commenters objected to what they considered to be excessive and unwarranted detail in the proposed regulations governing the content of local educational agency (LEA) applications for subgrants (§ 201.17(b)). The commenters

noted that the proposed application requirements conform closely to those contained in section 1012(b) of the Act without allowance for the special nature of the Migrant Education Program. While these statutory requirements in section 1012(b) are directly applicable to the Chapter 1 Program in LEAs, the commenters asserted that section 1202(a)(3) of the Act requires only that migrant education programs and projects be administered "consistent with the basic objectives" of section 1012. One commenter noted, for example, that while proposed § 201.17(b)(1)(i) required a project application to contain a description of program goals established to meet the needs of children "in greatest need," migrant education programs as a matter of first priority must serve the needs of currently migratory children, even if formerly migratory children are in greater need for assistance.

In addition, some commenters expressed the belief that proposed § 201.17 focused too heavily on the local rather than the State level. These commenters argued that since the Migrant Education Program is a State-administered rather than a locally-administered program, section 1202(a)(3) of the Act should make the "basic objectives" of section 1012 applicable at the State rather than the local level.

Discussion: In addressing these comments, the Secretary has focused upon two principal questions. These are (1) whether SEA administration of the Migrant Education Program requires minimum standards for the content of subgrant applications, and (2) if so, how section 1012(b) of the Act should affect that content.

A. *The need for regulations to address minimum requirements for applications that seek Migrant Education Program subgrants.* Unlike the Chapter 1 program in LEAs, the Chapter 1 Migrant Education Program is State-operated and -administered. Section 1201(a) of the Act authorizes SEAs to operate migrant education programs either directly or through subgrants to LEAs (interpreted by the Secretary to include local operating agencies), and nearly all SEAs elect to do the latter. While the SEAs retain responsibility for these local migrant education projects, staff of local operating agencies (usually LEAs) plan, implement, and evaluate the local projects, and spend program funds—just as they do in the Chapter 1 program in LEAs. The Secretary believes that the Congress intended for SEAs, in administering their migrant education programs, to review the same kinds of information that section 1012 requires an LEA to include in its application under the Chapter 1 Program in LEAs.

Sound programmatic management requires the same result. Given the common two-tier manner of operating a State's migrant education programs and projects, an SEA cannot effectively administer those programs and projects unless LEAs that desire subgrants submit to it applications that contain uniform information with which the SEA can ensure that subgrantees will properly operate migrant education projects on its behalf. Since nearly all of these operating agencies also participate in the Chapter 1 Program in LEAs, the Secretary believes it is reasonable that their applications for migrant education subgrants adapt the applicable requirements in section 1012(b) of the Act governing entitlement grants under the Chapter I Program in LEAs. Indeed, without knowledge that SEAs are reviewing subgrant applications that contain at least these kinds of information, the Secretary cannot review SEA applications submitted under section 1202 of the Act, and be able to determine that the SEA's programs will be administered and carried out in a manner consistent with the basic objectives of applicable provisions of the Chapter 1 statute.

Therefore, the Secretary rejects the suggestion that, for the Migrant Education Program, the provisions in section 1012(b) have no applicability at the LEA level. Rather, the Secretary has determined that § 201.17(b) should reflect the information relevant to this program that corresponds to the information that section 1012(b) of the Act requires under the Chapter 1 Program in LEAs.

B. *Adaptation of the LEA application requirements in section 1012 to requirements for applications for Migrant Education Program subgrants.* The Secretary agrees with the concerns of some commenters that § 201.17(b) should be revised so that the specific content of section 1012 of the Act is adapted to the Migrant Education Program. In keeping with the differences between the Chapter 1—Migrant Education Program and the Chapter 1 Program in LEAs, identified at the outset of this Appendix, the final regulations have been modified in several respects so that LEA applications contain information that specifically addresses the migrant education projects the LEA proposes to implement.

In particular, the Secretary has determined that to ensure that the Statewide needs of currently migratory children are given priority, the SEA must be able to review an LEA subgrant application that contains a separate description of the activities and level of funding that would support programs for currently migratory children the LEA expects to serve. As noted in the discussion of comments on § 201.25(b) (Amount available for an LEA subgrant), the proposal that an SEA tie the amount of an LEA's subgrant to the numbers of currently migratory children it would serve and the costs of activities needed to serve them has been revised. Section 201.25(b) requires only that the SEA ensure that LEAs have sufficient funds to meet the unmet needs of currently migratory children residing in areas they would serve. Because the SEA cannot do so without Statewide information on the expected activities and the costs of those activities LEAs would implement to meet the needs of currently migratory children, the Secretary has determined that this information must be included in any application for a Migrant Education Program subgrant.

Changes: The Secretary has made several changes to proposed § 202.17(b). First, paragraph (b)(2) now requires an operating agency application to contain information, "consistent with the SEA's approved application" (rather than "section 1012(b) of Chapter 1" as the NPRM had proposed), about (i) the operating agency's needs assessments and children with the greatest needs, consistent with the priority favoring currently migratory children, and (ii) the design of proposed projects and how they would meet the general instructional program goals the SEA has established. Second, § 201.17(b)(1)(ii) requires a breakdown of the components that would serve the identified unmet needs of currently migratory children expected to participate and the numbers of those children. Similarly, the budget of the project's expenditures required by § 201.27(b)(2) must contain a separate summary of project components that would serve currently migratory children.

Furthermore, the applicant's assurances described in paragraph (b)(3) have been changed from the LEA assurances in section 1012(c) of Chapter 1 to assurances that programs have been planned and will be operated in a manner consistent with §§ 201.35 and 201.36 of these regulations.

Comment: One commenter questioned the advisability of permitting LEAs that operate short-term summer projects to submit three-year applications under § 201.17(a). The commenter observed that the LEA cannot know from year to year whether the same students or numbers of students will return to the LEA each year, and so presumably cannot adequately plan projects for the three-year period. The commenter recommended that only the SEA's application to the Secretary be permitted to cover a three-year period.

Discussion: In applying the basic objectives of section 1012 of the Act to the Migrant Education Program, the Secretary is adhering to the overall congressional statement of policy, recited in section 1011(a) of the Act, that Chapter 1 eliminate unnecessary administrative burdens. Since even those LEAs that operate only the kind of summer projects the commenter described may be able to eliminate some duplicative paperwork by submitting three-year applications, the Secretary believes that § 201.17(a) should continue to permit any LEA to submit an application of up to three years. Moreover, the Secretary is satisfied that the requirements in § 201.17(c) (for annual LEA updating of its application) and that in § 201.17(b)(5) (that the LEA include in its application information the SEA needs to ensure the local project comports with the approved State application) adequately meet the commenter's concerns.

Changes: None.

Comment: None.

Discussion: In section 1202(a)(3) of the Act, Congress reemphasized that migrant education programs and projects must be administered and carried out in ways that meet the basic objectives of the maintenance of effort and comparability provisions in section 1028. In order to interpret this requirement the Secretary, in §§ 201.41 through 201.45, proposed regulations establishing maintenance of effort and comparability as preconditions to an LEA's receipt of a Migrant Education Program subgrant. As a result of further internal discussion, the Secretary believes that the LEA's application for program funds must

permit the SEA to determine that these preconditions have been met.

Changes: Section 201.17(b)(3) has been amended to require the operating agency's subgrant application to contain an assurance that the agency has established procedures to ensure that the levels of services that it provides for migrant children with State and local funds are comparable to the levels of services the LEA provides non-migrant children with State or local funds. Section 201.17(b)(5) has been amended to require the LEA to include in its application data from which the SEA can determine that the LEA has maintained fiscal effort. However, since many SEAs collect and maintain LEA expenditure data in a form that allows the SEA to determine whether LEAs have maintained fiscal effort, both § 201.17(b)(3) and § 201.17(c), which provides for annual updating of LEA applications, require the LEA to provide the data only if they are not otherwise available to the SEA.

Section 201.18 Approval of a Project Application for a Subgrant.

Comment: One commenter observed that conditioning approval of an LEA's project application on the SEA's prior determination that the LEA's salary schedule and policies would result in compliance with comparability, as proposed in § 201.18(a)(2)(ii), would serve no purpose in short-term summer programs that serve several school districts. Because of this factor and because the regulations appeared to be overly prescriptive, the commenter recommended deletion of the proposed provision.

Discussion: Section 1018(c) of the Act states that, as a means of demonstrating comparability, an LEA may provide a written assurance that it has established and implemented a district-wide salary schedule and other policies that will ensure equivalence among schools in staffing, curriculum, and materials and supplies. Because section 1202(a)(3) of the Act incorporates the basic objectives of that provision as a Migrant Education Program requirement, an LEA seeking funds must provide in its subgrant application the corresponding assurance of comparability the Secretary has established in § 201.44(b). That assurance covers the situation the commenter has described.

The intent of § 201.18(a)(2)(ii), as proposed, was to provide the SEA the information it needed prior to approving the LEA's application, thereby minimizing the LEA's risk of subsequently being found in noncompliance with the comparability requirement. However, the Secretary does not want to impose an unnecessary paperwork burden on LEAs or SEAs. Section 1018(c) of the Act states that an LEA shall be considered to have met the comparable services requirement if it files with the SEA the appropriate written assurance. Since an LEA that received a Migrant Education Program subgrant must comply with the comparable services requirement in § 201.44, and the SEA must monitor the LEA's compliance with it, the Secretary has determined that § 201.18(a)(2)(ii) should be revised.

Changes: Section 201.18(a)(2) has been revised accordingly.

Comment: None.

Discussion: As proposed, § 201.18(a)(1) provided that an SEA could approve an LEA's subgrant application that complied with the Chapter 1 statute, applicable regulations, and the provisions of the approved SEA application. The Secretary has revised the regulations for this part so that they contain all applicable Migrant Education Program requirements, and so that potentially unclear references to unspecified requirements of the statute can be eliminated.

While § 201.18(a) has been revised to embody much of the language of the corresponding regulations governing the Chapter 1 Program in LEAs (§ 200.21(a)), § 201.18(a) differs from its Part 200 counterpart by permitting, but not requiring, an SEA to approve an LEA application that meets the requirements in § 201.17 and the provisions of the approved SEA application.

Changes: The reference to the LEA application's need to comply with the "Chapter 1 statute" has been removed from § 201.18(a)(1).

Comment: Two commenters recommended that § 201.18(a) be amended so that the only requirements of the Chapter 1 statute with which the LEA application had to comply were those of maintenance of effort and comparability.

Discussion: The commenters failed to offer any rationale for their comment. The Secretary assumes that the commenters intended also to recommend deletion of the proposed rules on maintenance of effort and comparability (§§ 201.40 through 201.42 and 201.44), so that proposed § 201.18(a)(1) would mean that an LEA application would have to comply with only the statutory language concerning maintenance of effort and comparability. However, in view of the Secretary's decision to remove the express reference to Chapter 1 statutory requirements from § 201.18(a)(1), there is no need to consider further the commenters' recommendation.

Changes: None.

Section 201.20 Amount Available for an SEA Grant

Comment: Several commenters expressed confusion about whether proposed § 201.20(a)(2) made SEAs responsible for conducting audits to ensure that before submitting information on migratory children to the Migrant Student Record Transfer System (MSRTS), the State's count of those children did not exceed a five percent error rate. Commenters stressed their belief that Congress did not intend to impose this costly burden on States when it enacted the error rate provision in section 1201(b) of the Act.

Discussion: Children who are not migratory according to definitions in § 201.3 may not be enrolled in the MSRTS. While SEAs are responsible, under § 201.30(b), for implementing procedures that ensure the correctness of information on migratory children that they submit to the MSRTS, they are not specifically responsible for conducting audits of those eligibility determinations. If auditors or others review the correctness of the SEA's enrollment information, the count of the State's full-time equivalent (FTE) number of migratory children that the MSRTS generates will be sustained if the underlying eligibility determinations made for all enrolled children are correct within a five percent margin of error.

Other comments regarding the five percent error rate are addressed in the discussion of § 201.30 (Eligibility of a child to participate).

Changes: In view of the apparent confusion that proposed § 201.20(a)(2) created, the reference to the five percent error rate has been deleted from that section and retained only in § 201.30 (d) and (e).

Comment: Many commenters voiced strong opinions about the proposal in § 201.20(a)(3) to restrict the length of time children, who are recruited at "stopover" project sites while en route to other locations, may be counted as migratory children residing in States that operate those projects.

Commenters who opposed the proposal did so for many reasons. Some asserted that nothing in Public Law 100-297 supported the Secretary's proposal to alter the way in which the size of State grants should be determined. Many commenters claimed that the proposal inappropriately singled out for special treatment these "stopover" project sites. Commenters argued that under the MSRTS computer program for calculating each State's total of migrant child residency days (the Migrant Program Allocation Subsystem (MPAS)), no State is held responsible for determining and documenting when children leave their States. Commenters also claimed that the Secretary's proposal that States provide the MSRTS a "termination date" for children enrolled at a stopover site amounted to an improper effort to establish additional eligibility criteria. Many commenters claimed that their effort to monitor the dates children leave particular States would create excessive administrative burden, and violate the prohibition in section 1202(c) of the Act against expanding the definition of a "currently migratory child" in existing regulations.

Many commenters also stressed the substantial benefits that the projects at stopover sites provide. First, migrant children who pass through them receive supplemental education and health services and information about projects at their next destinations. Second, States that are the children's ultimate destinations could learn of the anticipated date and location of the family's arrival. Third, the overall fairness of the program's allocation process is improved. These commenters expressed serious concern about the continued viability of the migrant education projects located at stopover sites, should the Secretary adopt the proposed rule, and the corresponding harm that would befall the Migrant Education Program as a whole if proposed § 201.20(a)(3) were adopted. One commenter recommended that the Secretary continue to fund these projects, but do so from funds Congress appropriates for the separate migrant interstate and intrastate coordination program under section 1203 of the Act.

Commenters who favored the Secretary's proposal did not question the benefits that

these very short-term projects provide. However, they agreed that SEAs operating them should not be able to generate inflated FTE counts through the existing MPAS when they know that the children whom they recruit will immediately be proceeding to destinations in other States. Indeed, a number of commenters argued that the Secretary's proposal did not go far enough. One commenter observed that "receiving States" had a marked disadvantage over both "stopover States" and "home States" in identifying and enrolling migratory children within their borders. Therefore, in keeping with the national focus of the Migrant Education Program, this commenter recommended that each child enrolled by a stopover State generate an automatic 20-day period of enrollment in the State of the child's destination, and the corresponding additional allocation of program funds, within which time the receiving State would work to find and recruit the child.

Three commenters argued that the proposal was far too narrow. They urged the Secretary to address the fundamental problem with the method the Department had adopted for allocating Migrant Education Program funds under section 1201(b) of the Act, which they characterized as the unreasonable assumption that a child's residency in one State continues until he or she is identified and recruited elsewhere. One of the commenters urged the Secretary to replace the current method of allocating program funds on the basis of residency days with a system for distributing program funds on the basis of the numbers of migratory children, depending on age, who attend schools or projects in the State for at least one day.

Discussion: The Secretary proposed § 201.20(a)(3) to resolve a significant and longstanding inconsistency between (1) the statistics on the numbers of migratory children residing in States with stopover sites, upon which the Department has relied in distributing Migrant Education Program funds, and (2) the statutory requirement, re-enacted in section 1201(b) of the Act, that those statistics provide the most accurate estimate of the total of FTE migratory children who annually reside in each State. See the Supplementary Information accompanying the published NPRM (54 FR 3926). After considering all the public comment, the Secretary has determined to retain the proposal, but with modifications as explained in the Secretary's discussion of the succeeding set of comments.

A. *The current method for annually calculating each State's total of FTE migrant children residing within its boundaries.* For many years, in consultation with the State Directors of Migrant Education, the Department has allocated Chapter 1—Migrant Education Program funds to States on the basis of FTE residency data generated by the MSRTS through operation of the MPAS. Under the MPAS, as soon as a child is identified as migratory and enrolled in the MSRTS, the State enrolling the child begins to accrue residency credit on his or her account as of the day the child was found to begin residing in the State. That State will continue to receive residency credit on account of the child for one year unless, before then, (1) another State enrolls the child as a "currently migratory child" residing within that State, or (2) the MSRTS "terminates" the child's enrollment. At present, MSRTS might terminate a child's enrollment for reasons that include (a) the child's completion of five years as a "formerly migrant child" without any recorded, intervening moves that would make him or her once again a "currently migratory child," (b) the child's becoming 22 years of age, (3) its receipt of information that the child has graduated from high school, or (4) its receipt of information that the child has died. The MPAS does not process information that a child has merely left a State and resides elsewhere, and neither the Department nor MSRTS staff have ever advised State and local project officials to provide the MSRTS with this information.

B. *The problem of recruitment at the stopover sites.* The project sites, which proposed § 201.20(a)(3) was intended to address, are those that assist migrant families who are in transit to destinations in other States, by offering them short-term educational, health, counseling, or other services. While the families are at the sites, often only overnight, project staff recruit children who are eligible to be counted and served by the Migrant Education Program. They then enroll them as migratory children in the MSRTS, which provides the children with individualized identification numbers, and enter any available medical or educational information about them for future retrieval by SEA or LEA personnel in other States.

In making this information so readily available to school district personnel around the country, the projects operated at these stopover sites perform an important function. Yet, given the way the MPAS now operates, enrollment of these children in the MSRTS also has the effect of generating residency credit for States operating these projects for up to one full year, if the States to which the children move subsequently fail to locate and recruit them as migratory children on the basis of the current moves. This circumstance alone draws into question the statutory basis for continuing to allow the States operating these projects to so benefit.

The problem posed by recruitment at the stopover sites is exacerbated because the project staff there typically learn from the migrant families themselves not only that their children will be leaving those sites immediately for other destinations, but the expected destinations themselves. Under these circumstances, permitting States operating these projects to retain a windfall in the FTE number of migratory children estimated to reside within their boundaries, solely because other States to which the children move failed to recruit them, is not consistent with any reasonable process for calculating the migrant child counts of States where these stopover sites exist. Therefore, in keeping with the Secretary's responsibilities under section 1201(b) of the Act to allocate program funds on the basis of "statistics made available by the [MSRTS] or such other system as the Secretary may determine most accurately and fully reflects the actual number of migrant students" full- and part-time, who are estimated to reside in each State, the Secretary has included § 201.20(a)(3) in the Migrant Education Program regulations.

Until now, the Department has specifically permitted those States that recruit migratory children at stopover sites to receive the same residency credit on their account as any other migrant children. This is so despite the fact that typically, when staff at the stopover sites recruit the children, they are informed that the children will be traveling, often the following day, to other locations usually in other States to enable their parents or guardians to obtain qualifying employment. The Secretary has determined that continuing to permit SEAs to accrue residency credit after these children have left the stopover sites for locations in other States violates section 1201(b) of the Act.

C. *The differences between enrollment of migratory children at the stopover sites and enrollment elsewhere.* Commenters correctly observed that proposed § 201.20(a)(3) is an exception to the general "enrollment to enrollment" process that the Department has long sanctioned as part of the MPAS. Under that process, the MPAS attributes the residency of each migratory child to the State in which he or she was last identified. The child may move elsewhere, but unless another State identifies him or her as a migratory child residing within its boundaries, the first State will continue to accrue residency credit.

Despite the fact that the statistics the MSRTS annually provides of each State's migrant child count, as derived from the MPAS, are only as good as the extent and quality of the nation's multi-State recruitment of currently migratory children, the Department has long justified the continued use of the MPAS on three bases. First, States cannot easily provide reliable information to each other on the expected date and location of migrant children's arrival in the "receiving" State. Second, any effort on their part to do so would be administratively burdensome, intrusive, and extremely costly, because in many cases project staff would have to conduct follow-up visits with migrant families and, against the State's fiscal interest, record yet more information on their children's travel plans. Finally, use of the MPAS creates financial incentives for States to locate currently migratory children residing within their boundaries, since each child found will generate program funding, and each child overlooked may continue to benefit another State. However, these rationales for the continued use of the MPAS cannot justify retention, by the States operating projects at the stopover sites, of residency credits for children whom they know will proceed immediately to other States. First, project staffs collect information on the children's destinations as families in transit; the information is inherently reliable because the parents or guardians who provide it know their immediate travel plans. Second, project staff collect this information (or can collect the information) on children's destinations during the recruitment interview. Therefore, no additional administrative burden, intrusion, or cost is incurred. Indeed,

the function of these stopover migrant education projects, in most cases, includes obtaining this very information so that parents and the school districts into which the families expect to move can better find each other. Finally, while other States retain financial incentives to locate children who are recruited at these stopover projects and benefit directly from the information available to them through the MSRTS entries, the fundamental inconsistency with section 1201(b) of the Act remains.

It is true that States with migrant education projects at these stopover sites, like all other States, may fail to recruit some of their migratory children, thereby allowing the MSRTS to under-count their migrant child counts. But no logical relationship exists between the unknown extent of that failure and the known inflation in the number of migrant children to which States with stopover sites are credited because of the way the MPAS generates residency data for migratory children who are enrolled at them.

Section 201.20(a)(3) does not establish new eligibility requirements. SEAs in States that operate projects at these stopover sites can legitimately recruit any migrant child whose family comes to the project site because of the amenities or services the site provides, and enroll him or her in the MSRTS as a migratory child. However, they may not use the MSRTS and its MPAS to generate inflated numbers of their States' migrant residents with which the Secretary determines levels of State Migrant Education Program funding. Doing so directly conflicts with section 1201(b) of the Act, which directs the Secretary to allocate those funds according to the most accurate statistics on the estimated FTE number of migrant children residing in each State. Consequently, the fact that section 1201(b) includes language identical to that in the previous statute is of no account.

D. *The Secretary's plan to continue funding the stopover site projects.* The Secretary acknowledges the substantial national benefits that SEA efforts at these stopover sites have provided to the thousands of migrant children and their families who have passed through them. The Secretary also acknowledges the value of these projects in providing advance notification to other States about the children who are moving to their areas. The Secretary's objective, in issuing § 201.20(a)(3), is improving the accuracy of State child counts and the corresponding State-by-State distribution of Migrant Education Program funds, not eliminating worthwhile projects that serve important interstate needs of currently migratory children. Therefore, as one commenter recommended, the Secretary intends to commence discussions with State officials about ways to secure continued financial support for these projects from funds appropriated to the Department under section 1203 of the Act for grants or contracts that promote the interstate or intrastate coordination of Migrant Education Program services.

E. *The need for maximum recruitment to continue at the stopover sites.* The Secretary recognizes that the combined effect of § 201.20(a)(3) and the allocation formula in section 1201(b) of the Act may have the unfortunate practical consequence of eliminating the recruitment and enrollment of migratory children who would be State residents for only a day or two. Since it depends, in part, on an aggregation of child residency days, the allocation formula provides little fiscal reward for SEAs to expend the effort needed to recruit and enroll those children who will shortly move elsewhere. SEAs that, until now, have enrolled these children may feel they are receiving insufficient additional funds to justify the continued effort.

Nonetheless, the Secretary trusts that all SEAs affected by § 201.20(a)(3) will reject this parochial view, and continue expending the resources to permit active recruitment of *all* migrant children who pass through their States' stopover sites. Doing so will serve important educational objectives and benefit all of the States concerned. It will ensure that all migrant children who need the services available at the sites can get them. It will ensure that accurate records of these children's moves are established. Finally, recruitment of all those children who pass through the stopover sites, and entering corresponding residency data into the MSRTS identifying the period of their brief stays there, will substantially improve the accuracy of MSRTS statistics on the FTE numbers of migratory children residing in each State.

This one act, if performed at all sites, will permit the MSRTS statistics on the FTE number of migratory children residing in the "sending" States to reflect the fact that children who arrive at the stopover sites no longer reside in the States they have left. The Chapter 1—Migrant Education Program, as a national program, will thereby benefit because the Secretary will be able more fairly and with greater confidence to distribute program funds to all States, "sending," "receiving," and those where stopover sites exist, on the basis of more accurate estimates of where migrant children actually reside.

F. *Consideration of proposals to overhaul the system for generating statistics on the migrant children residing in each State.* The Secretary also considered the comment of those who believed that proposed § 201.20(a)(3) did not go far enough. Suggestions that Chapter 1—Migrant Education Program funds be allocated on the basis of the numbers of children actually served by migrant education projects have some merit but require further study by the Department. If implemented, they might permit MSRTS or another system to generate very accurate child count information while decreasing the amount of Migrant Education Program funds diverted from educational programs into child recruitment and enrollment efforts. The proposals, however, would not alleviate current problems of (1) identifying eligible children under the definitions in § 201.3, or (2) determining which children should be favored for receipt of program services given the statutory priority in section 1202(b) that favors currently migratory children. They also would likely decrease incentives SEAs now have to identify their currently migratory children, those who are hardest to find but who are the *raison d'etre* for the Migrant Education Program. In any event, the proposals conflict with the existing statutory requirement in section 1201(b) of the Act that the Secretary allocate funds on the basis of the most accurate estimate of each State's FTE number of migrant children residing within its boundaries.

Conversely, because they are controversial, the Secretary will treat as suggestions for future rulemaking the separate proposals (1) that receiving States that have not actually located and identified migratory children still receive some residency credit on the basis of information parents convey to the staff of the stopover projects, and (2) that the Secretary consider discarding the MPAS altogether for what the commenter characterized as unreasonable assumptions about continued child eligibility. The proposals will be studied as part of the Secretary's overall review of improvements that may still be needed in the quality of MPAS' estimates of State migrant child counts and, more generally, in the way Migrant Education Program funds should be allocated nationwide.

Changes: The substance of proposed § 201.20(a)(3) has been retained. However, the proposal has been modified as described in the following discussions of comments.

Comment: Several commenters recommended that, to avoid confusion, the terms "project" and "en route" in proposed § 201.20(a)(3) be defined or narrowed. Some commenters were concerned that, as written, the proposed regulations might prohibit desirable recruitment in any project that is located in an area to which migrant families have traveled to enable the child or members of the child's family to obtain temporary or seasonal work in agriculture or fishing. Others feared that the proposal would place undue recordkeeping and other administrative burdens on all States as their recruiters sought to determine whether migrant families were en route to locations in other States.

Discussion: In proposing § 201.20(a)(3), the Secretary wished to address one evident distortion that the current MPAS creates in the data that the MSRTS generates on each State's estimated annual migrant child count. It is the distortion caused by "large scale" efforts, conducted at sites that provide education and other services designed to attract migratory families during their moves from one location to another, to recruit migratory children who pass through them, coupled with the failure of States to which the families are moving to identify and enroll many of these children. The proposed regulations intended to address only this situation, not the more customary and varied forms of statewide recruitment activities. Consistent with that intent, the final regulations do not limit enrollment in the MSRTS of children recruited outside the kind of stopover site described above and in discussion of the preceding comment. Specifically, as revised in response to public comment, § 201.20(a)(3) has no effect on whatever recruitment efforts and MSRTS enrollment procedures may exist at stopover projects that offer migrant families short-term services, or job placement in temporary or

seasonal agriculture or fishing, and that are located in the States to which migrant children and families have moved to enable them to seek or obtain qualifying work.

With regard to situations not addressed by § 201.20(a)(3), the Secretary does not encourage SEA or LEA officials to recruit, as a State resident, any migratory child whom they discover is simply passing through the State so that a family member can seek or obtain employment elsewhere, unless they are likewise prepared to notify MSRTS to stop giving the State residency credit as of the date the recruiter learned the child expects to leave the State. However, the conditions under which this kind of recruitment effort occurs are likely to be far more random and unpredictable than those existing at the designated stopover sites that are the subject of § 201.20(a)(3). The quality of the estimates that MSRTS generates on the FTE number of each State's migratory children certainly warrants serious study. Until the study by the Department is completed, the Secretary is not prepared to regulate further in this area because of doubt that the resulting adjustments in State Migrant Education Program allocations justify the increased documentation and administrative burdens that regulations would impose.

Changes: Section 201.20(a)(3) has been revised to clarify its applicability to situations in which stopover sites are designed to attract migrant families who are in transit to locations in other areas to obtain temporary or seasonal employment in agriculture or fishing. It also clarifies that the limitations imposed on the period for which States, having recruited migratory children at those sites, may enroll children in the MSRTS or other system do not apply in the case of a child in transit to another location within the same State.

Comment: None.

Discussion: Proposed § 201.20(a)(3) appeared to apply only to migrant education stopover projects the SEA "operates." However, the provision was intended to address any distortion in program allocations resulting from the way in which MPAS assigns residency credit to children enrolled at certain stopover sites, regardless of whether the SEA or another agency funded or operated a project at those locations.

Changes: Section 201.20(a)(3) has been revised to clarify its applicability to any project conducted at a stopover site, "regardless of funding source," where recruitment of migratory children is conducted.

Comment: With regard to the proposed regulatory language in § 201.20(a)(3) referring to the SEA's enrollment of the child in "the MSRTS or other system of records as a resident in that State," one commenter recommended, for consistency with the statute, deletion of the words "of records."

Discussion: The Secretary agrees with the recommendation.

Changes: The words "of records" have been deleted.

Comment: Several commenters questioned how § 201.20(a)(3) could be implemented. They observed that withdrawal of children from the MSRTS does not now trigger an "end funding" code, and urged the Secretary to direct those operating the MSRTS to make appropriate changes in the existing MPAS.

Discussion: When these regulations take effect, the Secretary will commence discussions with State officials responsible for the MPAS to ensure that appropriate changes are made in it and that the Arkansas Department of Education, which operates the MSRTS, instructs SEA and LEA officials nationwide on any corresponding changes in data entries that may be necessary.

Changes: None.

Comment: The Secretary's proposal in § 201.20(b) to adopt a two-tier summer school adjustment formula, generated a heated debate on how and whether to change the Department's existing formula for implementing the special summer adjustment that Congress re-enacted in section 1201(b) of the Act. Currently, the Department provides all SEAs the same FTE credit for the total days of student enrollment in State summer school programs operated any time between May 15 and August 31, regardless of the levels of intensity and cost of those programs. The Secretary's proposal would have given that full FTE credit only for days students are enrolled during this period in intensive programs of instruction, defined to be a minimum operation of three hours per day or fifteen hours per week. Days of enrollment for students enrolled in less intensive programs would have generated half the FTE credit.

Those favoring the proposal cited its improvement over the current formula that does not address in any manner the differences in program cost or intensity of summer school programs operated throughout the country. However, many commenters felt that while its thrust was correct, the proposal was far too weak. Several commenters expressed concern that the term "program of instruction" needed definition. One commenter observed that otherwise the Department would continue its practice of rewarding FTE summer enrollment data that included alleged participation in projects that were "little more than dates entered in the MSRTS computer," such as a one-way correspondence project that mailed workbooks to migrant students of which the commenter was aware. Many commenters, particularly those from "receiving" States whose State programs emphasized summer programs, argued that the single supplemental FTE credit for every 109 days of enrollment between May 15 and August 31 generated too little additional funding to meet the costs of operating intensive summer projects. Many of these commenters recommended that the larger FTE credit for enrollment in intensive summer school programs of instruction be awarded for a much smaller number of days of enrollment.

On the other hand, the Secretary received many comments from those opposing proposed § 201.20(b). Commenters argued that the proposal would discourage innovative instruction and drastically reduce the number of migratory children whom summer programs would be able to reach. Commenters from one large State stressed the emphasis the SEA had placed on praise-winning, effective, and non-traditional summer programs that serve large numbers of migratory children. These commenters claimed the proposal would cost a significant proportion of their State's annual allocation of Migrant Education Program funds and summer program budget, with devastating repercussions on its migrant children. In addition, noting that § 201.20(b) would not provide any summer allocation adjustment to programs of instruction that were "not part of the regular school program," some commenters expressed concern about the inequity of decreasing SEA allocations to those States whose school districts operate on a "year-round" basis. Still other commenters urged the Secretary to decrease, rather than increase, the significance of the summer school adjustment in the overall formula for allocating Migrant Education Program funds, so as not to detract regular school programs for migratory children, which the commenters believed were more important.

In keeping with the service priorities in section 1202(b) of the Act that favor programs and services for currently migratory children, many commenters stressed the failure of both the current formula and proposed § 201.20(b) to focus on the need for increasing the levels and proportion of funding for programs designed to meet the needs of those children. Many also recommended that, in view of the subject's complexity, the proposed change in the summer formula be withdrawn so that various suggestions for revising the Department's current formula can be studied in detail. One commenter stressed that the Department's current formula was outdated, and that it derived from a collective decision made over ten years ago that relied upon the existing data and conjecture, but which at the time was deemed "equitable for the first year only."

Lastly, commenters disagreed on the goals that any summer school adjustment formula seeking to implement section 1201(b) of the Act should address. Some stressed the need for a formula tied to defraying more of the costs that intensive summer school programs of instruction incur. Others stressed that receiving States need more money to provide basic services for their summer migrant children, both to defray the costs of their existing programs and to allow creation of many more that are needed in unserved portions of their States. Still others stressed that all Migrant Education Program funding, whether related to the special summer school adjustment or not, should be tied to the costs of programs that attempt to meet the needs of currently migratory children. Finally, many commenters insisted that the SEA should determine the best form of summer school programs to meet needs of the State's migratory children, without pressure from a summer adjustment formula that rewarded only particular forms of intensive instruction.

Discussion: Section 1201(b) of the Act directs the Secretary to adjust the FTE number of migratory children in States during summer months "to take into account the special needs of those children for summer programs and the additional costs of operating such programs during the summer." As the Supplemental Information

accompanying the January 26, 1989 NPRM explained (54 FR 3926), the Department's method for implementing this adjustment gives equal weight to the daily enrollment of every child enrolled in any migrant education summer school program. An SEA provides the MSRTS with the identities of enrolled students and the enrollment and withdrawal dates of what it considers to be qualifying programs. The MSRTS aggregates the data to provide an adjusted summer FTE count for the State that, when added to its regular calendar year FTE count, produces the MSRTS statistics on the numbers of migratory children enrolled in the State. This total number forms the basis of the Department's annual allocations of Migrant Education Program funds.

As noted in the Supplemental Information to the NPRM, the Secretary is concerned that the Department's current summer school adjustment formula may unfairly reward SEAs whose summer projects passively serve large numbers of migrant children at the expense of SEAs whose projects intensively serve far fewer. Many commenters not only expressed a similar concern, but criticized proposed § 201.20(b) because it still did not generate adequate funding for the intensive summer programs that their States operate for currently migratory children. Conversely, the Secretary is aware of some summer school projects that, through the existing formula, generate Migrant Education Program funding for their States far in excess of their summer school costs.

As proposed, § 201.20(b) sought to ameliorate some of these apparent inequities and to do so, through reliance upon MSRTS data like those currently used, with minimal administrative cost and burden. Those inequities affect the fairness with which the Department allocates program funds linked to summer school costs and needs. Since the FTE summer school adjustment is but one element of the broader Migrant Education Program allocation formula that relies upon the total FTE number of each State's migrant children, persistent inequities in the summer adjustment formula also raise disturbing questions about the relative purpose of careful State identification and recruitment.

In proposing § 201.20(b), the Secretary wanted to begin the process of addressing these inequities. The Secretary is concerned about the potential impact that this and other formula changes might have on any State's existing innovative programs. However, the Secretary is also concerned that a funding allocation system be implemented that, consistent with section 1201(b) of the Act, responds to the costs of operating summer school programs and the numbers of migrant children, particularly currently migratory children, enrolled in them throughout the nation. In this regard, the Secretary observes that enactment of the special summer adjustment in 1978 in section 141 of Pub. L. 95–561 was specifically described by the House Education and Labor Committee as necessary to meet the unmet needs of *currently* migratory children: "[T]he lack of stability in the average migrant child's educational process, speaks for the necessity of summer programs, but few States have implemented these programs due to their higher costs." See H.R. Rep. No. 95–1137, 95th Cong., 2d Sess. 40 (1978). The Secretary acknowledges that the proposed § 201.20(b) did not adequately address adjustments needed in FTEs to reflect the costs of summer school programs established for currently migratory children.

Reaction to the proposal has revealed the depth and extent of public concern about any new regulations the Secretary might now issue. Commenters of all viewpoints urged caution and further study to avoid what they believed might be widespread and unpredictable ramifications that § 201.20(b) would cause. In response, the Secretary agrees that further study and debate about the specifications of a new summer school adjustment formula must occur before a new proposal can be issued.

Therefore, the Secretary has determined that the Department's existing summer adjustment formula should be retained without modification to permit a review of other formulas for adjusting State FTE numbers of migratory children that might better reflect the costs of summer school programs for currently migratory children.

Changes: Section 201.20(b) has been revised by deleting the two-tier formula.

Section 201.25 Amount of a Subgrant

Comment: Several commenters objected to proposed § 201.25(a)(1), which included as a factor in the amount of a subgrant to an LEA the count of only currently migratory children, rather than currently and formerly migratory children, residing in an area to be served by the project. Commenters emphasized that the statute required only that a local project give priority to the needs of currently migratory children. They argued, therefore, that since Public Law 200–297 was silent on how the amount of subgrants should be determined, Congress left to the States the authority to calculate the amounts of subgrants, if they chose, based on the total number of migratory children residing in areas served by those agencies. A few commenters stressed their view that SEAs needed this authority so that they could operate effective programs tailored to meeting their States' unique needs, such as in areas with relatively low levels of currently migratory children. One commenter stated that otherwise, the SEA's grant will permit "many arbitrary decisions."

Other commenters offered opinions about proposed § 201.25(a)(4), which would require that the criteria the SEA uses to determine the amount of a subgrant include the availability of funds from other sources. One commenter recommended that this criterion be revised to reflect "funds or services," and that if the criteria listed in § 201.25(a)(4) were intended to reflect a descending order of priority, that this criterion be given greater importance. Another commenter suggested that the Secretary clarify to what extent the SEA had to exhaust efforts to obtain these funds or services from other sources before including corresponding amounts of Migrant Education Program funds in the subgrant. Still another commenter appeared to recommend deletion of the criterion altogether as inconsistent with the manner in which the Department allocates Migrant Education Program funds to the SEAs.

Discussion: Section 1202(b) of the Act requires currently migratory children to be given "priority in the consideration of programs and activities" contained in SEA applications for migrant program funding. While section 1201(a) permits the SEA, if it chooses, to operate these programs and activities through subgrants to local operating agencies, the needs of the State's currently migratory children must be given precedence in the development of the State's projects. As noted in response to the preceding comment, Congress further stressed the priority it was placing on currently migratory children when it enacted the special summer school adjustment.

A. *The practice of subgranting on the basis of numbers of total migratory children residing in the area served by the LEA.* As proposed, § 201.25 appeared to some to impose a requirement that the amount of an SEA's subgrant to local operating agencies be based on a strict formula tied to numbers and needs of currently migratory children residing in areas served by those agencies. Its intent however was much simpler, to emphasize that the way the SEA distributes Migrant Education Program funds must ensure that the needs of the State's currently migratory children are being considered and will be met. The Secretary does not believe an SEA can ensure that the needs of all significant concentrations of the State's currently migrant children are being met if, as is often the case, it calculates the amount of subgrants to LEAs simply by applying a formula tied to the numbers of all migrant children found to be residing in areas the LEA would serve.

This kind of formula is simple to administer. However, funding project areas with equal numbers of migrant children at the same levels, regardless of either the relative proportion of those in each who are currently migratory or the relative costs of programs designed to serve them, conflicts with the SEA's responsibility to give "priority in the consideration of programs and activities" to currently migratory children. Moreover, the Migrant Education Program is not really SEA-operated, as so many commenters insisted it remain, if the FTE number of migratory children residing in the area served by the LEA in a sense creates for that LEA a *de facto* entitlement to a formula-driven amount of migrant education funding on their account.

Moreover, previous departmental regulations have likewise not sanctioned use of an automatic "dollars per child" subgrant formula. Rather, regulations for the Chapter 1—Migrant Education Program operated under the Education Consolidation and Improvement Act of 1981 (Pub. L. 97–35), and predecessor regulations for the Title I Migrant Education Program under the Elementary and Secondary Education Act as amended by the Education Amendments of 1978 (Pub. L. 95–561) both have included the "nature and scope" of the LEA's proposed project as factors the SEA was to consider in determining the amount of a subgrant, while the previous Chapter 1 regulations further required the SEA to consider the "cost" of that program. See § 201.25(b) of the Chapter 1

regulations issued on April 30, 1985, and § 204.40 of the Title I regulations issued on April 3, 1980.

Congress included no provision in Pub. L. 100–297 regarding the method for calculating subgrants. However, section 1431 of the Act specifically authorizes the Secretary to issue appropriate regulations to ensure compliance with statutory requirements governing the Migrant Education Program. The Secretary has determined that retention of the regulatory requirement that an SEA consider the "nature, scope, and cost" of the LEA's proposed project in determining the amount of a subgrant continues to be necessary for two reasons. First, it will enable the Secretary, under section 1202 (a)(1) and (b), to determine that payments are used for programs and projects designed to meet the needs of migratory children, particularly currently migratory children, residing in the area served by the LEA. Second, by ensuring that the amount of a subgrant to an LEA bears a reasonable relationship to the activities the LEA will conduct, it complements the SEA's responsibilities under sections 1012(a) and 1202(a)(3) of the Act to exercise appropriate fiscal control over the use of Migrant Education Program funds.

Use of the kind of considered approach to determinations on the amount of a subgrant will not lead to "arbitrary decisions," as one commenter suggested, because the SEA will be relying on project information and proposed budgets offered by the LEA, under § 201.17(b)(1)(ii), as part of its subgrant application. Moreover, determining subgrant amounts by the numbers of migratory children residing in particular areas of the State is perhaps the most arbitrary method of funds distribution since it awards funds to LEAs without regard to the relative needs of the State's migratory, particularly currently migratory, children. For all of these reasons, the Secretary has concluded that Migrant Education Program regulations must continue to require an SEA to consider other relevant factors, in addition to the numbers of children who would benefit from the LEA's project, when it determines the amount of a subgrant.

B. *Funds and services available from other sources.* Furthermore, the Secretary agrees with commenters that in order to use Migrant Education Program funds efficiently, a subgrant should not include amounts for project activities if funds "or services" from other sources are available to provide them. While not part of the statutory formula under which the Department allocates Migrant Education Program funds to the States, the provision is a necessary factor to be considered in determining the amount of a subgrant in order that limited program funding is most effectively utilized.

The SEA and its subgrantees must use reasonable efforts to secure these funds and services from the other sources, keeping in mind the need both for avoiding unnecessary expenditures of program funds and to avoid discontinuity in providing needed educational and support services to migrant children. The Secretary does not believe that the extent of this effort needs to be addressed in this regulation.

C. *The procedures and criteria for determining the amount of a subgrant.* Provided the SEA has ensured that all LEAs throughout the State that will be awarded subgrants with sufficient Migrant Education Program funding to operate projects designed to meet the needs of their significant concentrations of currently migratory children, the Secretary agrees that the SEA should be free to adopt procedures it considers appropriate to determine the amount of an LEA subgrant. Therefore, in response to comment, the Secretary has modified § 201.25 accordingly.

Changes: Section 201.25(a) requires that before it awards any subgrants to LEAs or other operating agencies, the SEA consider the relative needs of all operating agencies in the State for Migrant Education Program funds to conduct projects designed to meet the needs of significant concentrations of currently migratory children. Section 201.25(b) requires that before it awards subgrants to pay the supplemental costs of operating projects that stem from the inclusion of formerly migratory children, the SEA must ensure that the amount of each subgrant will be sufficient to meet the unmet needs of the operating agency's currently migratory children. Section 201.25(c) provides that as long as it does so, the SEA shall determine the amount of a subgrant using whatever procedures it believes are appropriate, based on the broad criteria in § 201.25 of the former Chapter 1—Migrant Education Program regulations.

Section 201.25(c)(1) expressly permits an SEA to use the number of migratory children residing in the area served by the project as a component of its subgrant formula. Section 201.25(c)(3) requires the SEA to consider the availability of services as well as funds from other sources.

Comment: One commenter recommended that the amount of the LEA's subgrant be tied to the total numbers of currently migratory children with educational needs residing in the area served by the LEA, rather than, as proposed, to those residing only "in sufficient concentrations to warrant implementation" of a project to meet their needs.

Discussion: The proposed language comports with the basic objectives of section 1012(c)(1) of the Act, which requires an LEA's project to be "of sufficient size, scope, and quality" to give reasonable promise of substantial progress toward meeting the special educational needs of children to be served. The Secretary has concluded that because the SEA must operate a statewide program, it should not be responsible for expending resources in those areas of the State where the numbers of currently migratory children with special educational needs are so few that Migrant Education Program funds cannot be prudently spent.

Changes: Section 201.25 (b) and (c) has been changed in response to other comments, but retains the requirement regarding "sufficient concentrations" of currently migratory children with special educational needs.

Section 201.30 Eligibility of a Child to Participate

Comments: Several commenters recommended that the language in proposed § 201.30(c) regarding the certificate of eligibility (COE) provide that the SEA's use of the national standard COE to be developed by the Secretary is permissive rather than mandatory. Commenters also suggested clarifying language to substitute for the proposed phrase that the COE will contain "minimum needed documentary information."

Discussion: The Secretary agrees with the commenters, and has accepted commenters' suggestions for revised regulatory language. The COE developed by the Secretary will identify the essential information that is needed to establish a child's eligibility. The SEA may adopt, modify, or reject use of that COE in its State. However, the SEA should ensure that all agencies of the State that recruit migratory children use whatever single COE the SEA approves.

Changes: Section 201.30(c) has been modified accordingly.

Comment: The Department received many comments recommending that the Secretary interpret the five percent error rate in section 1201(b)(1) of the Act in a manner that does not burden SEA officials. While one commenter merely expressed a general desire that requirements for State documentation not be burdensome and counterproductive, commenters generally urged the Secretary to interpret the provision as establishing a margin of error in the case of audit, rather than an affirmative SEA responsibility to monitor the eligibility information it submitted to the MSRTS. Many commenters stressed their view that, in enacting the provision in section 1201(b), Congress did not intend to impose an administrative burden of this kind on SEAs.

Discussion: As discussed in response to comments on proposed § 201.20(a)(2), the Secretary agrees with the comments.

Changes: For clarity, the regulatory provision concerning the five percent error rate, proposed in § 201.30(c), has been incorporated into new § 201.30(d) and § 201.30(e). Section 201.30(d) provides that the five percent error rate is operational only in the case of an audit. Section 201.30(e) provides further that while the SEA is responsible for ensuring that children who are ineligible for the Migrant Education Program are not determined to be migratory, the SEA is not responsible for auditing its determinations for correctness within a five percent margin of error.

Comments: Several commenters inquired how the Secretary interpreted the statutory provision that, in submitting their eligibility information, the States "not exceed a standard error rate of 5 percent." Commenters wished to know whether the five percent referred to the total number of children enrolled as eligible in the MSRTS, to the total number of State COEs (where siblings were enrolled on the same forms), to the FTE number of migratory children whom MSRTS statistics estimate to be residents of the State, or to the individual pieces of information recorded on the SEA's COE. Commenters consistently recommended the first approach. One commenter also expressed confusion about the meaning of the phrase "standard rate of error," and recommended it be replaced by a phrase like

"maximum error rate." Another commenter recommended that the language in proposed § 201.30(c) about the five percent rate of error be deleted as unnecessary in light of similar language contained in proposed § 201.20(a)(2).

Discussion. Because questions raised by the five percent standard error rate pertain most directly to matters of ensuring the correctness of State eligibility information, the Secretary believes it should be addressed in § 201.30 rather than in § 201.20, which concerns the amount of an SEA's grant. The Secretary agrees with the commenters that the five percent error rate applies to the actual numbers of children whom the SEA annually enrolls in the MSRTS as eligible to participate in the Migrant Education Program. While it might also apply to the State's MSRTS-generated FTE number of migrant children, the Secretary does not believe Congress intended one State's error rate to depend upon the quality of another State's recruitment effort and enrollment information, as would occur under the MPAS the MSRTS uses to generate its statistics. See the discussion of comments on proposed § 201.20(a)(3).

Moreover, the Secretary believes that in view of the complexities associated with applying the eligibility definitions in § 201.3, Congress enacted the margin of error provision to ensure that SEAs were given a reasonable latitude in the correctness of their child eligibility determinations. Because, under the MPAS, after enrolling a child in the MSRTS an SEA loses control over the period of time within the succeeding 365-day period that the child will generate as a State resident, it is logical that the five percent error rate apply to the very decisions on eligibility of individual children over which the SEA can exercise responsibility.

Finding no indication of a contrary congressional intent, the Secretary interprets the phrase "standard error rate" to mean "margin of error," as the commenter had recommended.

Changes: Section 201.30(d) provides that in case of audit, the Secretary considers both the SEA determinations and the statistics generated by the MSRTS or other system on the FTE number of migratory children residing within the State to be correct, if the number of children whom the SEA or its operating agencies found to be eligible migratory children is correct within a five percent margin of error.

Comment: One commenter recommended that the five percent error rate apply when incorrect eligibility information results in "non-eligible students being served."

Discussion: Under § 201.30(a), the SEA or its operating agency must indicate in writing the basis for determining a child to be a migratory child as the term is defined in § 201.2 before he or she may be counted as a migratory child or provided with program services. Section 1201(b)(1) of the Act provides that the five percent rate of error applies to information needed to make determinations on the total FTE number of migratory children estimated to reside in each State, and this statement is reflected in § 201.30(d). Since the State's eligibility determinations are also used to determine which children will be served with Migrant Education Program services, an SEA charged with serving ineligible children on a statewide basis may, under appropriate circumstances, demonstrate that the total number of ineligible children served by the program does not exceed five percent. However, the Secretary does not believe that this matter needs to be the subject of regulations.

Changes: None.

Comment: None.

Discussion: The enactment of the new requirements in section 1201 of the Act that the Secretary develop a national standard COE and that States be given a five percent margin of error in their eligibility determinations, has created some confusion about their relationship to the SEA's responsibility under proposed § 201.30(c) for "implementing procedures that ensure the correctness of the information on which the SEA or the operating agency relies." The Secretary has concluded that development of that COE, and its possible use by each SEA, is intended to give State and local officials confidence in the adequacy of the COE the SEA adopts for its State, and to eliminate future expenditures of resources devoted to modifying the State's COE. However, while use of the national standard COE, or any adequate COE, ensures the use of an acceptable document for purposes of recordkeeping, it does not ensure the necessary "correctness of the information on which the SEA or the operating agency relies." Use of the COE is a necessary but not sufficient condition for proper recordkeeping.

It is the accuracy of the information recorded on the COE, rather than the completed COE itself, that determines the eligibility of a migrant child. Therefore, the five percent error rate does not relate to the number of COEs that on their face contain information supporting the children's eligibility, but rather to the quality of the information recorded on these COEs. It is the quality of that information that must be the subject of the SEA's procedures under § 201.30(b) "that ensure the correctness of the information on which the SEA or the operating agencies rely" (subject to the five percent margin of error that will apply if an audit occurs). This subject has been the topic of substantial public discussion and comment in response to the May 1988 and January 1989 proposals offered by the Department's Office of Migrant Education to revise nonregulatory guidance, and the Secretary is satisfied that the public understands and concurs with this approach.

Changes: Section 201.30 has been rewritten to clarify the SEA's responsibilities for implementing procedures that ensure the correctness of eligibility information extend both to use of an adequate COE and to the implementation of a process to ensure that the completed COE contains information that is both accurate and in sufficient detail to explain the factors making the child eligible for the Migrant Education Program.

Comment: One commenter urged deletion of language in the second sentence of proposed § 201.30(c) that suggested that the SEA, rather than the Secretary, determine the FTE number of migratory children residing in each State.

Discussion: The Secretary agrees that the proposed language incorrectly implied that each State determine its count of migratory children. Section 1201(a) of the Act gives the Secretary responsibility for that determination.

Changes: As revised, references to data the Secretary accepts to determine the FTE number of migratory children residing in each State have been deleted from § 201.30. The issue is addressed instead in § 201.20.

Section 201.31 Service Priorities

Comment: Two commenters questioned the breadth of the language in proposed § 201.31(a) that would require currently migratory children to be given priority over formerly migratory children in the receipt of services provided in "all programs and activities" the SEA and operating agencies provide. They stated that, in keeping with section 1202(b) of the Act, which establishes the priority for currently migratory children in all programs and activities "contained in applications submitted under this section," the service priority should be limited to those programs and activities conducted under the Migrant Education Program.

Discussion: The Secretary agrees with the comment.

Changes: Section 201.31(a) has been revised to require an SEA or operating agency to give currently migratory children priority in all programs and activities that are offered "pursuant to its approved applications for Migrant Education Program funds."

Comment: Section 201.31(a), as proposed, would have required currently migratory children to be given priority over formerly migratory children in receipt of all Migrant Education Program services. One commenter stated that strict implementation of the proposal could create student selection procedures that are not necessarily educationally sound. In particular, the commenter observed that a single-year period as a currently migratory child provided insufficient time to address the cumulative effects of educational disruption, while the priority favoring them over formerly migratory children prevented formerly migratory children still suffering the effects of educational disruption from receiving sufficient levels of services. Another commenter, through a response to the proposed requirement, in § 201.36(a), that students selected for project participation "have the greatest need for special assistance (as identified on the basis of educationally related objective criteria)," stressed that at times formerly migratory children are in greater need of services than currently migratory children.

The comments raise the significant question of whether § 201.31(a) must retain its absolute rigidity in favor of services to currently migratory children.

Discussion: The issue is fundamental to the Migrant Education Program. Because the program exists to assist migratory children, currently migratory children must remain its central focus. However, isolated situations may exist in which, perhaps because of their previous dislocations and school

interruptions, some formerly migratory children have needs that are greater than those of the currently migratory children residing in the project area. Conceivably, this might be so because of the lack of a minimum requirement for a migratory "move" (see the discussion of comments on § 201.3), or because climatic or industrial changes in a particular year cause significant numbers of an area's neediest migratory children to refrain from moving.

As proposed, § 201.31(a) repeated the requirement in previous regulations that currently migratory children be given "priority over formerly migratory children in receipt of services provided." The proposal is somewhat broader than the underlying statutory requirement in section 1202(b) of the Act, which requires currently migratory children to receive "priority in the consideration of programs and activities" described in program applications. The Secretary does not interpret the statutory provision to require blind allegiance to a priority favoring currently migratory children if, for example, needs assessments plainly reveal a greater need among formerly migratory children residing in an area. On the other hand, any broad revision of proposed § 201.31(a) could have very adverse consequences for currently migratory children.

The Secretary has determined that this dilemma can best be resolved by modifying § 201.31(a) to reflect the more flexible statutory language in section 1202(b) of the Act, and then using the annual needs assessment procedures discussed in § 201.32 as the vehicle for selecting children to participate in migrant education programs and projects. In particular, § 201.32(a)(5) requires SEAs and operating agencies to design their programs around the needs of those migratory children, consistent with the service priorities in § 202.32, who would benefit most from them.

The Secretary intends these provisions to permit SEA and local project officials to respond to those situations in which the special educational needs of formerly migratory children clearly exceed those of currently migratory children. They may do so by using the needs assessment process to identify services that are available to those currently migratory children from other sources, thereby directing limited Migrant Education Program funds to benefit those "most in need."

Changes: Section 201.31(a) has been modified to require that currently migratory children be given priority over formerly migratory children "in the consideration of all [migrant education] programs and projects" the SEA, LEA, or other operating agency offers.

Section 201.32 Annual Needs Assessment

Comment: Various commenters stated that the needs assessment requirement, as proposed in § 201.32, conformed too closely to the comparable requirement for the Chapter 1 Program in LEAs in section 1014(b) of the Act. They observed that the proposal failed to take into consideration the special problems posed by the mobility of migratory children. Commenters recommended that the provision be revised in keeping with the requirement in section 1202(a)(3) of the Act that programs and projects conducted under the Migrant Education Program "be administered and carried out in a manner consistent with the basic objectives of" section 1014(b).

Discussion: The Secretary agrees that § 201.32 should be revised to adapt the needs assessment requirement in section 1014 of the Act to the special nature of the Migrant Education Program and migratory children who, because of the nature and extent of their migration, may have special needs that are different from those of non-migratory children. In doing so, the Secretary has modified language of the comparable provision in § 200.31 of the Department's May 19, 1989 regulations governing the Chapter 1 Program in LEAs to highlight differences in the ways the two programs must operate. Therefore, § 201.32 follows the form of § 200.31 more closely than did the proposed regulations, but deviates from the latter provision in several important respects.

First, unlike the case in the Chapter 1 Program in LEAs, SEA and operating agency staff conducting migrant education programs and projects may be unable to design them around children whom they expect to participate the following year. Operating agencies that conduct regular school year projects either for children who move at other times of the year or for formerly migratory children may be able to do so. Agencies that conduct other projects, including summer school projects, may not. Therefore, § 201.32(a) has been revised to permit the needs assessment to be based upon an identification of the children or, if that is not possible, the characteristics of the children expected to reside in the area the project will serve. Section 201.32(b) now requires the SEA and operating agency to consider the differing needs, if any, that currently and formerly migratory children have in view of differing effects of migration on educational continuity and development.

Section 201.32(c), like the NPRM, requires that all projects, regardless of the types of migratory children they serve, must assess needs on the basis of educationally related objective criteria. However, the Secretary recognizes that projects serving children who miss substantial periods of the regular school term, or who attend summer school programs in areas other than those in which they regularly attend school, face procedural difficulties that do not arise elsewhere. Therefore, § 201.32(c) now differentiates, in the kinds of educationally related objective criteria to be used, among various migrant education projects. Some projects serve students during the regular school year who are mostly 1) currently migratory children who remain in the same school district for all or most of the regular school year or 2) formerly migratory children. Agencies that operate these projects can reasonably conduct needs assessments using educational criteria that are substantially similar to the criteria used in the Chapter 1 Program in LEAs. While § 201.32(c) encompasses the educational criteria that all projects serving currently migratory children must use, the Secretary interprets the provision as requiring these agencies to use the same forms of "educationally related objective criteria" that include "the results of written or oral tests" as do the Chapter 1 LEA projects.

However, § 201.32(c) also clarifies that migrant education projects serving more actively transitory children are not required to use the results of formal testing to assess educational needs. This provision is designed to recognize the practical difficulties that these disjointed or short-term projects may have in finding and using appropriate testing methods. Therefore, while formal testing should be performed if it is reasonably possible to do so, § 201.32(c)(1) provides that projects serving currently migratory children may assess educational needs using the most appropriate form of educationally related objective criteria. These "non-testing" objective criteria might include student absenteeism, reports from school districts that migratory students previously attended, and objectively performed teacher assessments.

Finally, the Secretary has determined that the contents of paragraphs (c)(1), (c)(3), (d)(1), and (d)(2) of section 1014 of the Act do not pertain to the Migrant Education Program, and so have no place in these regulations. Paragraph (c)(1), providing LEA discretion to maintain Chapter 1 services to children who are transferred to another school attendance area, conflicts with the SEA's responsibility both to operate the State's migrant education program and to determine the terms and amount of LEA subgrants. Paragraphs (c)(3) and (d)(2), regarding continuation of services to children from year to year, conflict with the service priority, in section 1202(b) of the Act, favoring services to currently migratory children. The special rules in section 1014(d)(1), conditioning services to children with handicapping conditions or limited English proficiency on meeting needs "stemming from educational deprivation," conflict with sections 1201 and 1202 of the Act, which impose no requirement that children receiving services under the Migrant Education Program must be suffering from educational deprivation.

Changes: Section 201.32 has been revised accordingly.

Comment: Several commenters stressed that testing of migratory children, as part of a needs assessment, will likely be very cumbersome because their mobility and unpredictable dates of enrollment would require year-round testing.

Discussion: The Secretary agrees that projects that typically cannot predict the dates of students' enrollment may have special problems using standardized tests or other forms of educationally related objective criteria in conducting needs assessments on the basis of all children who are expected to participate.

Changes: Section 201.32(b)(2) clarifies that, with regard to projects serving currently migratory children, the needs assessment may be conducted on the basis of the latest available information for those children "expected to be present at periods of peak enrollment."

Comment: Several commenters recommended that § 201.32 (c) and (d) be revised to clarify the relationship of the needs assessment of one group of currently migratory children to the services that may well be provided to others, if those whose needs are assessed become "formerly migratory children" in the following project year. One commenter recommended that the statement of criteria to be used to assess needs be revised to reflect the general educational needs of programs serving mobile children, rather than the individual needs of students who would receive services.

Discussion: The situations the commenters described are most typically faced by projects that serve those currently migratory children who attend summer projects away from their regular places of residence, or whose moves significantly disrupt project attendance. Migrant education projects that serve either other currently migratory children, i.e., those whose moves do not affect regular school program enrollment, or formerly migratory children do not face these problems. These projects generally will serve many of the same students from year to year, and so can focus the needs assessment process on the needs of the same students who will participate the following project year.

However, projects designed to serve the other group of currently migratory children do require special consideration. The Secretary has provided flexibility in the way LEAs conduct their needs assessments. First, § 201.32(a)(1) permits the SEA or operating agency to identify either the migrant children or, if this is not possible, the "specific characteristics of the children who are expected to reside in" the area served by the project. Second, as noted in the response to the previous comment, § 201.32(b)(2) permits the needs of children to be assessed using information relevant to those children "expected to be present at periods of peak enrollment."

The needs assessment requirement does not require use of testing, or any other educationally related objective criteria, to be used for child placement. While it is logical to do so, § 201.32 concerns project design, not project placement. In this regard, § 201.32(a) requires that the needs assessment procedures, and the educationally related criteria used to assess needs, be used to "improve migrant education programs and projects." The fact that the migratory children to be assessed may not be the same as those expected to participate in the following year's project creates no significant problems provided the SEA or operating agency has reason to believe the needs of participating migratory children will be similar from project year to project year.

Changes: As discussed in response to this comment, § 201.32(c) now includes a requirement that those migrant education projects serving students whose migration affects project participation only need to use the "most appropriate" educationally related criteria when assessing student needs "including, if reasonably possible, the results of written or oral tests."

Comment: One commenter objected to requiring the use of educationally related objective criteria because many local project staff lack the skills to administer tests properly.

Discussion: Subject to the flexibility that has been incorporated into § 201.32 in response to the preceding comments, the Secretary has determined that the use of educationally related objective criteria in assessing educational needs, like other program requirements, may not be waived merely because of the relative capabilities of project staff. In operating migrant education projects throughout its State, the SEA is responsible for ensuring that those implementing projects are adequately trained in skills necessary to administer the projects.

Changes: None.

Comment: One commenter questioned how the requirement in proposed § 201.32(c) that projects assess needs on the basis of educationally related objective criteria could be implemented for preschool projects serving three- and four-year-old children.

Discussion: The Secretary believes that all migrant education projects, even those designed to serve the special educational needs of preschool children, can benefit from adoption of a needs assessment process. However, the Secretary has determined that formal use of educationally related criteria, objective or otherwise, to assess the special educational needs of preschool children could be unduly burdensome and costly. Therefore, § 201.32 has been modified to require that the formal needs assessment with regard to projects operated for preschool children only identify children expected to benefit most from preschool services and select those children, subject to the service priorities in § 201.31.

Changes: A new paragraph (e), limiting the scope of the needs assessment requirement to projects operating for preschool programs, has been added to § 201.32.

Comment: One commenter recommended that the phrase "educationally deprived children" in proposed § 201.32(c) be changed to read "migratory children."

Discussion: The Secretary agrees that sections 1201 and 1202 of the Act requires that migrant education programs and projects be designed to meet the special educational needs of "migratory children." They do not require those migratory children necessarily to be "educationally deprived."

Changes: Section 201.32 has been changed to require selection of those migratory children (consistent with the service priorities in § 201.31) who are in greatest need for Migrant Education Program services.

Comment: One commenter stressed that requiring an SEA and operating agency to determine the "library resource needs" of migratory children is confusing and beyond the scope of the Migrant Education Program. The commenter recommended the term be deleted.

Discussion: In enacting section 1014(b) of the Act, Congress specifically directed library resource needs to be addressed. In many areas, migrant education projects represent a significant, if not exclusive, portion of the total Chapter 1 services available to migrant students. Therefore, the Secretary has determined that the library resource needs of migratory students must be assessed. In doing so, the SEA or operating agency need not overemphasize this particular need, but only must consider those needs along with other needs of migratory children.

Changes: Section 201.32(a)(6) provides that as part of its needs assessment the SEA or operating agency determines the "resources, such as personnel, instructional materials, and library resources, necessary to meet" the identified special educational needs of children expected to participate in the project.

Section 201.35 Requirements for Parent Involvement

Comment: Several commenters requested that the new requirements for parental involvement be included in the regulations rather than incorporated by reference into § 201.35(c) through the phrase "in a manner consistent with paragraphs (a) through (c) and (e) of 34 CFR 200.34."

Discussion: The Secretary has determined that restating the many new requirements governing parental involvement in § 201.35 is unnecessary. Section 200.34 of the regulations governing the Chapter 1 Program in LEAs, which itself restates the underlying provisions in section 1016 of the Act, provides a full recitation of those provisions. Since nearly all State and local agencies that operate migrant education projects also operate Chapter I LEA projects, the Chapter I LEA program regulations are readily available to Migrant Education Program staff. Therefore, because of their length, these provisions will not be republished in these regulations.

Upon review of § 200.34, the Secretary has determined that paragraph (d) governing the LEA's annual assessment of its parental involvement program does not apply to parental activities conducted under the Migrant Education Program. That provision stems from program improvement plan requirements in section 1021 of the Act, which do not apply to migrant education programs and projects.

Changes: Section 201.35(c) clarifies that the requirements in § 200.34(d) do not apply.

Comment: None.

Discussion: The statutory provision in section 1202(a)(4) of the Act that *all* migrant education projects be carried out "consistent with the requirements of section 1016" expands the existing parental participation requirements for projects operated at the LEA level for the duration of the school year. For those projects, as with the State program as a whole, section 1202(a)(4) also requires LEA officials to ensure that project planning and operation includes appropriate consultation with parent advisory councils (PACs). Some confusion may exist about how these dual requirements impact upon each other.

The Secretary encourages LEAs to conduct their new section 1016 responsibilities through active PACs if it is appropriate to do so. If a PAC is active, the LEA can use it as the focal point of its effort, for example, to ensure full parental involvement in program planning, design, and implementation (section 1016(c)(1)), to convene an annual meeting of parents, where school officials explain the migrant education projects to be

conducted (section 1016(c)(2)), and to provide opportunities for regular meetings of parents to provide formal input into the program (section 1016(c)(4)). However, even if PACs are strong and enjoy good working relations with school officials, section 1016 establishes parental involvement requirements that LEA officials cannot meet through the PACs. These include the various provisions for meaningful parent-teacher discussions on children's progress (section 1016(c)(3)), and the various processes suggested in section 1016(c)(5) to involve parents more actively in their children's education.

The Secretary is aware that while some projects have very active PACs, other projects, for various reasons, do not. If a PAC only nominally exists, or is used sparingly, the LEA almost certainly cannot rely on it to meet its ongoing responsibilities for full parental participation under sections 1016 and 1202(a)(4) of the Act. Moreover, if an LEA relies upon a PAC to help channel some of its section 1016 responsibilities, it must maintain vigilance to ensure that the PAC operates fully and with purpose.

The Secretary also emphasizes that LEA officials that do not operate projects for the duration of the school year, and so have no statutory responsibility to maintain a formal PAC, also must ensure that their projects are administered and carried out consistent with the section 1016 requirements. Indeed, section 1016(a)(2) of the Act specifically prohibits an LEA from receiving any Chapter 1—Migrant Education Program funds unless it "implements programs, activities, and procedures for the involvement of parents" in its migrant education project. Section 1016(a)(2) also provides that the LEA's methods for obtaining full participation must both be planned and implemented in consultation with parents, and be "of sufficient size, scope, and quality to give reasonable promise of substantial progress toward achieving the" Act's stated goals of parental involvement.

Changes: None.

Section 201.36 General Program Requirements.

Comment: One commenter questioned the basis for language in proposed § 201.36(a), which would have required the SEA to ensure that the children selected for service are those with the greatest need for special assistance. The commenter stated that the provision conflicted with the service priority in section 1202(b) that favors services to currently migratory children, and provided too much latitude to an SEA or an operating agency to focus the project on the more easily identified and served formerly migratory children. Another commenter stressed that sometimes, because of the long-term developmental effects of transiency, formerly migratory children may have needs greater than those of currently migratory children.

Discussion: Section 201.31 (Service priorities) requires currently migratory children to receive priority over formerly migratory children "in receipt of services" under the Migrant Education Program. The services to be received, however, are those determined on the basis of an annual assessment of educational need. Although not typical, it is possible that in isolated circumstances the SEA and its operating agencies may determine that "in the consideration of migrant education program activities" some currently migratory children are less in need of services than formerly migratory children, and so do not warrant receipt of project services. As an extreme example, children who are currently migratory solely because of isolated weekend moves (see the discussion in response to comment on § 201.3 (Definitions for this program)) may not have sufficient needs for special Migrant Education Program services to warrant selection ahead of formerly migratory children who suffer the effects of years of previous dislocations.

Consequently, the service priorities in § 201.31 must guide student selection for projects, but must not do so to the total disregard of the identified needs of individual migrant children who reside in the area served by the operating agency.

Changes: Section 201.36(a) has been revised to require that the children selected for services are those, consistent with the service priorities in § 201.31, who have the greatest need for special assistance.

Comment: One commenter stated that the proposed requirement in § 201.36(a), that children be selected on the basis of "educationally related objective criteria," might lead to a failure to identify the neediest students. The commenter observed that sometimes other factors, "including the long-term developmental effects of transiency," often make formerly migratory children in greater need of assistance than currently migratory children.

Discussion: As revised, § 201.32(c) (annual needs assessment) requires that SEAs and operating agencies conduct needs assessments for all migrant education projects on the basis of "educationally related objective criteria." Section 201.32(c) directs use of the results of written or oral tests, such as traditional standardized tests, for assessing needs of formerly migratory children and, if reasonably possible, currently migratory children. Regardless of whether testing is necessary, the use of some appropriate form of objective criteria to conduct needs assessments is a pivotal part of project design and is appropriate in all cases.

However, use of these same criteria to select students who will actually participate in the following year's project may not always be feasible. For example, some migrant children either arrive in school districts well after their projects have begun or move to locations where they attend special summer programs. The Secretary does not believe that projects designed to serve these children should necessarily delay selecting each project participant until their use of educationally related objective criteria can confirm that the child's selection is warranted. Therefore, while use of these criteria to confirm that these students warrant project selection should be conducted as soon thereafter as reasonably feasible, the Secretary believes that § 201.36(a) should provide some flexibility.

Finally, as discussed previously, § 201.31 (service priorities) has been revised to permit projects to serve formerly migratory children in advance of currently migratory children if their needs for Migrant Education Program services are clearly greater than those of the currently migratory children.

Changes: Section 201.36(a) now requires that children be selected for services "to the maximum extent possible" on the basis of the criteria in § 201.32(c) (annual needs assessment).

Comment: One commenter suggested that proposed § 201.36 (d) and (e), regarding services to private school migratory children and coordination between the migrant education curriculum and the regular instructional curriculum, be revised in view of what the commenter believed would be an unwarranted expenditure of resources for the benefit of a very few students.

Discussion: The SEA is responsible for establishing and operating projects that serve all significant concentrations of migratory children in the State according to the service priorities in § 201.31. If currently migratory children attending private schools in a particular location are too few to justify their own migrant education project, the SEA does not have to spend Migrant Education Program funds to do so. However, if children attending private schools reside in sufficient numbers to warrant receipt of migrant education services, coordination of their migrant education curriculum with their regular school curriculum is as necessary as for children attending public schools.

Changes: Paragraph (d) of § 201.36 has been revised to clarify that the SEA must only ensure that services are provided to "all significant concentrations of migratory children enrolled in private schools, consistent with the service priorities in § 201.31."

Comment: One commenter expressed difficulty in determining the statutory basis of each of the general program requirements in § 201.36. The commenter recommended that the provisions be revised since, in the commenter's view, they reflected too closely the requirements for the Chapter 1 Program in LEAs since the Migrant Education Program only requires that projects be administered and carried out "consistent with" their basic objectives.

Discussion: The general program requirements in § 201.36 all stem from the incorporation into section 1202(a)(3) of the basic objectives of various specified requirements that govern the Chapter 1 Program in LEAs. Many of these requirements govern LEA application requirements for that program, but for the SEA-operated Migrant Education Program also represent SEA operational requirements.

The specific statutory underpinning of each provision of § 201.36 is as follows: § 201.36(a) regarding student selection and identification of their special educational needs—section 1014(b) (and the priority favoring currently migratory children in section 1202(b)); § 201.36(b) regarding the requisite size, scope, and quality of migrant education programs and projects—section 1012(c)(1); § 201.36(c) regarding the use of evaluations to improve program services—the interrelationships among sections 1019 and 1202(a)(6)

concerning evaluations and section 1201(a)(1) requiring projects to be designed to meet the special educational needs of migrant students; § 201.36(d) regarding services to migrant children attending private school—section 1012(c)(2); § 201.36(e) regarding coordination of the migrant education curriculum with the regular instructional program—section 1012(c)(3); and § 201.36(f) regarding services to migratory children who are also of limited English proficiency or are handicapped—section 1012(c)(4).

The Secretary has carefully examined each provision in § 201.36 to ensure that the requirements are of sufficient breadth to be adaptable to the Migrant Education Program. Except for the revisions to the proposed regulations explained in response to previous comments, the Secretary has determined that the language and requirements of § 201.36 represent "basic objectives" of the pertinent statutes governing the Chapter l Program in LEAs, and pertain to the way the Migrant Education Program should operate.

Changes: None.

Section 201.41 Maintenance of Effort

Comment: Two commenters questioned the appropriateness of any maintenance of effort requirement for the State-operated and -administered Migrant Education Program. One of the commenters stated that § 201.41 was unnecessary given the "supplement not supplant" provision in § 201.43.

Discussion: Section 1202(a)(3) of the Act provides that migrant education programs and projects "be administered and carried out in a manner consistent with the basic objectives of section * * * 1018" of the Act. Section 1018(a) contains the maintenance of effort provision, as expressly applicable to the Chapter 1 Program in LEAs. This requirement conditions the full receipt of an LEA's Chapter 1 subgrant on its maintaining, from year to year, the level of State and local funds it spends on free public education.

The requirement that the basic objectives of the Chapter 1 maintenance of effort requirement apply to the Migrant Education Program is not new. Congress enacted identical provisions to govern the Migrant Education Program both in section 142(a)(3) of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978 (Pub. L. 95–561), and in section 19(a) of 1983 technical amendments to the Education Consolidation and Improvement Act of 1981 (Pub. L. 98–211). Thus, Congress has determined that even though LEAs have no entitlement to subgrant or suballocation of funds in State-operated programs such as the Migrant Education Program the requirement that LEAs maintain fiscal effort still exists.

While related, maintenance of effort and supplement, not supplant requirements serve different purposes. Unlike maintenance of effort, which focuses solely on aggregate levels of LEA expenditures, the supplement, not supplant requirement prohibits LEAs from using Chapter 1 funds to replace the State and local funds that, in the absence of Chapter 1 funding, would be spent on programs for Chapter 1 students. Consequently, the supplement, not supplant provisions of § 201.43 cannot substitute for the maintenance of effort requirement in § 201.41 (and § 201.42).

Changes: None.

Comment: Several commenters strongly objected to what one commenter considered to be the "burdensome paperwork" that proposed § 201.41 would entail, particularly for LEAs operating only summer projects. Commenters noted that the records to be maintained duplicate those required by the Chapter 1 Program in LEAs.

Discussion: Any effort to ensure an LEA's compliance with the maintenance of effort requirement will entail recordkeeping so that yearly comparisons in the district's aggregate levels of expenditures can be made. However, the Secretary has determined to address the issue of unnecessary paperwork through § 201.17(b)(5), under which, as part of its application for a subgrant, an LEA only needs to provide the SEA evidence that it has maintained effort, if that information is not otherwise available to the SEA.

Changes: None.

Comment: One commenter commented on the proposed penalty, in § 201.41(b), to reduce by 50 percent the amount of the LEA's subgrant that may be used for indirect costs if the LEA failed to maintain effort. The commenter stated that he understood that most LEAs do not receive subgrants for indirect costs.

Discussion: Section 1018(a) of the statute provides that noncompliance with the maintenance of effort requirement will have consequences to the LEAs. For the LEA-operated Chapter 1 Program in LEAs, the penalty expressed in section 1018(a) of the Act, a pro rata reduction in the amount of the LEA's grant, is logical. However, this penalty is incompatible with the State-operated nature of the Migrant Education Program, particularly because LEAs are not entitled to subgrants.

As explained in the supplemental information that accompanied publication of the NPRM (54 FR 3927–28), the Secretary proposed the penalty in § 201.41(b) because that penalty appeared to comport with the basic objective of the maintenance of effort requirement—to create incentives for maintaining levels of non-Federal support by reducing levels of program support to those who did not. Despite the commenter's perception that many LEAs do not receive subgrants for indirect costs, the Secretary understands that many LEAs do charge a portion of their Migrant Education Program subgrants to the indirect costs of operating their programs on the basis of an established formal indirect cost rate that comports with that in 34 CFR 75.564 through 75.568. The Secretary expects that program reviews, audit reports, and communications from SEAs and LEAs will highlight whether this penalty needs to be revised. However, until a demonstrated need for a different penalty for noncompliance arises, and thereafter further study of how better to implement the maintenance of effort requirement yields a more suitable penalty, the Secretary has determined to retain the penalty contained in § 201.41(b).

Changes: None.

Section 201.42 Waiver of the Maintenance of Effort Requirement

Comment: A number of commenters considered this provision overly prescriptive and incompatible with the language of section 1202(a)(3) of the Act that migrant education projects be administered in a manner "consistent with the basic objectives" of section 1018(a).

Discussion: Section 201.42(a)(1) permits an SEA to waive an LEA's maintenance of effort requirement only once because of unforeseen or uncontrollable circumstances the LEA faces. Because maintenance of effort is tied to the total of an LEA's non-Federal resources spent on public education, and an agency operating a Chapter 1 LEA Program is entitled to only one waiver, the Secretary has determined that it would be illogical to permit a greater number of waivers under the Migrant Education Program. Consequently, the Secretary has determined that no further regulatory flexibility in § 201.42 is available.

Changes: None.

Section 201.44 Comparability

Comment: Several commenters questioned the rationale for proposing to implement the comparability requirement at the LEA level in a State-operated program. Another commenter specifically questioned why a comparability requirement is appropriate for a small program in which one paraprofessional provides all migrant education services to all the LEA's migrant children.

Discussion: As with maintenance of effort, Congress in section 1202(a)(3) of the Act has re-enacted the requirement that migrant education programs and projects be administered and carried out consistent with the basic objectives of the section 1018(c) comparability requirements. Because comparability measures the levels of State and local resources provided to support programs for similarly situated Chapter 1 and non-Chapter 1 students attending schools in a particular school district, the requirement cannot be implemented through statewide comparisons, and is not met by providing all of the LEA's migrant children the same level of Migrant Education Program services. However, consistent with section 1018(c) of the Act, the SEA is able, as it is for the Chapter 1 Program in LEAs, to monitor LEAs to ensure that migratory students attending their schools receive equivalent levels of State and locally funded services as do nonmigratory students.

Changes: None.

Comment: One commenter expressed confusion about whether the proposal in § 201.44(a), that the LEA provide comparable levels of services to migrant students as to "students in the same grades who are not receiving migrant program funds," referred to grades in the school migrant children attend or grades in all schools the LEA operates.

Discussion: The comparability requirement is intended to ensure that programs in which migrant children are enrolled are given levels of State and locally funded services that are comparable to levels of services provided for programs in which non-migrants are enrolled.

Therefore, the comparison is to the same grades throughout all the LEA's schools.

Changes: Section 201.44(a) has been revised to clarify that the corresponding grades of non-migratory children are those in all the LEA's schools.

Comment: None.

Discussion: While insisting upon regulations that consider the special nature and character of the Migrant Education Program, the Secretary has determined that the migrant education regulations should be as consistent as possible with those for the Chapter 1 Program in LEAs. Use of similar procedures will lessen the burdens LEAs would otherwise face if they had to implement separate comparability requirements for the two programs.

Changes: Section 201.44 has been revised to reflect many of the more flexible aspects of the corresponding § 200.42, governing the Chapter 1 Program in LEAs. For example, as proposed, § 201.44(b) would have required the LEA to establish and adopt the salary schedules and policies for equivalency among all the LEA's programs. However, § 201.44(b) now provides that an LEA will be considered to have satisfied the requirement if it files with the SEA an assurance that it has established and implemented that salary schedule and those policies or "establishes and implements other measures for determining compliance as the SEA may approve."

Section 201.45 Excluding Special State and Local Funds From Supplement, Not Supplant and Comparability Determinations

Comment: One commenter recommended deletion or substantial modification of this requirement, claiming that it appeared inconsistent with the intent of the Migrant Education Program to provide migratory children the same opportunities as other children.

Discussion: The commenter has misconstrued the purpose of § 201.45. That provision, like its statutory counterpart in section 1018(d) of the Act, encourages State and local governments to establish their own special compensatory programs, similar to Chapter 1. It does so by permitting them to exclude payments made under these special programs from the fiscal requirements that would otherwise exist under comparability or supplement, not supplant. The Secretary perceives no inconsistency between the provision and the goals of the Migrant Education Program, and so retains § 201.45 in the regulations.

Changes: None.

Section 201.46 State Rulemaking and Other SEA Responsibilities

Comment: As noted in the discussion of general comments on the Part 201 proposed regulations, many commenters strongly objected to the limits on State rulemaking in proposed § 201.46. Commenters, including both SEA and LEA officials, believed that the provision undercuts the authority of the SEA to administer and operate the State's migrant education program. The commenters pointed particularly to (1) the provisions of § 201.46(c), which they interpreted as precluding State determinations in matters such as the grade levels the migrant education projects should serve, and (2) the requirement in § 201.46(e) that a committee of practitioners shall review any State rules or regulations relating to the Migrant Education Program before they are published. One commenter also questioned the practicality of having a committee of practitioners review proposed State rules or regulations that would apply only to short-term summer projects.

Commenters felt that the purpose of the underlying statute, section 1451 of the Act, as applied to the Migrant Education Program through the "basic objectives" language of section 1202(a)(3), was merely to ensure local involvement in planning of local projects and development of the applications to support them.

Discussion: The Secretary sympathizes with the commenters' concerns that section 1451, after which § 201.46 was modeled, is a source of tension for those Federal, State, and local migrant education officials who have understood their program to be State-administered and State-operated. As discussed in response to the general comment on the part 201 proposed regulations, it is true that only the "basic objectives" of the provision need apply to the administration and implementation of migrant education projects. However, the express limitations on State rulemaking in named areas of local decisions and the requirement that a formal State committee of practitioners review rules or regulations before they are issued apply to all Chapter 1 programs, including the Migrant Education Program.

In seeking to resolve the question of the nature of section 1451's applicability to the Migrant Education Program, the Secretary has found no indication in Public Law 100–297 or its legislative history to indicate a congressional desire to preclude SEA decisionmaking in areas that have traditionally been accepted as State responsibilities. In this regard, the Department's Office of Migrant Education has long considered *all* activities conducted at the State or local level in the planning, design, implementation and evaluation of migrant education programs and projects to be part of SEA administration and operation, and the Secretary understands this view to be widely accepted. The Secretary therefore addresses the issues raised by section 1451 of the Act, regarding (a) limitations on State rulemaking and (b) the committee of practitioners, within this context.

A. *The "limitations" on State rulemaking.* Section 201.46(c) of the NPRM sought to resolve the dilemma by providing that the section 1451 preclusions on State rulemaking in the specified areas of LEA decisions would apply "unless [State rules, regulations, or policies were] needed to implement SEA responsibilities in an approved State application or in the Chapter l statute or regulations." The supplemental information accompanying the NPRM (54 FR 3925) stated that this provision was proposed because "the SEA must be able to retain authority to establish rules and policies that legitimately relate to its statutory responsibility for administering and operating the State's migrant education program." The intent of the provision was to continue to permit the SEA to implement legitimate activities under its State's migrant education program through the kinds of policies and rules it considered necessary to meet its responsibilities for operating the State program.

The Department received no specific comment on § 201.46(c). However, the Secretary has revised § 201.46(c) by including a new paragraph (c)(2), which clarifies the breadth of SEA decisionmaking. Under § 201.46(c)(2), the only reasons an SEA would be unable to issue rules or policies in the specified areas of grade levels to be served, skills to be addressed, and others described in § 201.46(c)(1), would be a conscious SEA decision to refrain from stepping into these areas. In effect, all Migrant Education Program decisions at the State or local levels are "SEA decisions" unless the SEA decides to delegate them to local operating agencies.

B. *The committee of practitioners.* Section 1451(b) expressly requires State rulemaking under any Chapter 1 program to be reviewed by a committee of practitioners. The Secretary has determined that while the manner of review of State migrant education program rules or regulations may be left to State discretion, nothing about the Migrant Education Program is inconsistent with the congressional desire to have broad discussion of any State rule, for the regular school year or summer school programs, before it is issued. Where expense is a major consideration, the SEA is free to use the least costly method available to obtain the committee's review, and may use a committee already empaneled for purposes of reviewing rules and policies for the Chapter 1 Program in LEAs.

Changes: Section 201.46(c) has been revised to clarify that decisions about the operation of the State's migrant education program do not become "LEA decisions" unless the SEA so determines.

Comment: Several commenters questioned the relationship between the committee of practitioners and the existing State parent advisory council, with which the SEA already must consult in planning and developing the State's migrant education programs and projects. Commenters stated that the work of the committee of practitioners would be duplicative of the work of that council.

Discussion: The committee of practitioners is much more broadly based than the State parent advisory council. Moreover, unlike the council, the composition of the committee of practitioners will include a majority of LEA representatives, who will be able to represent the specific interests of those local agencies during the State rulemaking process. Parent advisory council members ensure the involvement of another important constituency, parents of migratory children.

Changes: None.

Comment: None.

Discussion: Section 1451(b) of the Act requires that a State committee of practitioners review before publication any proposed or final State rule or regulation relating to the administration and operation of programs under this part. In addition, the Act requires that the State convene the committee to review an emergency regulation

prior to issuance in final form. On further consideration, the Secretary recognizes the inconsistency in requiring a State to convene a committee to review emergency rules and regulations while not requiring that the committee be convened to review other regulations. However, the Secretary is concerned with the undue burden that will be placed on States if the committee must be convened to review all rules and regulations. Therefore, the Secretary believes that the most appropriate way to carry out the intent of the Act and reduce undue burden is to require that the State convene the committee to review all major rules and regulations. All other rules and regulations must be reviewed by the committee before publication but not necessarily in a meeting. In addition, in a State that does not issue rules or regulations relating to the administration and operation of programs under this part but issues policies that the SEA and local operating agencies are required to follow, the State must comply with the consultation requirements for issuing rules and regulations.

Changes: Section 201.46(e) has been revised to require a State to convene the committee of practitioners to review any major proposed or final rule or regulations that the SEA and local operating agencies are required to follow in administering and implementing programs under this part. In addition, a change has been made to require that, for a State that does not issue rules or regulations but only issues policies that the SEA and local operating agencies must follow, the State must comply with the consultation requirements for issuing rules and regulations.

Section 201.49 Persons To Be Assigned Non-Chapter 1 Duties.

Comment: Two commenters objected to proposed § 201.49 on the basis that it provided too much flexibility to Migrant Education Program staff to divert their attention away from serving migrant children. Commenters stated that this was particularly so since many migrant education paid staff have responsibilities for working with much smaller numbers of children than do their Chapter 1 LEA Program counterparts.

Discussion: Congress enacted the underlying statutory provision, section 1453 of the Act, in order to ensure that LEA officials have the authority to treat all "similarly situated" staff the same, subject to the time limits specified in section 1453(a), with regard to certain school-wide supervisory functions, such as cafeteria duty, hall monitoring, home room supervision, and curriculum committee membership. While in some locations migrant education staff may work with far fewer students than other staff, the Secretary does not believe this alone is sufficient cause to limit the scope of the regulations.

In view of the congressional desire that the Chapter 1 teachers, affected by § 201.49 (and section 1452 of the Act), be permitted assignment to duties that are broader than those normally considered to be "supervisory," the title has been revised to refer to "non-Chapter 1" duties rather than supervisory duties.

Changes: The heading of § 201.49 has been modified accordingly.

Sections 201.51 through 201.56 Evaluation

Comment: Several commenters emphasized that they believed the proposed evaluation requirements to be overly prescriptive, an undue data collection burden, and too similar to the program requirements governing evaluations in §§ 200.80 through 200.86 for the Chapter 1 Program in LEAs. These commenters generally believed that the proposed regulations were insensitive to the special conditions of migratory children, particularly those with limited English proficiency. One commenter expressed concern that since SEAs administer and operate migrant education programs on a statewide basis, the regulations did not provide them with adequate flexibility.

Discussion: Section 1435 of the Act requires the Secretary to set national standards for evaluating for all Chapter 1 programs. These regulations provide those minimum standards. States are not precluded, if they desire greater flexibility, from mandating additional evaluation requirements that promote better program improvement. The Secretary believes that the proposed regulations governing Migrant Education Program evaluation did recognize the uniqueness of the migratory child population served by the program. The proposed regulations varied from those established for the Chapter 1 Program in LEAs in several ways, bearing more similarity to the provisions applicable to bilingual education in §§ 500.50 through 500.52 of the Department's regulations, while still adhering to the basic objectives of the requirements for evaluation contained in the Chapter 1 statute. In particular, the proposed rules considered the special effect that the mobility of some currently migratory children may have on individual migrant education projects, particularly those operated in summer months. The Secretary continues to believe that the regular school year projects that serve formerly migratory children do not present evaluation problems substantially greater than those encountered under the Chapter 1 Program in LEAs. Furthermore, there are significant numbers of currently migratory children who either remain in their home base school district long enough to participate in its testing program or arrive in a receiving school at the time of its districtwide testing program. For projects with these currently migratory children, standardized test scores can be collected in the same ways as in the Chapter 1 Program in LEAs. Therefore, even though some currently migratory children may be missed by these testing procedures, this number will be fewer than the commenters believed.

Section 1435 of the Act directs the Secretary to develop national evaluation standards for the Migrant Education Program, which presumably should complement express SEA responsibilities to implement the evaluation requirements in section 1202(a)(6) of the Act. However, the Secretary also understands the commenters' concerns about potential difficulties in implementing the proposed requirements. Therefore, the Secretary has decided to permit added flexibility in evaluations by permitting SEAs and LEAs to measure the overall progress of migrant children served by the State's migrant education programs and projects. The Secretary is satisfied that since the SEAs have long been responsible for (1) evaluating their migrant education programs and projects in a manner of their choosing, (2) using these evaluations to improve their programs, and (3) making the results of these evaluations public, the use of procedures prescribed in these regulations should not create an undue data collection burden upon the SEAs or their operating agencies.

Changes: Subpart E of these regulations has been revised by modifying § 201.51(a) and 201.52 to allow the SEA and its local operating agencies to measure the overall progress of the State's migrant education program, including the extent of educational progress achieved through the projects, in terms of basic and more advanced skills.

Section 201.51 Evaluation and Demographic Reports

Comment: One commenter objected to the inconsistency between the requirement that LEAs report their evaluation results every three years and the requirement that SEAs submit evaluation reports to the Secretary every two years.

Discussion: Section 1019 of the Act requires that the results of local evaluations be submitted to the SEA at least once during a three-year period. While this provision is not incorporated directly into section 1202 of the Act as a requirement of those administering migrant education projects, the provision is generally cited in section 1012 of the Act (governing LEA applications), whose basic objectives are incorporated into section 1202(a)(3). Therefore, the Secretary has determined not only that local projects have an evaluation requirement, but that the section 1019 provision that it evaluate its project at least every three years applies to migrant education projects as well.

In accordance with section 1019(b) of the Act, the SEA is expressly required to conduct evaluations (based upon local evaluation data collected under 1202(a)(6)) at least every two years. Therefore section 1019(b) plainly requires separate Migrant Education Program evaluations every two years, a schedule that comports with the Secretary's responsibility under section 1435(b) of the Act to report to the Congress on a similar two-year schedule.

In trying to mesh the inconsistences between the two-year State evaluation and the potentially three-year local evaluation, § 201.51 permits the SEA to require operating agencies to report more frequently than once every three years. It also permits the SEA to establish a schedule under which a sufficient number of operating agencies report to it each year or every two years to ensure that the SEA receives statewide data that are representative of the State's migrant education program.

Changes: None.

Section 201.52 Evaluation Information to Be Collected.

Comment: One commenter objected to proposed § 201.51(a)(2), which would require the LEA to address, for formerly migratory

children, whether improved performance had been sustained over two years. The commenter questioned how, given the impact of a migrant lifestyle, one can determine if improved performance has been sustained.

Discussion: Section 201.52(a)(2) applies only to formerly migratory children who have participated in a full school-year program for at least two years. The regulations reflect the underlying requirement in section 1019(a)(3) of the Act. The Secretary has determined that, since the regulations apply only to formerly migratory children who, by definition, have not migrated for at least two years, it is feasible for operating agencies to collect the uniform data the regulations specify.

Changes: None.

Comment: One commenter questioned the reasonableness of collecting separate evaluation data for both instructional and support services, as proposed § 201.52 (a) and (b) would require. The commenter felt that, for the Migrant Education Program, these two types of services are too intertwined to permit separate assessments of their effectiveness.

Discussion: The Secretary realizes that the benefits deriving from instructional and support services are intertwined, and that a measure of the success of one may be a measure of success of the other. However, most SEAs and operating agencies formally describe their migrant education programs and projects in terms of separate instructional and support activities. The purpose of the regulatory provision is only to require collection of data on the success of each of these project components.

Changes: None.

Comment: Some commenters questioned the use of "pre" and "post" normed test results as objective measures of the effectiveness of migrant education programs and projects, claiming that resulting matched scores will not be representative of the successes of the program.

Discussion: The Secretary recognizes that assessing the effectiveness of the migrant education programs and projects and the achievement of participating children presents challenges to SEAs and operating agencies. The Secretary, however, believes these challenges can be met, and that the extent of educational progress of migratory children can be determined for both currently and formerly migratory children participating in the regular school year program and those who may participate in the summer school projects. The regulations do not limit the objective measures of educational progress to nationally normed standardized achievement tests (or to the "pre" and "post" normed test results the commenter described). They acknowledge that other evaluation instruments, including those with State norms, may provide a valid measure of the progress of migratory children. Examples of objective measures other than standardized achievement tests include, as appropriate depending upon the objectives of the particular project, changes in attendance patterns indicating less frequent absenteeism and tardiness, declining course dropout and school dropout rates, and more frequent usage of library books and resource materials.

Changes: Sections 201.51 and 201.52 have been revised to clarify that SEAs and operating agencies must measure or assess the overall progress of both the instructional component, including the extent of educational progress achieved by its students, and support components of their Chapter 1 migrant education projects.

Section 201.52 Evaluation Information to Be Collected and Section 201.54 Non-Project Comparison Groups

Comment: A number of commenters were concerned about the proposal to require the use of appropriate non-project comparison groups in the collection of evaluation information. They expressed the view that the evaluation requirement may be very difficult to implement because of the lack of any appropriate non-project comparison group for migratory children. Another indicated that migratory children are decidedly different from the regular school population in ethnicity, language proficiency, ages in grade, and socioeconomic status and questioned the statutory basis for requiring use of non-project comparison groups.

Several commenters stated, as did the previous commenter, that limited English proficiency is an obstacle for making nonproject comparisons. In contrast, another commenter stated that evaluations of the Migrant Education Program should incorporate outcomes for migratory children served by Chapter 1, bilingual education, or other programs, as well as outcomes that directly stem from instructional services provided with Migrant Education Program funds.

Discussion: The Secretary believes that it is essential that the educational progress of migratory children receiving Migrant Education Program services be measured, to the maximum extent possible, using objective measures of gain. Indeed, educational progress in the regular school program can really only be measured against benchmarks uniformly applied to the migratory student population.

Two benchmarks are possible. One is a national or State norm based upon all students of a given age or grade. The other is an appropriate SEA or operating agency non-project comparison group. In addressing the ways in which either standard bears upon evaluation design, it is useful to examine separately (1) the form of the non-project comparison group, and (2) the different components, instructional and support-service, of migrant education programs and projects to be evaluated.

A. *The non-project comparison group.* It is sensible, if possible, to assess the performance of children who are served by migrant education programs and projects in comparison to the most similar groups available that receive no program assistance. For example, if the dominant characteristics of the migratory students whom a project serves are academic deficiency and non-English proficiency, the agency should try to compare their performance with the group of non-migratory students, if one is available, who most share those characteristics. Doing so will provide good information on the benefits that the migrant education programs and projects have produced. Therefore, pursuant to section 1425(a) of the Act, the Secretary has determined that use of appropriate non-project comparison groups may be necessary for evaluating the overall progress of migrant education programs and projects.

However, while proposed § 201.54 would have required the nonproject comparison group to include persons with characteristics and backgrounds "similar" to those of the migrant children participating in the project, the Secretary is satisfied that for some SEAs and operating agencies similar groups may not always exist. The Secretary understands that for some migratory children, particularly the actively mobile currently migratory children, an appropriate non-project comparison group, and data on that group, may be difficult to secure. Therefore, § 201.54(a) has been revised to define the non-project comparison group as consisting of those who "are as similar as possible" in characteristics and background.

B. *Use of the non-project comparison group or the national or State normed achievement test in evaluating the instructional and support-service components of migrant education projects.* Even so, the Secretary also recognizes that if the results of national or State normed achievement tests for a given age or grade of child are available, requiring the use of a non-project comparison group as a means of evaluating migrant student achievement may generate costs and difficulties that are not commensurate to the benefits obtained. Therefore, in response to the comments, the Secretary has revised § 201.52(b) to permit, for migrant education instructional projects operating throughout the regular school year, SEAs and operating agencies to conduct evaluations using "appropriate forms and levels of national or State normed achievement tests."

Only if those agencies do not use those achievement tests must they compare performance of migratory students to the performance of an appropriate non-project comparison group. Because instructional projects operating only over the summer term cannot reasonably be evaluated in terms of these national or State normed achievement tests, the Secretary has retained, in § 201.32(c), the requirement proposed in § 201.32(a)(2) of the NPRM that summer school projects be evaluated "to the extent possible," by comparing project results to those of a non-project comparison group.

If, for any instructional components of migrant education programs and projects, evaluations are conducted with an appropriate non-project comparison group, § 201.54(b) requires an SEA or operating agency to use standardized achievement tests based on national or State normative data only "to the extent possible." (The provision deletes the proposed alternate use of "local normed achievement data," contained in proposed § 201.54(b), because that data likely does not exist and, in any event, would frustrate development of common standards for a statewide evaluation.) However, if possible, the Secretary strongly recommends use of standardized norm-referenced tests to fulfill the requirement. Use of these tests,

with the most reasonable non-project comparison group that is available, will at least provide some kind of measure, where none may otherwise exist, of the success of a migrant education program and the overall progress of its participants.

Whether based on national or State norms these comparisons also (1) can provide measures of the participants' ability to function in local mainstream classrooms with their non-migratory peers, and (2) can help determine whether participants in migrant education projects function at the level of established State or local standards.

Use of the Technical Assistance Centers (TACs), funded under section 1436(d) of the Act, and the Rural Technical Assistance Centers (R–TACs), established under section 1456 of the Act, are available to assist SEAs and operating agencies in selecting appropriate non-project comparison groups, and appropriate norm-referenced testing procedures, to fulfill this regulatory requirement.

Finally, the Secretary also recognizes that some project support-service components, such as clothing and health care, do not easily lend themselves to evaluation through the use of a non-project comparison group, while others, such as those that promote dropout prevention or reading, may well do so. Therefore, with minor modifications, § 201.32(d) retains the requirement proposed in § 201.32(b) of the NPRM that the evaluation design for support-service components include "if possible, a means of comparing project outcomes to the performance of an appropriate non-project comparison group."

Changes: Sections 201.52(b) and 201.54 have been revised accordingly.

Section 202.53 General Technical Standards for Evaluation

Comments: A commenter recommended that evaluations of the Migrant Education Program be conducted at the national level, rather than at the State and local levels, by persons skilled in evaluation who have a thorough knowledge of the unique population the program serves.

Discussion: The Secretary is planning to conduct a number of national studies to examine various issues related to the operation and effects of the Migrant Education Program. At the same time, provisions of the Act, such as sections 1019, 1202(a)(6), and 1435, emphasize both that local and State level evaluations are necessary for purposes of accountability and program improvement, and that their performance is a responsibility of the SEA and local operating agencies.

Changes: None.

Section 201.55 Submission of Sampling Plans

Comments: One commenter suggested that States not be required to submit sampling plans for prior approval by the Secretary. Another commenter recommended that the Secretary consider a specific sampling strategy to address the coordination problems posed by requirements that SEAs report at least once every two years while operating agencies report at least once every three years, while a third commenter recommended deletion of the requirement altogether.

Discussion: Section 1435 of the Act, which directs the Secretary to establish national standards for evaluation, permits appropriate sampling of operating agency projects in order to avoid undue data burden on SEAs and operating agencies. Rather than prescribing the sampling procedures to be used, the regulations provide SEAs flexibility to design sampling systems most appropriate for their States. Section 201.55 requires that SEAs submit their sampling plans to the Secretary for approval so that the Secretary can be satisfied, consistent with responsibilities imposed under section 1435 of the Act, that the statewide evaluation data that is obtained will be representative of the State's migrant education programs and projects. Deletion of § 201.55 would preclude this desired flexibility.

Changes: None.

Sections 200.5, 201.2, and 203.5 Applicability of 34 CFR Part 85

Comment: None.

Discussion: These final regulations make applicable 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)). The regulations in part 85 were adopted in two separate rulemaking actions. First, under Executive Order 12549, 27 executive agencies joined together to promulgate common regulations authorizing debarment and suspension of individuals and organizations from nonprocurement programs of the U.S. Government. The Department implemented this Executive order in subparts A through E of part 85 (regular debarment and suspension) (53 FR 19161 (May 26, 1988)). Second, under the Drug-Free Workplace Act of 1988, the 27 agencies were joined by seven other agencies to issue debarment and suspension regulations implementing the new Act. The Department implements the Drug-Free Workplace Act of 1988 in subpart F of part 85 (drug-free debarment and suspension) (54 FR 4946 (January 31, 1989)).

The regular debarment and suspension regulations provide that statutory entitlements and mandatory awards (but not subtier awards thereunder which are not themselves mandatory) are not covered by the debarment and suspension regulations (34 CFR 85.110(a)(2)(i)). The Secretary has concluded that this exception from coverage precludes the Secretary from denying funding under this or any other State-administered program based on a regular debarment or suspension. The exception also would prevent the Department from denying assistance to a subgrantee under this program or any other program in which subgrantees are entitled to funds if they meet certain requirements.

While the Department could not cut off funds to a State or mandatory subgrantee, the Secretary has determined that all lower tier covered transactions, such as the employment of an administrator (a covered transaction under 34 CFR 85.110(a)(1)(ii)(A)), would be subject to the debarment and suspension regulations. Such a debarment would not prohibit the receipt of funds by the State or mandatory subgrantee. However, the debarment would prohibit the subject individual from acting as a principal (as defined by 34 CFR 85.105(p)) for the State or subgrantee or from participating in any other covered transaction under nonprocurement programs of the Federal Government.

As a result, if the Department discovered any activity by an administrator paid from program funds that would constitute grounds for debarment, the debarring official for the Department would take action to debar the individual. Further, if a State continued to do business with the individual, the Department would consider issuing a Program Determination Letter to the State to recover the program funds.

Given these conclusions, the Secretary has determined that the Department must collect primary tier certifications from grantees under this and other State-administered programs. Under 34 CFR 85.510(a), however, a State need only certify as to its principals. The OMB-approved forms used by the Department at this time for primary tier transactions do not yet indicate that they apply only to principals. The Department will submit to OMB for approval a new form that would apply only to principals of a State.

Similarly, as to mandatory subgrantees, States must collect the lower tier certifications from both mandatory and discretionary lower tier participants. As with the primary tier certifications submitted by States under this program, the Department will submit a new lower tier certification form to OMB for approval that would apply only to principals of mandatory subgrantees. However, pending approval of the new forms, the Department will use the current forms with the understanding that they apply only to principals of States under State-administered programs and to principals of mandatory subgrantees under State-administered programs.

The drug-free debarment and suspension regulations require all grantees receiving a grant from any Federal agency to certify that they will maintain a drug-free workplace. The regulations do not apply to subgrantees. The Department has authority to deny funds under entitlement programs to grantees that fail to meet these requirements. Regarding the State certifications required under these regulations, the Department will continue to use currently approved forms. Because the regulations do not apply to subgrantees, there is no need for States to take any other action to fully implement the requirements.

Changes: Section 201.2 has been revised to reference the applicability of 34 CFR part 85. Amendments have also been made to part 200 (Chapter 1 Program in Local Educational Agencies) (§ 200.5) and part 203 (Chapter 1 Program for Neglected or Delinquent Children) (§ 203.5) to indicate the applicability of part 85 to those programs as well.

[FR Doc. 89–24658 Filed 10–20–89; 8:45 am]

BILLING CODE 4410–01–M

federal register

Monday
October 23, 1989

Part III

Environmental Protection Agency

40 CFR Parts 795 and 799
Isopropanol; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 795 and 799

[OPTS-42097B; FRL 3658-7]

RIN 2070-AB07

Isopropanol; Final Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a final test rule, under section 4 of the Toxic Substances Control Act (TSCA), requiring manufacturers and processors of isopropanol (CAS No. 67-63-0) to perform testing for health effects. The testing requirements include subchronic toxicity, reproductive toxicity, developmental toxicity, neurotoxicity, developmental neurotoxicity, mutagenicity, oncogenicity, and pharmacokinetics. The action is in response to the Interagency Testing Committee's (ITC) designation of isopropanol for priority testing consideration.

DATES: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern (daylight or standard as appropriate) time on November 6, 1989. This rule shall become effective on December 4, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA is issuing a final test rule under section 4(a) of TSCA to require health effects testing of isopropanol.

I. Introduction

A. Test Rule Development Under TSCA

The final rule is part of the overall implementation of section 4 of TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*), which contains authority for EPA to require the development of data relevant to assessing the risk to health and environment posed by exposure to particular chemical substances or mixtures (chemicals).

Under section 4(a) of TSCA, EPA must require testing of a chemical to develop data if the Administrator makes certain findings as described in TSCA under section 4(a)(1)(A) or (B). Detailed discussions of the statutory section 4 findings are provided in the EPA's first and second proposed test rules which were published in the **Federal Register** of July 18, 1980 (45 FR 48510) and June 5, 1981 (46 FR 30300).

B. Regulatory History

The Interagency Testing Committee (ITC) recommended isopropanol with intent to designate for health effects testing consideration in its 19th Report, published in the **Federal Register** of November 14, 1986 (51 FR 41417). The ITC designated isopropanol for priority testing consideration in its 20th Report (May 20, 1987, 52 FR 19020). The ITC recommended that isopropanol be tested for chronic toxicity including oncogenicity, and for genotoxicity including mutagenicity in mammalian systems and clastogenicity. Testing for developmental and reproductive effects was deferred from consideration pending the outcome of relevant studies that were being conducted in the United Kingdom by the British Industrial and Biological Research Association (BIBRA).

EPA responded to the ITC's recommendations for isopropanol by issuing a proposed rule (March 16, 1988, 53 FR 8638), which proposed that isopropanol be tested for subchronic toxicity, reproductive toxicity, developmental toxicity, neurotoxicity, developmental neurotoxicity, mutagenicity, oncogenicity, and pharmacokinetics. Consent order negotiations for isopropanol, attempted prior to rulemaking, were abandoned when consensus could not be reached between EPA and the Isopropanol Panel of the Chemical Manufacturers Association (CMA) on the requirements of a two-species oncogenicity bioassay.

The proposed rule for isopropanol contained the discussions on the attempted consent order, chemical profile of isopropanol, section 4(a) findings, and the proposed test standards and reporting requirements.

II. Response to Public Comments

EPA received written comments on the isopropanol proposed test rule from the Isopropanol Panel of CMA (the Panel), the Procter and Gamble Company (PGC), and the Natural Resources Defense Council (NRDC) on May 16, 1988 (Refs. 1 through 3). The Panel members are: Arco Chemical Company, Exxon Chemical Corporation, Shell Oil Company, and Union Carbide Corporation. A public meeting was also requested by the Panel and was held on June 1, 1988. The Panel submitted supplemental written comments on July 21, 1988 that reiterated the issues discussed at the public meeting (Ref. 4). A summary of the comments received on the isopropanol proposed test rule are stated in the following Units II. A. and B. along with EPA's responses to the comments.

A. Exposure Finding

The Panel stated that it does not dispute EPA's finding that there is or may be substantial exposure to isopropanol, although it does not accept all aspects of EPA's characterization of exposure (Ref. 1).

1. *Exposure during isopropanol manufacture.* The Panel expressed concern that EPA's proposed rule may have overstated worker exposure to isopropanol during its manufacture. The Panel indicated that it had initiated a survey of its four members, who produce all of the U.S. isopropanol at five manufacturing sites, to obtain data on potential and actual exposure during production of isopropanol (Ref. 1). The survey results, submitted to EPA as part of the Panel's supplemental written comments, showed that there are 395 manufacturing employees in the United States who are potentially exposed to isopropanol. The concentration of isopropanol to which employees are exposed ranged from 0.02 parts per million (ppm) to 6.41 ppm (Ref. 1).

The worker exposure level to isopropanol of 50 mg/m^3 (approximately 20 ppm) during its manufacture, stated in the proposed rule, is the upper limit of exposure derived from EPA analysis (Ref. 5). Although worker exposure to isopropanol from manufacturing operations is generally less than this value, EPA believes that worker exposure from isopropanol manufacturing operations is only a minor source of occupational exposure to isopropanol. Worker exposure from industrial use is a much greater source of occupational exposure to isopropanol (Ref. 5). Therefore, the data on exposure to workers at manufacturing facilities are of only limited use, since exposure to workers from processing and use of isopropanol, which contributes a far greater proportion of the exposure upon which the substantial exposure finding is based, was not considered by the Panel.

2. *Inhalation exposure within the general population.* The Panel suggested that isopropanol may be a naturally occurring constituent of milk, therefore, the Pellizarri mother's milk study (Ref. 6) should not be used as evidence of exposure to isopropanol in the general population. The Panel also pointed out several serious flaws with this study.

EPA agrees that there are flaws in the Pellizzari study and is not using the study to support the findings in the rule.

B. Health Effects Testing Requirements

The Panel agreed with EPA that additional health effects testing for isopropanol is warranted. Therefore, the Panel's comments are directed principally at the scope and sequence of the required tests and the selection of appropriate methodologies (Ref. 1).

1. *Route of exposure.* a. The Panel stated that, since inhalation is the principal route of exposure to isopropanol, inhalation should be the preferred route of exposure for all of the major health effects studies conducted, including reproductive toxicity, developmental toxicity, and developmental neurotoxicity studies. The Panel envisioned no technical difficulties in conducting the required studies by inhalation. The Panel recommended that exposure be through drinking water if EPA concludes inhalation is an inappropriate route for any of the major health effects studies. The Panel further stated that gavage administration is particularly inappropriate for testing isopropanol because isopropanol demonstrates saturable metabolism.

EPA concurs with the Panel that there are no major technical difficulties with conducting developmental toxicity tests by the inhalation route. There are, however, technical difficulties with conducting both the reproductive toxicity and developmental neurotoxicity tests by inhalation. In these latter tests the animals are exposed to isopropanol both during pregnancy and through the period of weaning. During the time from just prior to birth until the end of weaning it would be difficult to transfer animals daily to the inhalation chamber for the required exposure periods. This excessive handling of the animals (particularly removal of the mother from the pups) would likely result in adverse effects on the pups which was not chemically related and would confound the interpretation of the results. This would be particularly true in assessments of developmental neurotoxicity where aberrant behavior might be easily be attributed to handling. In addition, if it was decided to expose both mothers and pups in an inhalation chamber, the nesting material required during the latter part of pregnancy and during weaning could easily absorb vapors during an inhalation exposure, and the saturated bedding could provide an important, yet unquantified, exposure to the test substance to both the mothers and the pups. For these reasons, EPA disagrees that inhalation route should be used for conducting reproductive toxicity and developmental neurotoxicity tests. Further, EPA considers it advisable, for the ability to compare reproductive performance, that the developmental toxicity, developmental neurotoxicity, and reproductive toxicity tests be conducted by similar routes.

Administration by gavage has some distinct advantages for the developmental neurotoxicity testing. The use of gavage administration permits relatively precise estimations of the dosages administered. By comparison, drinking water studies require estimates of individual water consumptions. Also, some spillage of water may occur during drinking and volatile chemicals may be lost. Furthermore, in the developmental neurotoxicity study, exposure extends through the period of weaning, and gavage administration ensures that exposure of the pups only occurs through the mother's milk. Since, as mentioned above, it is desirable to perform all the reproductive tests by the same route of administration, EPA believes that gavage administration is the most appropriate route for these studies.

b. While the Panel supported the use of inhalation exposure for most of the health effects testing, the Panel stated that the *Drosophila* assay and the in vivo cytogenetics assay should not be conducted by inhalation exposure. The Panel contended that, since the data from these assays will not be used directly for human risk assessment, the greater expense involved in inhalation studies is not justified under TSCA. In addition, the Panel contended that vapor phase exposure has provided inconclusive results in tests of glycol ethers (Ref. 7), and that tests of a similar compound, methanol, have been conducted by feeding. Finally, the Panel contended that the use of a feeding study would allow a more ready comparison with other *Drosophila* assays.

EPA does not agree that feed should be the route of administration in the *Drosophila* assay because of the relative difficulty of determining the dosages administered by feed. There is no apparent major technical obstacle to performing this study with isopropanol using vapor exposure. The study of glycol ethers by McGregor (Ref. 7) does not indicate that there is any inherent limitation to the use of vapor exposure, but, on the contrary, demonstrates that this experimental system is feasible and has been performed in the past. The inconclusive results reported in this study were attributed by the authors to the metabolic status of *Drosophila* and not to the exposure conditions. Thus, EPA is requiring that isopropanol be administered by vapor exposure or by injection.

The Panel may choose to conduct the in vivo cytogenetic assay by a route other than inhalation. EPA is requiring the other route to be either oral gavage or interperitoneal (IP).

2. *Reproductive toxicity testing.* The Panel stated that the available data on reproductive toxicity of isopropanol are adequate. The Panel cites existing reproductive toxicity data in rats to indicate that reproductive effects are more severe in the first generation. The Panel also noted that a recently completed BIBRA one- generation reproductive toxicity study, currently under review in the United Kingdom, may provide the necessary data to assess the reproductive toxicity of isopropanol.

The question of one- vs. two-generation reproductive effects studies was recently evaluated by a panel of experts in a workshop sponsored by the EPA's Risk Assessment Forum. The Panel of experts concluded that, by itself, a one-generation reproductive effects study is insufficient to identify all potential reproductive toxicants and that a two-generation study is needed for an adequate assessment (Ref. 8). Thus, EPA considers that the one-generation study conducted by BIBRA, even when it becomes available in the United States, will not provide the data needed for an adequate assessment of this endpoint. Because there is no benefit in delaying the two-generation reproductive toxicity testing for isopropanol until the BIBRA study becomes available, EPA is requiring testing for this endpoint in this rule.

3. *Developmental toxicity testing.* The Panel recommended that EPA include a two-species developmental toxicity study in its final rule but stay the requirement to conduct testing in the rat until the results of a rat developmental toxicity study conducted by BIBRA becomes available. It further recommended that at this juncture, following a public meeting, EPA could determine whether additional testing in the rat is needed.

EPA concurs with the Panel's contention that the BIBRA study may fulfill the data needs for developmental toxicity testing in rats. To assure that adequate testing is available if BIBRA data are not submitted in a timely manner, EPA is requiring a two-species developmental toxicity test in this rule. The testing requirement in the rat will be reexamined after the BIBRA data are received by EPA.

4. *Developmental neurotoxicity testing.* a. The Panel noted that in previous test rules, developmental neurotoxicity tests have only been required when data exists to raise concern about this endpoint for the test compound, and that the tests were required as a tier-II type study. The Panel disagreed with EPA's decision to use data on other short chain alcohols, ethanol and t-butanol, to support the decision to require developmental toxicity testing of isopropanol. The Panel stated that studies by Nelson and co-workers on ethanol and 1-propanol (Refs. 9 and 10) only reported changes in neurotransmitter levels and hence can only be used to support similar types of testing rather than the more extensive tests required in the proposed rule.

EPA is concerned that data on other short chain alcohols have shown developmental neurotoxic effects. As stated in the proposed rule, EPA is basing the developmental neurotoxicity testing requirement for isopropanol on the authority of section 4(a)(1)(B), not section 4(a)(1)(A), of TSCA. Because there is a high degree of exposure to isopropanol, EPA has decided that testing should not be delayed.

b. The Panel also noted a number of technical issues with regard to the conduct of the developmental neurotoxicity tests. For instance, statistical questions concerning the number of animals required for each test and neuropathology issues regarding such questions as the type of histologic stains to be used, the techniques for examining the spinal cord and other nerve tissues, and the measurement of brain tissues need to be resolved.

The neuropathology issues were raised earlier in a July 9, 1987 letter from Dr. John L. O'Donoghue to the CMA Glycol Ethers Program concerning similar testing under a consent order for triethylene glycol ethers (Ref. 11). These issues were subsequently addressed (Refs. 12 and 13).

c. Finally, the Panel maintained that an even greater problem with regard to the developmental neurotoxicity tests is the lack of testing facilities that can perform these tests by the required Good Laboratory Practice Standards (GLPS).

On the basis of information available to EPA, it appears that some capability exists for conducting developmental neurotoxicity studies at this time and additional capability will be available in the near future (Ref. 14).

5. *Neurotoxicity testing.* a. The Panel stated that the existing study in humans by Maizlish et al. (Ref. 15) provides sufficient data to indicate that exposure to isopropanol does not result in any neurologic impairment. In this study, workers were exposed to isopropanol at an average concentration of 161 ppm, with both naphtha (50 ppm) and hexane (39 ppm) also present in the air. The Panel noted that neither hexane nor naphtha is metabolized by alcohol dehydrogenase, nor would it be anticipated that these compounds would induce this enzyme, and thus the metabolism of isopropanol should not be affected by the co-exposure. In this study, no relation was observed between solvent exposure and 10 behavioral variables. The Panel contended that the lack of observed effects in humans is supported by the animal data by Boughton (Ref. 16), who observed only slight reversible decrement in performance in rats maintained on drinking water containing sufficient isopropanol to result in weight loss in the test animals. The Panel stated that this is sufficient evidence that isopropanol has little potential to be a neurotoxic agent, and that EPA should not require further testing.

EPA disagrees that the studies cited by the Panel provide sufficient data to evaluate the neurotoxicity of isopropanol. The study of Maizlish et al. has severe limitations. The entire exposed population in this study consisted of 240 workers in four plants; however, the subgroup referred to by the Panel was made up of only 26 individuals from one plant who signed consent forms and were tested. Not only was this group small, but the authors of the study were concerned with biases since only those who volunteered were tested. Also the extent of exposure was determined through an analysis of air in the breathing zone taken only during the week that the behavioral testing was conducted. There is no data to indicate that the reported exposure was representative of exposure in this plant. Possibly the most critical limitation was with regard to study design. As the authors noted, this was a cross-sectional study which has many inherent limitations. The predominant confounders are the healthy worker effect since workers who have ill health are likely to either leave employment or be transferred to other jobs, and not be present at the time the study is conducted. In addition, subjects are not followed up with time, and this does not permit evaluation of deterioration of performance as the subjects age. Also, the early study by Boughton is inadequate, since only one dose was used, 5 percent in drinking water, and the only behavioral test performed was the activity and maze learning tests which would allow for only a limited ability to detect neurological effects. Taken together, these two studies are inadequate to predict the potential for isopropanol to produce neurologic effects, and are insufficient to justify elimination of the proposed testing.

b. The Panel stated that the subchronic neurotoxicity test should not be initiated until completion of the acute study. The benefits cited by the Panel include the ability to identify appropriate doses for the subchronic study, and the identification of potential important endpoints in the acute study which may be monitored more closely in the subchronic test.

EPA agrees that there are advantages to conducting these tests sequentially. There are, however, disadvantages which include delays in the receipt of data, and the inability to conduct the acute tests as a satellite of the subchronic test. Since it is estimated by the Panel that performing the tests sequentially would result in an extension of the reporting requirements from 15 to 30 months, EPA has decided that this would unduly delay obtaining the needed data and that the schedule as outlined in the proposed rule should be maintained.

c. The Panel stated that EPA must resolve technical issues with regard to the adult neurotoxicity tests before the tests are required. Some of these issues are the same as discussed for the developmental neurotoxicity tests and have been addressed. (Refs. 12 and 13).

In addition, the Panel notes that for each of the proposed motor activity tests, "...each test or control group must be designed to contain a sufficient number of animals at the completion of the study to detect a 40 percent change in activity of the test groups relative to the control group with 90 percent power at the 5 percent level." The Panel maintains that testing laboratories and industrial company laboratories have insufficient experience with these test protocols to be able to predict the number of animals needed. Data would not be available from published studies since published articles often underestimate variation, and these tests have been conducted by university groups which have a great deal of experience in conducting such tests. Although the Panel expects that many of these issues will be resolved by neurotoxicity testing that is now underway, the Panel wants the adult neurotoxicity testing to be stayed if unresolved issues remain at the time of promulgation of the final rule on isopropanol.

As noted in the memorandum from Rees (Ref. 13), some judgment is required in determining the parameters

to be used in the determination of sample size. The determination of sample size to allow for confidence in experimental results is not limited to neurotoxicity testing, but is an integral part of all test protocols. It is professional judgement which allows an investigator to determine the number of animals needed and doses to be used to have sufficient animals at the termination of the study for valid interpretation of the results. EPA believes that, with the information gained by ongoing testing and the use of professional judgment, it will be possible to reasonably predict the numbers of animals needed for the adult neurotoxicity tests, and that the small amount of uncertainty involved with regard to the question of number of animals does not justify a delay in testing.

6. *Mutagenicity testing.* a. The Panel agreed that additional assessment of the genotoxic potential of isopropanol is warranted; however, it recommended that the first tier tests be modified. The study of Thompson (Ref. 17) compared 181 compounds tested for induction of chromosomal aberrations in both in vitro and in vivo assays, and reported that similar results were obtained with 126 compounds while 53 were positive when tested in vitro and negative in vivo, 2 compounds were positive in vivo and negative in vitro, and 35 had equivocal results. The Panel stated that this data indicates that in vitro chromosomal aberration tests are not predictive of results obtained in vivo, and hence the requirement for in vitro testing for chromosomal aberrations should be eliminated and an in vivo micronucleus test performed instead. The Panel also stated that the available data on clastogenic effects in vitro, negative tests for meiotic nondisjunction in *Neurospora crassa* and sister chromatid exchange (SCE) in cultured V79 cells, indicate that it is unlikely that isopropanol will be active in other in vitro systems. In addition, since EPA considers the in vivo chromosome aberration assay to be equivalent to the in vivo micronucleus test, the Panel requested that the rule be modified to substitute the latter for the former. Further, the micronucleus test is substantially less expensive and hence fulfills the requirement under TSCA of cost effective testing.

EPA is not requiring the in vitro chromosomal aberration assay for isopropanol. The study of Von der Hude et al. (Ref. 18), which evaluated the potential induction of SCE in vitro, has become available since the evaluation of the data for the proposed rule and fulfills the requirement for an in vitro cytogenetic assay. This recently published study reported on an assay of isopropanol at four concentrations, 3.3, 10.0, 33.3, and 100 mM, in the presence and absence of metabolic activation, and determined that isopropanol was negative. The highest concentration tested was reported to produce cytotoxicity as indicated by a delay in the cell cycle.

In regards to the Panel's arguments for elimination of the in vitro cytogenetic assay as a general rule, EPA does not agree with the Panel. The study by Thompson should not be interpreted to indicate that in vitro testing is unnecessary. In that report, the in vitro tests identified more compounds as potential genotoxic agents than did the in vivo tests. As noted by the authors, the occurrence of activity in vitro and not in vivo may result from detoxification mechanisms or barriers present in the whole animal. It should be concluded from this study that these "false positives" are only false positives as related to the in vivo bone marrow assay, while the activity observed in vitro may be expressed at other target sites.

b. The Panel agreed to perform Tier III tests if earlier results are positive; however, the Panel noted that there is some controversy over the mouse visible specific locus (MVSL) test, that EPA is reexamining the test, and that there is a question whether this relatively expensive test can actually be performed. The Panel recommended that the EPA not require any Tier III tests in the rule, but instead reopen the rulemaking proceedings if Tier III tests are to be required.

EPA is requiring the MVSL test in this rule, but plans to amend all test rules requiring the MVSL through a separate rule. EPA has proposed separately to amend the requirement for the MVSL (40 CFR 798.5200) for proposed and final test rules promulgated under section 4(a) of TSCA. EPA plans to allow test sponsors of current test rules, including this rule for isopropanol, to choose either the MVSL or the mouse biochemical specific locus test (MBSL), after it is promulgated, to test for heritable mutations in mammals. EPA believes that the MBSL and MVSL are comparable tests and are acceptable for detecting this endpoint in mammals. The test guideline for the MBSL was proposed on December 23, 1988 (53 FR 51847) to be codified at 40 CFR 798.5195. EPA is proposing a reporting requirement of 51 months for the completion of testing for either the MVSL or MBSL once triggered. The provision in this final rule for public review prior to requiring Tier III testing will permit EPA and the public to address many of the concerns raised by the Panel with regard to Tier III testing. Requiring the Tier III MVSL testing in the rule will permit a more expeditious treatment of questions concerning Tier III testing than would be obtained by requiring the reopening of the rulemaking process.

7. *Oncogenicity testing.* The Panel's comments reiterate the position it took during the consent order negotiations that the design of the oncogenicity study be determined by evaluation of data on the pharmacokinetics, subchronic, and mutagenicity testing of isopropanol. After evaluation of this data, a determination would be made as to whether a one species or two species oncogenicity study would be required.

EPA requires data from two species under its oncogenicity testing guidelines (40 CFR 798.3300) and cancer risk assessment guidelines (51 FR 33992). For chemicals of unknown activity, such as isopropanol, two mammalian species are needed to increase the power of the test to detect potential carcinogens. Also, a negative single-species bioassay would be insufficient evidence to exonerate isopropanol as a potential carcinogen (Ref. 3).

8. *Pharmacokinetics testing.* a. The Panel did not dispute that pharmacokinetics data were insufficient. The Panel argued that the reporting requirements specified in the proposed rule on isopropanol will make it necessary to initiate subchronic toxicity studies prior to completion of the pharmacokinetics studies. This would preclude use of the pharmacokinetics data for setting dose levels for the subchronic studies. The Panel suggested that it will be necessary to adjust the maximum dose level so that it does not exceed the metabolic saturation point, as defined from the results of pharmacokinetics studies. The Panel proposed that the subchronic and chronic toxicity studies be delayed to allow for completion of the pharmacokinetics studies.

The proposed reporting requirements allow 15 months from the effective date of the final rule for completion of the pharmacokinetics study and the 90-day subchronic study, and 53 months for completion of the 2-year chronic study. EPA believes that the reporting requirements allow sufficient time for completion of the pharmacokinetics study and preliminary data analysis prior to initiating the subchronic and chronic toxicity studies.

b. The Panel suggested that an additional 9 months will be required to develop inhalation exposure methods and assay procedures for isopropanol and its metabolites, and that these tasks will be time-consuming because the metabolism departments of many testing facilities are unaccustomed to using the inhalation route for pharmacokinetics and metabolism studies.

EPA conducted a study to assess the availability of adequate test facilities and concluded that there will be test facilities and personnel to perform the testing specified in this rule. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing," can be obtained through the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (PB 82- 140773). With respect to assay procedures, the Panel's comments indicated that methods already exist for determining isopropanol and its metabolites in biological materials. Therefore, EPA believes that 15 months allows sufficient time for completion of the pharmacokinetics testing.

c. The Panel suggested that pharmacokinetics data for the mouse may be useful for interpreting mouse bioassays. The Panel indicated that it is prepared to work with EPA to initiate such testing voluntarily. EPA agrees that this data would be extremely useful and encourages the Panel to perform these studies on a voluntary basis.

d. The Panel would like EPA to specify whether inhalation exposures are to be conducted in dynamic or static exposure systems. EPA is requiring inhalation exposures to be conducted in dynamic exposure systems. Inhalation toxicity studies are generally performed under dynamic exposure conditions; guidelines for subchronic inhalation toxicity studies specify dynamic exposures (see 40 CFR 798.2450). It is also the most consistent with the goals of risk assessment extrapolations, which are based on assuming continuous exposures to a constant concentration of air-borne chemicals. Furthermore, it is the only exposure system in which exposure to volatile metabolites can be prevented.

e. The Panel expressed concern about the requirement for use of radioisotopes in the pharmacokinetics studies. The Panel suggested that very large quantities of radioactivity would be required for dynamic inhalation exposures and that incorporation of radiolabel into tissue constituents may lead to confusing or misleading data on distribution of the test substance.

EPA believes that use of radiolabel in conjunction with chromatographic techniques provides the most reliable and sensitive means for detecting metabolites and for evaluating mass balance for the carbon skeleton of the test substance. The objective of the metabolite identification requirements specified in the proposed rule is to identify the major metabolites of isopropanol in tissues and excreta, to provide data for evaluating the contribution of metabolism to detoxification or activation of isopropanol in the test species. If metabolic incorporation of the radiolabel into tissue constituents is a quantitatively significant metabolic fate of isopropanol, then this should be documented with data regarding the identity of the incorporated label. Such incorporation may represent fixation of CO_2 derived from the degradation of isopropanol or may represent a covalent interaction of tissue constituents with reactive metabolites of isopropanol. In either case, it will be important to document the nature of the incorporation. Indeed, only with the use of radiolabeled isopropanol is this kind of rigorous analysis possible.

f. The Panel expressed concern about the requirement for collection of exhaled air, urine, and feces excreta during nose-only or head-only inhalation exposures, and indicated that the latter is not technically feasible. EPA agrees that collection of multiple samples of urine and feces from such an apparatus may be very difficult and has modified the guideline accordingly.

g. The Panel expressed concern about the definition for percent absorption that is cited in the proposed rule. The definition given by EPA is "...100 times the ratio between total excretion of radioactivity following oral or inhalation administration and total excretion of radioactivity following intravenous administration of test substance." EPA agrees that for compounds administered by the oral route, this calculation may overestimate the actual percent absorption by that amount of chemical that passes through the gastrointestinal tract without absorption. Thus, EPA has modified the guideline to reflect this change.

h. The Panel expressed concern over the selection of an appropriate toxicity endpoint on which to base the selection of the high dose level to be used in the pharmacokinetics studies.

The objective of the high-dose level study is to examine the absorption, distribution, metabolism and excretion of the test substance at the highest dose level that can be achieved without severely perturbing or impairing the above mechanisms. Dose levels that produce frank effects, e.g., convulsions, coma, and death, are clearly unacceptable since the disposition mechanisms are likely to be severely perturbed or impaired in severely poisoned animals. Ideally, the high dose level should be the lowest observable effect level. This effect will vary depending on the chemical and its toxicologic characteristics. In the case of isopropanol, for which narcosis represents an important critical effect, the dose level at or just below that required to produce mild symptoms of narcosis seems appropriate. The relevant observation period in which to define the effect would include the exposure and sampling period, since it would not be productive to expose an animal to a dose that results in unconsciousness or frank effects after the exposure and before the sampling was completed. Note that toxicity will define the highest dose level acceptable for testing; however, this does not preclude testing of several levels below the high-dose level, although EPA requires that only one nontoxic dose level be examined.

C. TSCA Sections 4 and 12(B) Requirements

PGC proposed that EPA exclude small manufacturers and importers from the requirements of section 4. PGC suggested this exclusion include production or importation of 25,000 lb/yr or less. In addition, PGC suggested that EPA eliminate the requirement for all section 12(b) reporting for isopropanol, since the benefit would not be commensurate with the burden that this reporting requirement would place upon EPA. If all section 12(b) reporting is not exempted, then PGC further recommended that a small quantity exemption (shipment of 25,000 lb/yr or less) be used to eliminate the burden to small companies.

Since these issues apply to all section 4 rules and consent orders and the commenter has not distinguished how this rule is any more burdensome than other section 4 rules, EPA rejects these comments. EPA is continuing to look at the burden of section 4 and 12(b) requirements. EPA has proposed amendments to its procedural rule that would alleviate the requirement of certain manufacturers to submit letters of intent to test or submit exemption applications (54 FR 21237; May 17, 1989). EPA has also proposed amendments to its section 12(b) rules (54 FR 29524; July 12, 1989) to reduce the burden of section 12(b) notification as it relates to section 4.

D. Summary of NRDC's Comments

In general, NRDC concurred with the testing program outlined by EPA in its proposed rule for isopropanol. Specifically, NRDC agreed that oncogenicity testing must be conducted in two species and that a two-generation study is necessary to adequately assess reproductive effects. NRDC recommended that the BIBRA study on the developmental effects be used to replace the required developmental testing in the rat only if it is submitted and reviewed in a timely fashion.

III. Final Test Rule for Isopropanol

A. Findings

EPA is basing its final health effects testing requirements for isopropanol on the authority of section 4(a)(1)(B) of TSCA.

EPA finds that isopropanol is produced in substantial quantities and that there is or may be substantial human exposure to isopropanol from its manufacture, processing, use, and disposal. The available data on isopropanol, discussed in Unit II. of the preamble to the proposed rule (53 FR 8638), show that the annual production volume of isopropanol has been in excess of 1 billion pounds since 1956, and that it was ranked 50th among chemicals produced in the United States in 1985. There is or may be a substantial number of workers exposed to isopropanol from activities related to its manufacturing, processing, distribution in commerce, and use. The National Occupational Hazard Survey (NOHS) conducted by the National Institute for Occupational Safety and Health (NIOSH) from 1972 to 1974 estimated that there were 8,899,594 exposures in 357,173 plants, potentially exposing 5,483,862 people to isopropanol in the workplace in 1970. The National Occupational Exposure Survey (NOES) estimates that 1,857,972 workers, 60 percent of whom were female, were potentially exposed to isopropanol in the workplace in 1980.

Isopropanol is used as a solvent and is a component of numerous industrial products, consumer products, and commercial sprays. The above uses may result in widespread exposure to workers and consumers (Ref. 5). EPA believes that exposures associated with the manufacture, processing, use, and disposal of isopropanol and its products provide a sufficient basis for a finding that there is or may be substantial human exposure under TSCA section 4(a)(1)(B) for isopropanol.

Under TSCA Section 4(a)(1)(B)(ii) and (iii), EPA finds that existing data are insufficient to reasonably determine or predict the subchronic, reproductive, developmental, neurotoxic, developmental neurotoxic, mutagenic, and oncogenic effects of human exposure to isopropanol resulting from its manufacture, processing, use, and disposal. EPA also finds that there are insufficient data to reasonably predict and compare the absorption, distribution, metabolism, and excretion of isopropanol in the body as a result of oral or inhalation exposure due to isopropanol's manufacture, processing, use, and disposal, and that an oral/inhalation comparative pharmacokinetics study of isopropanol is necessary to develop such data. The reasons data are insufficient are further discussed in Unit II. B. of this preamble. EPA believes that the data generated from this testing will be relevant to a determination as to whether the manufacture, processing, use, and disposal of isopropanol does or does not present an unreasonable risk of injury to human health.

B. Required Testing and Test Standards

On the basis of these findings, EPA is requiring that certain health effects testing be conducted for isopropanol in accordance with scientific test guidelines set forth in 40 CFR 795 and 798.

To assess the degree of toxicological activity of isopropanol upon various target organs, EPA is requiring that isopropanol be tested for subchronic toxicity by inhalation (40 CFR 798.2450).

EPA is requiring that testing for reproductive effects (40 CFR 798.4700), and developmental toxicity (40 CFR 798.4900) be done by gavage.

To assess the effects of acute neurotoxic inhalation exposures to isopropanol, EPA is requiring an acute neurobehavioral toxicity evaluation consisting of a functional observational battery (40 CFR 798.6050), and measurement of motor activity (40 CFR 798.6200).

To assess the neurotoxic effects of repeated inhalation exposures to isopropanol, EPA is requiring a subchronic neurobehavioral toxicity evaluation consisting of a neuropathologic evaluation of tissues perfused in situ (40 CFR 798.6400), a functional observational battery (40 CFR 798.6050), and measurement of motor activity (40 CFR 798.6200). This required battery of neurotoxic evaluation may be combined with the subchronic test (40 CFR 798.2450).

To assess the developmental neurotoxicity potential of isopropanol, EPA is requiring a developmental neurotoxicity evaluation (40 CFR 795.250).

To assess the potential for isopropanol to cause gene mutations, EPA is requiring that testing be conducted for gene mutations in cells in culture (40 CFR 798.5300). If the results of the cells in culture test are positive, a *Drosophila* sex-linked recessive lethal assay (SLRL) shall be conducted (40 CFR 798.5275). A positive result in the SLRL assay shall trigger a mouse visible specific locus (MVSL) test (40 CFR 798.5200). If the cells in culture test is negative, no further testing is required. If the SLRL assay is negative, the MVSL test is not required.

To assess the potential for isopropanol to cause chromosomal aberrations, EPA is requiring that an in vivo bone marrow assay (40 CFR 798.5385) be conducted. Should the in vivo bone marrow test results prove negative, no further chromosomal aberrations testing is required. If the results of the in vivo bone marrow test are positive, a dominant-lethal assay is required (40 CFR 798.5450). A positive result in the dominant-lethal assay will trigger a heritable translocation assay (40 CFR 798.5460).

If the results from the dominant-lethal assay and/or the SLRL are positive, EPA will hold a public program review prior to requiring initiation of the heritable translocation and/or mouse specific locus testing. Public participation in this program review will be in the form of written public comments or a public meeting. Request for public comments or notification of a public meeting, if one is held, will be published in the **Federal Register**. Should EPA determine, based on the weight of the evidence then available, that proceeding to the heritable translocation test and/or MVSL assay is no longer warranted, EPA will propose to repeal that test requirement and, after public comment, will issue a final amendment to rescind the requirement. For a more detailed discussion concerning mutagenicity tiered testing and program review, see the final test rule for the C_9 aromatic hydrocarbon fraction (50 FR 20662; May 17, 1985).

EPA believes that the oncogenicity testing is justified without waiting for the results of gene mutation tests. EPA is thus requiring a 2-year inhalation bioassay in two species (40 CFR 798.3300).

To aid in the assessment of the potential toxicity of isopropanol for risk assessment purposes, EPA is requiring metabolism and pharmacokinetics testing by the oral and inhalation routes of exposure. EPA believes this testing of isopropanol is necessary to reduce uncertainties associated with the

extrapolation of test data from high to low doses, from species to species, and from one route of exposure to another. Pharmacokinetics testing in rats is being required to develop comparative, dose-dependent, oral and inhalation absorption, tissue distribution, bioaccumulation, metabolism, and excretion data. These data are needed for extrapolation purposes. The necessary extrapolations can be made on the basis of metabolism and pharmacokinetics data obtained from studies performed by both routes of isopropanol administration. Repeated dose studies are needed to learn whether multiple exposures modify the metabolism and/or pharmacokinetics of isopropanol. Although there are some human and rat data, these are not adequate to support the required extrapolations.

EPA is establishing the TSCA health effects test guidelines as the test standards for the purpose of the required tests for isopropanol. The TSCA test guidelines for health effects testing specify generally accepted minimum conditions for determining the health effects for substances like isopropanol to which humans are expected to be exposed.

C. Test Substance

EPA is requiring that isopropanol of at least 99.8 percent purity be used as the test substance. Commercial isopropanol of such purity is available according to comments received from the Panel (Ref. 1). EPA has specified a relatively pure substance for testing to best evaluate the effects attributable to isopropanol itself. In addition, radiolabeled 14C isopropanol is required for the pharmacokinetics.

D. Persons Required to Test

Section 4(b)(3)(B) of TSCA specifies that the activities for which EPA makes section 4(a) findings (manufacture, processing, distribution in commerce, use, and/or disposal) determine who bears the responsibility for testing a chemical. Because EPA has found that there are insufficient data and experience to reasonably determine or predict the effects on human health from manufacture, processing, use, and disposal of isopropanol, EPA is requiring that persons who manufacture and/or process, or who intend to manufacture and/or process, isopropanol, other than as an impurity, at any time from the effective date of the final test rule to the end of the reimbursement period be subject to the testing requirements in this final rule. While EPA has not identified any byproduct manufacturers of isopropanol, such persons are covered by the requirements of this test rule. The reimbursement period will end 5 years after the last final report is submitted to EPA or an amount of time equal to that which was required to develop data, whichever is later.

E. Reporting Requirements

EPA requires that all data developed under this rule be reported in accordance with its TSCA GLPS, which appear in 40 CFR Part 792.

In accordance with 40 CFR Part 790 under single-phase rulemaking procedures, test sponsors are required to submit individual study plans at least 45 days prior to the initiation of each study.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. Thespecific reporting requirements for each of the test standards for isopropanol are specified in the following table:

TABLE—REQUIRED TESTING, TEST STANDARDS, AND REPORTING REQUIREMENTS FOR ISOPROPANOL

Test	Test Standard (40 CFR Citation)	Reporting Deadline for Final Report (Months)[1]	Number of Interim (6-month) Reports Required
Health Effects:			
1. Subchronic inhalation toxicity	§ 798.2450	15	2
2. Reproduction and fertility effects	§ 798.4700	29	4
3. Developmental toxicity	§ 798.4900	12	1
Mutagenicity - gene mutations:			
4. Mammalian cells in culture	§ 798.5300	6	—
5. *Drosophilla* sex-linked recessive lethal	§ 798.5275	18	2
6. Mouse visible specific locus test	§ 798.5200	51	8
Mutagenicity - chromosomal aberrations:			
7. In vivo cytogenetics: micronucleus	§ 798.5395	15	2
8. Dominant lethal assay	§ 798.5450	27	4
9. Heritable translocation assay	§ 798.5460	24[2]	3
Acute neurotoxicity:			
10. Functional observation battery	§ 798.6050	15	2
11. Motor activity	§ 798.6200	15	2
Subchronic neurotoxicity:			
12. Functional observation battery	§ 798.6050	18	2
13. Motor activity	§ 798.6200	18	2
14. Neuropathology	§ 798.6400	18	2
15. Developmental neurotoxicity	§ 795.250	21	3
Chronic toxicity:			
16. Oncogenicity	§ 798.3300	53	8
Pharmacokinetics:			
17. Oral and inhal. Pharmacokinetics	§ 795.231	15	2

[1] Number of months after the effective date of the final rule, except as indicated.
[2] Figure indicates the reporting deadline, in months, calculated from the date of notification of the test sponsor by certified letter or FEDERAL REGISTER notice that, following public program review of all of the then existing data for isopropanol, the Agency has determined that the required testing must be performed.

Persons who export a chemical which is subject to a final section 4 test rule are subject to the export reporting requirements of section 12(b) of TSCA. Final rules interpreting the requirements of section 12(b) are in 40 CFR Part 707. In brief, as of the effective date of the final test rule, an exporter of isopropanol must report to EPA the first annual export or intended export of isopropanol to each country. EPA will

notify the foreign country concerning the test rule for the chemical.

F. Enforcement Provisions

EPA considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by TSCA. Section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by TSCA section 11. Section 11 applies to any "...establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce..." EPA considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory inspections and data audits will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated representatives of EPA for the purpose of determining compliance with the final rule for isopropanol. These inspections may be conducted for purposes which include verification that testing has begun, schedules are being met, and reports accurately reflect the underlying raw data, interpretations, and evaluations, and to determine compliance with TSCA GLPS and the test standards established in the rule.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and to include such other requirements as are necessary to provide such assurance. EPA maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provisions of section 16 of TSCA, any person who violates section 15 of TSCA could be subject to a civil penalty of up to $25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers who fail to submit a letter of intent or an exemption request and who continue manufacturing after the deadlines for such submissions. This provision also applies to processors that fail to submit a letter of intent or an exemption application and continue processing after EPA has notified them of their obligation to submit such documents (see 40 CFR 790.28(b)). Knowing or willful violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation, imprisonment for up to 1 year, or both. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors listed in TSCA section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

IV. Economic Analysis of Final Rule

To assess the potential economic impact of this rule, EPA has prepared an economic analysis (Ref. 19) that evaluates the potential for significant economic impact on the industry as a result of the required testing. The economic analysis estimates that costs of conducting the required testing and evaluates the potential for significant adverse economic impact as a result of these tests costs by examining four market characteristics of isopropanol: (1) price sensitivity of demand; (2) market expectations; (3) industry cost characteristics; and (4) industry structure.

Total testing costs for the final rule for isopropanol are estimated to range from $2.6 to $3.8 million. To predict the financial decision making practices of manufacturing firms, these costs have been annualized. Annualized costs are compared with annual revenue as an indication of potential impact. The annualized costs represent equivalent constant costs which would have to be recouped each year of the payback period to finance the testing expenditure in the first year.

The annualized test costs, using a 7 percent cost of capital over a period of 15 years, range from $289,000 to $412,000. Based on 1987 production of 1.4 billion pounds, the unit test costs range from $0.00021 to $0.00029 per pound. These costs are equivalent to 0.09 to 0.13 percent of the current price of $0.23 per pound.

EPA believes that the potential for adverse economic impact resulting from the costs of testing is low. This conclusion is based on the following observations:

1. The annualized cost of testing is very low, at approximately 0.13 percent of product prices in the upper bound case.

2. Demand for isopropanol does not appear to be sensitive to a price increase in this range.

Refer to the economic analysis which is contained in the public record for this rule making for a complete discussion of test cost estimation and potential for economic impact resulting from these costs.

V. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "...the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing," can be obtained through the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (PB 82-140773). On the basis of this study, EPA believes that there will be available test facilities and personnel to perform the testing specified in this rule.

EPA has reviewed the availability of contract laboratory facilities to conduct the neurotoxicity testing requirements (Ref. 20) and believes that facilities will be made available for conducting these tests. The laboratory review indicates that few laboratories are currently conducting these tests according to TSCA test guidelines and TSCA GLPS. However, the barriers faced by testing laboratories to gear up for conducting these tests are not formidable. Laboratories will need to invest in testing equipment and personnel training, but EPA believes that these investments will be recovered as the neurotoxicity testing programs under TSCA section 4 and the Federal Insecticide, Fungicide and Rodenticide

Act (FIFRA) continue. EPA's expectations of laboratory availability were borne out under the testing requirements of the C_9 aromatic hydrocarbon fraction test rule (50 FR 20675; May 17, 1985). Pursuant to that rule, the manufacturers were able to contract with a laboratory to conduct the testing according to TSCA guidelines and TSCA GLPS.

VI. Rulemaking Record

EPA has established a record for this rulemaking (docket number OPTS-42097B). This record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice containing the ITC designation of isopropanol to the Priority List (51 FR 41417; November 14, 1986) and all comments on isopropanol received in response to that notice.

(b) Rules requiring TSCA section 8(a) and (d) reporting on isopropanol (51 FR 41328; November 14, 1986).

(c) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (48 FR 53922; November 29, 1983).

(d) Notice of interim final rule on single-phase test rule development and exemption procedures (50 FR 20652; May 17, 1985).

(e) Notice of final rule on data reimbursement policy and procedures (48 FR 31786; July 11, 1983).

(f) Interim Final Rule: Procedures Governing Testing Consent Agreements and Test Rules Under the Toxic Substances Control Act (51 FR 23706; June 30, 1986).

(2) Communications consisting of:

(a) Written public comments and letters.

(b) Contact reports of telephone conversations.

(c) Meeting summaries.

(3) Reports--published and unpublished factual materials including Chemical Testing Industry: Profile of Toxicological Testing (October, 1981).

B. References

(1) CMA's Isopropanol Program Panel. Comments on EPA's Proposed Test Rule for Isopropanol submitted to Public Information Office, USEPA (May 16, 1988).

(2) The Procter & Gamble Company. Comments on EPA's Proposed Test Rule for Isopropanol submitted to Public Information Office, USEPA (May 16, 1988).

(3) Natural Resources Defense Council. Comments on EPA's Proposed Test Rule for Isopropanol submitted to Public Information Office, USEPA (May 16, 1988).

(4) CMA's Isopropanol Program Panel. Letter from Geraldine V. Cox, Chemical Manufacturers Association, 2501 M Street NW, Washington, DC 20037, to Richard Troast, Test Rules Development Branch, Office of Toxic Substances, USEPA, Washington, DC (July 21, 1988).

(5) USEPA. "Worker exposure assessment for isopropanol (IPA)." John D. Walker, Test Rules Development Branch, Office of Toxic Substances, USEPA, Washington, DC (November 20, 1985).

(6) Pellizzari, E.D., et al., "Purgeable organic compounds in mother's milk." Bulletin of Environmental Contamination and Toxicology, 28:222-238 (1982).

(7) McGregor, D.B. "Genotoxicity of glycol ethers." *Environmental Health Perspectives*, 57:97-103 (1984).

(8) Syracuse Research Corporation. "Response to public comments: Isopropanol." Contract No. 68-02-4209 (September 29, 1988).

(9) Nelson, B.K., et al., "Neurological, but not behavioral deviations in the offspring of rats following prenatal inhalation exposure to ethanol." *Neurotoxicology and Teratology*, 10:15-22 (1988).

(10) Nelson, B.K., et al., "Behavioral teratology investigation of 1-propanol administered by inhalation to rats." Paper presented at Teratology Society Meeting (1988).

(11) Eastman Kodak Company. Letter from John L. O'Donoghue, Eastman Kodak Company, 343 State Street, Rochester, NY 14650, to Carol Stack, Chemical Manufacturers Association, 2501 M Street NW, Washington, DC 20037 (July 9, 1987).

(12) USEPA. "Response to industry comments on the neuropathology portion of the glycol ether test rule." Intraagency memorandum from Robert C. MacPhail, Health Effects Research Laboratory, to Carol Glasgow, Test Rules Development Branch, Office of Toxic Substances, USEPA, Washington, DC (January 6, 1988).

(13) USEPA. "OTS-ORD comments on the proposed protocol for neurotoxicolo1gical testing of triethylene glycol 1monomethyl ether." Intraagency memorandum from David C. Rees, Health and Environmental Review Division, to Ralph Northrup, Test Rules Development Branch, Office of Toxic Substances, USEPA, Washington, DC (February 5, 1988).

(14) Mathtech, Inc. "Developmental neurotoxicity laboratory capability." Intraoffice memorandum from J.K. Orrell to Edmund Coe, Mathtech, Inc., 5111 Leesburg Pike, Falls Church, VA 22041 (September 19, 1988).

(15) Maizlish, N.A., et al. "Behavioral evaluation of workers exposed to mixture of organic solvents." *British Journal of Industrial Medicine*, 42:579-590 (1985).

(16) Boughton, L.I. "The relative toxicity of ethyl and isopropyl alcohols as determined by long term rat feeding and external application." Journal of *American Pharmacology Association*, 33:111-113 (1944).

(17) Thompson, E.D. "Comparison of *in vivo* and *in vitro* cytogenetic assay results." *Environmental Mutagenesis*, 8:753-767 (1986).

(18) Von der Hude, W. et al. "Genotoxicity of three-carbon compounds evaluated in the SCE test *in vitro*." *Environmental Mutagenesis*, 9:401-410 (1987).

(19) USEPA. Economic impact analysis of final test rule for isopropanol. Office of Toxic Substances, USEPA, Washington, DC (February 22, 1989).

(20) Mathtech, Inc. "Evaluation of TSCA guidelines for neurotoxicity testing: Impact of increased testing requirements." Prepared for Regulatory Impacts Branch, USEPA (April 14, 1987).

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the TSCA Public Docket Office, Rm. G-004, NE Mall, 401 M St., SW, Washington, DC 20460.

VII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order; i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA responses to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, Pub. L. 96-354, September 19, 1980), EPA is certifying that this test rule will not have a significant impact on a substantial number of small businesses because: (1) They are not likely to perform testing themselves, or to participate in the organization of the testing effort; (2) they will experience only very minor cost, if any, in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this final rule under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*, Pub. L. 96-511, December 11, 1980), and has assigned control number 2070-0033.

Public reporting burden for this collection of information is estimated to average 1,190 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to, Chief, Information Policy Branch (PM-223), U.S. EPA, 401 M St., SW, Washington, DC 20460 and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503.

List of Subjects in 40 CFR Parts 795 and 799

Testing, Environmental protection, Hazardous substances, Chemicals, Laboratories, Recordkeeping and reporting requirements.

Dated: September 22, 1989

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR, chapter I, subchapter R, is amended as follows:

1. In part 795:

a. The authority citation for part 795 continues to read as follows:

Authority: 15 U.S.C. 2603.

b. By adding § 795.231 to read as follows:

§ 795.231 Pharmacokinetics of isopropanal.

(a) *Purpose.* The purposes of these studies are to:

(1) Ascertain whether the pharmacokinetics and metabolism of the "test substance" are similar after oral and inhalation administration.

(2) Determine bioavailability of the test substance after oral and inhalation administration.

(3) Examine the effects of repeated dosing on the pharmacokinetics and metabolism of the test substance.

(b) *Definitions.* (1) "*Bioavailability*" refers to the rate and relative amount of administered test substance which reaches the systemic circulation.

(2) "*Metabolism*" means the study of the sum of the processes by which a particular substance is handled in the body, and includes absorption, tissue distribution, biotransformation, and excretion.

(3) "*Pharmacokinetics*" means the study of the rates of absorption, tissue distribution, biotransformation, and excretion.

(c) *Test procedures*—(1) *Animal selection*—(i) *Species.* The rat shall be used because it has been used extensively for metabolic and toxicological studies.

(ii) *Test animals.* For pharmacokinetics testing, adult male and female rats (Fischer 344 or strain used for major toxicity testing), 7 to 9 weeks of age, shall be used. The animals should be purchased from a reputable dealer and shall be identified upon arrival at the testing laboratory. The animals shall be selected at random for the testing groups and any animal showing signs of ill health shall not be used. In all studies, unless otherwise specified, each test group shall contain at least four animals of each sex for a total of at least eight animals.

(iii) *Animal care.* (A) Animal care and housing should be in accordance with DHEW Publication No. (NIH)-85-23, 1985, entitled "Guidelines for the Care and Use of Laboratory Animals."

(B) The animals should be housed in environmentally controlled rooms with at least 10 air changes per hour. The rooms shall be maintained at a temperature of 22±2 °C and humidity of 50±20 percent with a 12-hour light/dark cycle per day. The animals shall be kept in a quarantine facility for at least 7 days prior to use and shall be acclimated to the experimental environment for a minimum of 48 hours prior to treatment.

(C) During the acclimatization period, the animals should be housed in suitable cages. All animals shall be provided with certified feed and tap water *ad libitum.*

(2) *Administration of test substance*—(i) *Test substance.* The use of radioactive test substance is required for all materials balance and metabolite identification requirements of the study. Ideally, the purity of both radioactive and nonradioactive test substance should be greater than 99 percent. The radioactive and nonradioactive substances shall be chromatographed separately and together to establish purity and identity. If the purity is less than 99 percent or if the chromatograms differ significantly, EPA should be consulted.

(ii) *Dosage and treatment*—(A) *Intravenous.* The low dose of test substance, in an appropriate vehicle, shall be administered intravenously to four rats of each sex.

(B) *Oral.* Two doses of test substance shall be used in the oral portion of the study, a low dose and a high dose. The high dose should ideally induce some overt toxicity, such as weight loss. The low dose level should correspond to a no-observed effect level. The oral dosing shall be accomplished by gavage or by administering an encapsulated test substance. If feasible, the same high and low doses should be used for oral and dermal studies.

(C) *Inhalation.* Two concentrations of the test substance shall be used in this portion of the study, a low concentration and a high concentration. The high concentration should ideally induce some overt toxicity, while the low concentration should correspond to a no observed level. Inhalation treatment should be conducted using a "nose-cone" or "head only" apparatus to prevent ingestion of the test substance through "grooming".

(iii) *Dosing and sampling schedule.* After administration of the test substance, each rat shall be placed in a separate metabolic unit to facilitate collection of excreta. For the inhalation studies, excreta from the rats shall also be collected during the exposure periods. At the end of each collection period, the metabolic units shall be cleaned to recover any excreta that might adhere to the cages. All studies, except the repeated dose study, shall be terminated at 7 days, or after at least 90 percent of the radioactivity has been recovered in the excreta, whichever occurs first.

(A) *Intravenous study.* Group A shall be dosed once intravenously at the low dose of test substance.

(B) *Oral studies.* (*1*) Group B shall be dosed once *per os* with the low dose of the test substance.

(*2*) Group C shall be dosed once *per os* with the high dose of the test substance.

(C) *Inhalation studies.* A single 6-hour exposure period shall be used for each group.

(*1*) Group D shall be exposed to a mixture of the test substance in air at the low concentration.

(*2*) Group E shall be exposed to a mixture of test substance in air at the high concentration.

(D) *Repeated dosing study.* Group F shall receive a series of single daily oral low doses of nonradioactive test substance over a period of at least 7 consecutive days. Twenty four hours after the last nonradioactive dose, a single oral low dose of radioactive test substance shall be administered. Following dosing with radioactive substance, the rats shall be placed in individual metabolic units as described in paragraph (c)(2)(iii) of this section. The study shall be terminated 7 days after the last dose, or after at least 90 percent of the radioactivity has been recovered in the excreta, whichever occurs first.

(3) *Types of studies*—(i) *Pharmacokinetics studies.* Groups A through F shall be used to determine the kinetics of absorption of the test substance. In groups administered the substance by intravenous or oral routes, (i.e., Groups A, B, C, F), the concentration of radioactivity in blood and excreta including expired air shall be measured following administration. In groups administered the substance by the inhalation route (i.e., Groups D and E), the concentration of radioactivity in blood shall be measured at selected time intervals during and following the exposure period. In the groups administered the substance by inhalation (i.e., Groups D and E), the concentration of radioactivity in excreta (including expired air) shall be measured at selected time intervals following the exposure period. In addition, in the groups administered the substance by inhalation, the concentration of test substance in inspired air shall be measured at selected time intervals during the exposure period.

(ii) *Metabolism studies.* Groups A through F shall be used to determine the metabolism of the test substance. Excreta (urine, feces, and expired air) shall be collected for identification and quantification of test substance and metabolites.

(4) *Measurements*—(i) *Pharmacokinetics.* Four animals from each group shall be used for these purposes.

(A) *Bioavailability.* The levels of radioactivity shall be determined in whole blood, blood plasma or blood serum at 15 minutes, 30 minutes, 1, 2, 3, 6, 9, and 18 hours after dosing; and at 30 minutes, 3, 6, 6.5, 7, 8, 9, 12, and 18 hours after initation of inhalation exposure.

(B) *Extent of absorption.* The total quantities of radioactivity shall be determined for excreta collected daily for 7 days, or after at least 90 percent of the radioactivity has been recovered in the excreta, whichever occurs first.

(C) *Excretion.* The quantities of radioactivity eliminated in the urine, feces, and expired air shall be determined separately at appropriate time intervals. The collection of the intact test substance or its metabolites, including carbon dioxide, may be discontinued when less than 1 percent of the administered dose is found to be exhaled as radioactive carbon dioxide in 24 hours.

(D) *Tissue distribution.* At the termination of each study, the quantities of radioactivity in blood and in various tissues, including bone, brain, fat, gastrointestinal tract, gonads, heart, kidney, liver, lungs, muscle, skin, spleen, and residual carcass of each animal shall be determined.

(E) *Changes in pharmacokinetics.* Results of pharmacokinetics measurements (i.e., biotransformation, extent of absorption, tissue distribution, and excretion) obtained in rats receiving the single low oral dose of test substance (Group B) shall be compared to the corresponding results obtained in rats receiving repeated oral doses of test substance (Group F).

(F) *Biotransformation.* Appropriate qualitative and quantitative methods shall be used to assay urine, feces, and expired air collected from rats. Efforts shall be made to identify any metabolite which comprises 5 percent or more of the dose eliminated.

(G) *Changes in biotransformation.* Appropriate qualitative and quantitative assay methodology shall be used to compare the composition of radioactive substances in excreta from the rats receiving a single oral dose (Groups B and C) with those in the excreta from rats receiving repeated oral doses (Group F).

(ii) [Reserved]

(d) *Data and reporting.* The final test report shall include the following:

(1) *Presentation of results.* Numerical data shall be summarized in tabular form. Pharmacokinetics data shall also be presented in graphical form. Qualitative observations shall also be reported.

(2) *Evaluation of results.* All quantitative results shall be evaluated by an appropriate statistical method.

(3) *Reporting results.* In addition to the reporting requirements as specified in the EPA Good Laboratory Practice Standards (40 CFR 792.185), the following specific information shall be reported:

(i) Species and strains of laboratory animals.

(ii) Chemical characterization of the test substance, including:

(A) For the radioactive test substance, information on the site(s) and degree of radiolabeling, including type of label, specific activity, chemical purity, and radiochemical purity.

(B) For the nonradioactive substance, information on chemical purity.

(C) Results of chromatography.

(iii) A full description of the sensitivity, precision, and accuracy of all procedures used to generate the data.

(iv) Extent of absorption of the test substance as indicated by: percent absorption of the administered oral dose; and total body burden after inhalation exposure.

(v) Quantity and percent recovery of radioactivity in feces, urine, expired air, and blood.

(vi) Tissue distribution reported as quantity of radioactivity in blood and in various tissues, including bone, brain, fat, gastrointestinal tract, gonads, heart, kidney, liver, lung, muscle, skin, spleen and in residual carcass of each rat.

(vii) Biotransformation pathways and quantities of the test substance and metabolites in excreta collected after administering single high and low doses to rats.

(viii) Biotransformation pathways and quantities of the test substance and metabolites in excreta collected after administering repeated low doses to rats.

(ix) Pharmacokinetics model(s) developed from the experimental data.

2. In part 799:

a. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

b. By adding § 799.2325 to read as follows:

§ 799.2325 Isopropanol.

(a) *Identification of test substance.* (1) Isopropanol (CAS No. 67-63-0) shall be tested in accordance with this section.

(2) Isopropanol of at least 99.8 percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests, and submit data.* All persons who manufacture (including import or byproduct manufacture) or intend to manufacture or process isopropanol, from the effective date of this rule to the end of the reimbursement period, shall submit letters of intent to conduct testing, submit study plans, conduct tests, and submit data or submit exemption applications as specified in this section, subpart A of this part, and

parts 790 and 792 of this chapter for single-phase rulemaking.

(c) *Health effects testing*—(1) *Subchronic inhalation toxicity*—(i) *Required testing.* A subchronic inhalation toxicity test shall be conducted with isopropanol in accordance with § 798.2450 of this chapter.

(ii) *Reporting requirements.* (A) The subchronic inhalation toxicity test shall be completed and the final report submitted to EPA within 15 months of the date specified in paragraph (d) of this section.

(B) Progress reports shall be submitted to EPA for the subchronic inhalation toxicity test at 6-month intervals beginning 6 months after the date specified in paragraph (d)(1) of this section until submission of the final report.

(2) *Reproduction and fertility effects*—(i) *Required testing.* A reproduction and fertility effects test shall be conducted by gavage with isopropanol in accordance with § 798.4700 of this chapter.

(ii) *Reporting requirements.* (A) The reproduction and fertility effects test shall be completed and the final report submitted to EPA within 29 months of the date specified in paragraph (d)(1) of this section.

(B) Progress reports shall be submitted at 6-month intervals beginning 6 months after the date specified in paragraph (d)(1) of this section until submission of the final report.

(3) *Developmental toxicity*—(i) *Required testing.* A developmental toxicity test shall be conducted in two mammalian species by gavage with isopropanol in accordance with § 798.4900 of this chapter.

(ii) *Reporting requirements.* (A) The developmental toxicity test shall be completed and the final report submitted to EPA within 12 months of the date specified in paragraph (d)(1) of this section.

(B) A progress report shall be submitted 6 months after the date specified in paragraph (d)(1) of this section.

(4) *Mutagenic effects—gene mutations*—(i) *Required testing.* (A) A gene mutation test in mammalian cells shall be conducted with isopropanol in accordance with § 798.5300 of this chapter.

(B)(*1*) A sex-linked recessive lethal test in *Drosophila melanogaster* shall be conducted with isopropanol in accordance with § 798.5275 of this chapter, except for the provisions in paragraphs (d)(5)(ii) and (iii) of § 798.5275, unless the results of the mammalian cells in the culture gene mutation test conducted pursuant to paragraph (c)(5)(i)(A) of this section are negative.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Route of administration.* The route of administration shall be by exposure to isopropanol vapors or by injection of isopropanol.

(*ii*) [Reserved]

(C)(*1*) The mouse visible specific locus (MVSL) test shall be conducted with isopropanol by inhalation in accordance with § 798.5200, except for the provisions in paragraphs (d)(5)(ii) and (iii) of § 798.5200, if the results of the sex-linked recessive lethal test conducted pursuant to paragraph (c)(4)(i)(B) of this section are positive and if, after a public program review, EPA issues a **Federal Register** notice or sends a certified letter to the test sponsor specifying that the testing shall be initiated.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Dose levels and duration of exposure.* A minimum of 2 dose levels shall be tested. The duration of exposure shall be for 6 hours per day. Duration of exposure shall be dependent upon accumulated total dose desired for each group.

(*ii*) *Route of administration.* Animals shall be exposed to isopropanol by inhalation.

(ii) *Reporting requirements.* (A) The gene mutation tests shall be completed and final report submitted to EPA as follows:

(*1*) The gene mutation in mammalian cells assay within 6 months of the date specified in paragraph (d)(1) of this section.

(*2*) The sex-linked recessive-lethal test in *Drosophila melanogaster* within 18 months of the date specified in paragraph (d)(1) of this section.

(*3*) The mouse visible specific-locus test within 51 months of the date of EPA's notification of the test sponsor by certified letter or **Federal Register** notice under paragraph (c)(4)(i)(C) of this section that testing shall be initiated.

(B) Progress reports shall be submitted to EPA for the *Drosophila* sex-linked recessive lethal test at 6-month intervals beginning 6 months after the date specified in paragraph (d)(1) of this section until the submission of the final report.

(C) Progress reports shall be submitted to EPA for the mouse visible specific locus test at 6-month intervals beginning 6 months after the date of EPA's notification of the test sponsor that testing shall be initiated until submission of the final report.

(5) *Mutagenic effects—chromosomal aberrations*—(i) *Required testing.* (A)(*1*) The micronucleus test shall be conducted with isopropanol in accordance with § 798.5395 of this chapter.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Route of administration.* Animals shall be exposed to isopropanol by either inhalation or oral gavage or inperitoneally (IP).

(*ii*) *Duration of exposure.* For inhalation, the duration of exposure shall be for 6 hours per day for 5 consecutive days with one sacrifice time or for 6 hours for 1 day with three sacrifice times.

(B)(*1*) A dominant lethal assay shall be conducted with isopropanol in accordance with § 798.5450 of this chapter, except for the provisions in paragraphs (d)(5)(ii) and (iii) of § 798.5450, unless the micronucleus test conducted pursuant to paragraphs (c)(5)(i)(A) of this section is negative.

(2) For the purpose of this section, the following provisions also apply:

(*i*) *Route of administration.* Animals shall be exposed to isopropanol by inhalation.

(*ii*) *Duration of exposure.* The duration of exposure shall be for 6 hours per day for 5 consecutive days.

(C)(*1*) A heritable translocation test shall be conducted with isopropanol in accordance with § 798.5460 of this chapter, except for the provisions in paragraphs (d)(5)(ii) and (iii) of § 798.5460, if the results of the dominant lethal assay conducted pursuant to paragraph (c)(5)(i)(B) of this section are positive and if, after a public program review, EPA issues a **Federal Register** notice or sends a certified letter to the test sponsor specifying that the testing shall be initiated.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Route of administration.* Animals shall be exposed to isopropanol by inhalation.

(*ii*) [Reserved]

(ii) *Reporting requirements.* (A) The chromosomal aberration tests shall be completed and the final reports submitted to EPA as follows:

(*1*) The micronucleus test within 15 months of the date specified in paragraph (d)(1) of this section.

(*2*) The dominant lethal assay within 27 months of the date specified in paragraph (d)(1) of this section.

(*3*) The heritable translocation test within 24 months of the date of EPA's notification of the test sponsor by certified letter or **Federal Register** notice

under paragraph (c)(5)(i)(C) of this section that testing shall be initiated.

(B) Progress reports shall be submitted to EPA for the the micronucleus and the dominant lethal assays at 6-month intervals beginning 6 months after the date specified in paragraph (d)(1) of this section until submission of the final report.

(C) Progress reports shall be submitted to EPA for the heritable translocation assay at 6-month intervals beginning 6 months after the date of EPA's notification of the test sponsor that testing shall be initiated until submission of the final report.

(6) *Neurotoxicity*—(i) *Required testing.* (A)(1) A functional observation battery shall be conducted with isopropanol in accordance with § 798.6050 of this chapter except for the provisions in paragraphs (d)(5) and (6) of § 798.6050.

(2) For the purpose of this section, the following provisions also apply:

(*i*) *Duration and frequency of exposure.* For subchronic study, animals shall be dosed for 6 hours per day, 5 days per week for 90 days. For acute study, animals shall be dosed for 4 to 6 hours once.

(*ii*) *Route of exposure.* Animals shall be exposed to isopropanol by inhalation.

(B)(*1*) A motor activity test shall be conducted with isopropanol in accordance with § 798.6200 of this chapter except for the provisions in paragraphs (d)(5) and (6) of § 798.6200.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Duration of exposure.* For subchronic study, animals shall be dosed for 6 hours per day, 5 days per week for 90 days. For acute study, animals shall be dosed for 4 to 6 hours once.

(*ii*) *Route of exposure.* Animals shall be exposed to isopropanol by inhalation.

(C)(*1*) A neuropathology test shall be conducted with isopropanol in accordance with § 798.6400 of this chapter except for the provisions in paragraphs (d)(5) and (6) of § 798.6400.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Duration of exposure.* Animals shall be dosed for 6 hours per day, 5 days per week for 90 days.

(*ii*) *Route of exposure.* Animals shall be exposed to isopropanol by inhalation.

(D) A developmental neurotoxicity test shall be conducted with isopropanol in accordance with § 795.250 of this chapter.

(ii) *Reporting requirements.* (A) The acute functional observation battery and motor activity tests shall be completed and the final report submitted to EPA within 15 months of the date specified in paragraph (d)(1) of this section. The subchronic functional observation battery, motor activity, and neuropathology tests shall be completed and the final reports submitted to EPA within 18 months of the date specified in paragraph (d)(1) of this section. The developmental neurotoxicity test shall be completed and the final report submitted to EPA within 21 months of the date specified in paragraph (d)(1) of this section.

(B) Progress reports shall be submitted to EPA for the functional observation battery, motor activity, neuropathology, and developmental neurotoxicity tests at 6-month intervals beginning 6 months after the date specified in paragraph (d)(1) of this section until submission of the applicable final report.

(7) *Pharmacokinetics studies*—(i) *Required testing.* An oral and inhalation pharmacokinetics test shall be conducted with isopropanol in accordance with § 795.231 of this chapter.

(ii) *Reporting requirements.* (A) The pharmacokinetic test shall be completed and the final report submitted to EPA within 15 months of the date specified in paragraph (d)(1) of this section.

(B) Progress reports shall be submitted to EPA for the pharmacokinetics test at 6-month intervals beginning 6 months after the date specified in paragraph (d)(1) of this section until submission of the final report.

(8) *Oncogenicity*—(i) *Required testing.* An oncogenicity test shall be conducted by inhalation with isopropanol in accordance with § 798.3300 of this chapter.

(ii) *Reporting requirements.* (A) The oncogenicity test shall be completed and the final report submitted to EPA within 53 months of the date specified in paragraph (d)(1) of this section.

(B) Progress reports shall be submitted at 6-month intervals beginning 6 months after the date specified in paragraph (d)(1) of this section until submission of the final report.

(d) *Effective dates.* (1) This test rule shall be effective on December 4, 1989.

(2) The guidelines and other test methods cited in this section are referenced as they exist on the effective date of the final rule.

(Information collection requirements have been approved by the Office of Management and Budget under control number 2070-7030).

[FR Doc. 89-24677 Filed 10-20-89; 8:45 am]
BILLING CODE 6560-50-D

Reader Aids

Federal Register

Vol. 54, No. 203

Monday, October 23, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, OCTOBER

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

318.....43041
319.....40631
327.....41045
381.....41045
Proposed Rules:
71.....41845, 43065
78.....43065
80.....41845
92.....42144
94.....41845

10 CFR

11.....40859
20.....42287
21.....42287
25.....40859
35.....41819
73.....42287
95.....40859
600.....41943
Proposed Rules:
2.....40780
50.....41980

12 CFR

Ch. III.....42799
Ch. V.....42799
312.....40377
1510.....41948
1511.....41948
Proposed Rules:
5.....42306
7.....42306
203.....41255
220.....41454

13 CFR

124.....43217
Proposed Rules:
121.....42512

14 CFR

21.....41955
23.....41955
39.....40381, 40382, 40632, 40633, 40635, 40636–40639, 41051–41054, 41438, 41821, 41958–41960, 42288–42292, 42493, 42621, 43045–43047, 43217
61.....41234
71.....41822, 42293, 42494, 42495, 42801, 43048
73.....42495
91.....40624, 41211, 42439, 43049
97.....41590, 43048
1260.....43050
Proposed Rules:
Ch. I.....40672
1.....41986, 42916
11.....42916
27.....41986
29.....41986, 42716
33.....41986
39.....40672, 40673, 40675–40678, 40680, 41103–41106, 41456, 41846, 41987, 41988, 42307, 42512, 42514, 43069–43081
65.....42916
71.....41109, 41110, 41458, 41713, 42694, 42806, 42916
75.....42916
91.....42916
93.....42916
101.....42916
103.....42916
105.....42916
121.....42916
127.....42916
137.....42916
139.....42912
171.....42916
205.....42309
221.....41989
294.....42309
298.....42309

15 CFR

769.....41439
770.....40861
771.....40861
772.....42496
776.....40640
779.....40643, 41055
799.....40861, 41055
Proposed Rules:
19.....41848
771.....40681
772.....40681
773.....40681
774.....40681
786.....40681
799.....40681
806.....41275

16 CFR

305.....41242

17 CFR

1.....41068
3.....41068
31.....41068
145.....41068
147.....41068
200.....40862
211.....41084
Proposed Rules:
240.....40395

18 CFR

37.....42945
154.....41085
294.....41086
1314.....42456

19 CFR

171.....41364
Proposed Rules:
12.....40882
24.....40882
132.....40887
133.....40882
142.....40887

20 CFR

200.....43054
222.....42949
262.....43054
335.....43057
404.....40779
416.....40779
Proposed Rules:
404.....40570

21 CFR

Ch. I.....41363
177.....40383, 43168
178.....42886
436.....41823, 42886
442.....40651, 40653, 41823
453.....40654, 41823
455.....40384, 41823, 42886
510.....40656, 41441, 41713
522.....40656, 41441
540.....41441
544.....41441
555.....41441
558.....40657, 41713
Proposed Rules:
Ch. I.....43183
10.....41629
310.....40618, 41629
314.....41629, 42515
320.....41629
341.....40412
347.....40808
348.....40808
1020.....42674
1316.....40888

22 CFR

120.....42496
122.....42496
123.....42496
126.....42496
514.....40386
Proposed Rules:
50.....41459

23 CFR

Proposed Rules:
658.....41278

24 CFR

1710.....40863
888.....43170

26 CFR

1.....41087, 41442, 41962
5h.....41243, 41364
602.....41087, 41243, 41442, 41962
Proposed Rules:
1.....41990, 42621
602.....41990

29 CFR

1601.....40657
1910.....41364, 42498
1926.....41088
2610.....42294
2622.....42294
2644.....41962
2676.....41963
Proposed Rules:
1910.....41460, 41461

30 CFR

914.....41824, 41828
Proposed Rules:
7.....40950, 40995
44.....43028
56.....43026
57.....43026
58.....43026
70.....40950, 43026
71.....43026
72.....43026
75.....40950, 43026
90.....43026
104.....43028
917.....40413
925.....40414
943.....41281

31 CFR

317.....40830

32 CFR

Proposed Rules:
169a.....42807

33 CFR

100.....41088, 42499, 43217
117.....41964, 41965
165.....40868, 40869
241.....40578
Proposed Rules:
117.....41991, 42517
154.....41366
155.....41366, 42624
156.....41366
334.....40572

34 CFR

200.....43220
201.....43220
203.....43220
600.....40388
Proposed Rules:
302.....42704

36 CFR

7.....43060
292.....41089
Proposed Rules:
254.....41849

37 CFR

202.....42295

38 CFR

1.....40388, 40870
3.....42802
21.....40871, 42500
Proposed Rules:
3.....40684, 40686, 41110
21.....40687, 40688, 41110, 42961

39 CFR

3.....42300
4.....42300
5.....42300
6.....42300
8.....42300
601.....43061

40 CFR

35.....40798
52.....40657, 40659, 40660, 41094, 41443, 41830, 43173–43176
60.....40662
61.....40662
81.....41094, 41831, 42956
123.....40664
180.....41098
261.....41402
271.....41402
300.....41000, 41015
302.....41402
355.....43164
370.....41904
403.....40664
795.....41832, 43252
799.....41832, 43252
Proposed Rules:
51.....41218

52 ..... 40689, 40889, 41218, 41629, 41849, 42309, 43083, 43183
61 ..... 40779, 41113
81 41218
228 40415
260 41930
261 41114
300 40889
370 41907
372 42962
721 42439

41 CFR

Ch. 101 41244
101-6 41214
101-40 42803
101-47 ..... 41099, 41244
201-1 42302
201-2 42302
201-6 42302
201-38 42302

Proposed Rules:

201-2 41850
201-6 41850
201-7 41850
201-8 41850
201-11 41850
201-16 41850
201-17 41850
201-18 41850
201-19 41850
201-20 41850
201-21 41850
201-22 41850
201-23 41850
201-24 41850
201-26 41850
201-30 41850
201-31 41850
201-33 41850
201-34 41850
201-38 41850
201-39 41850
201-41 41850
201-44 41850

42 CFR

405 41716
411 41716
412 41716
433 41966
489 41716

43 CFR

Public Land Order:

6750 43178

Proposed Rules:

11 ..... 41363, 43185
2090 43185
2200 43185

44 CFR

60 42144
64 40872
65 43178
67 42501

Proposed Rules:

67 ..... 40890, 41631, 42518

45 CFR

60 42722
205 42146
224 42146
233 42146
234 42146
238 42146
239 42146
240 42146
250 42146
255 42146
256 42146

46 CFR

50 40590
56 40590
61 40590
67 41835

Proposed Rules:

12 42624
13 42624
15 42624
30 ..... 41124, 42624
31 ..... 41124, 42624
32 41366
33 41124
35 ..... 41124, 41366, 42624
39 41366
67 41992
70 41124
71 41124
75 41124
78 ..... 41124, 42624
90 ..... 41124, 42624
91 41124
94 41124
97 ..... 41124, 42624
98 42624
105 42624
107 41124
108 41124
109 41124
112 41124
151 42624
153 42624
154 ..... 41124, 42624
160 41124
161 41124
167 41124
168 41124
188 41124
189 41124
192 41124
196 41124
199 41124
580 40891
581 40891

47 CFR

1 ..... 40392, 43062
2 41974
73 ..... 40393, 40873-40875, 41100, 41445, 41446, 42507, 42804, 43062, 43063
74 41842
76 41842
80 42804
300 41447

Proposed Rules:

2 41464
15 ..... 41125, 41464
73 ..... 40419, 40420, 40893-40896, 41125-41128, 41465-41470, 41852, 41853, 42523, 42524, 42807-42809, 43086-43088

48 CFR

815 42507
1532 40876
1552 40876
2801 40877
2813 40877
2819 40877
532 43180
552 43180

Proposed Rules:

20 40420
31 43032
37 41941
52 41941
1602 43089
1615 43089
1616 43089
1622 43089
1632 43089
1652 43089

49 CFR

171 41447
172 41447
191 40878
195 40878
209 42894
219 40879
383 40782
391 40782
531 ..... 40665, 42303
565 41843
571 41844
1135 42509
1145 42509
1171 42958
1312 42959
1314 42959

Proposed Rules:

177 41902
195 41912
217 40856
219 40856
225 40856
531 40689
541 42809
571 ..... 40896, 41632, 41636, 41854
1022 41643
1043 41643
1044 41643
1047 41643
1051 41643
1058 41643
1061 41643
1063 41643
1067 41643
1070 41643
1080 41643
1081 41643
1083 41643
1084 41643
1085 41643
1091 41643
1104 41643
1105 42964
1136 41643
1143 41643
1152 42964
1161 41643
1167 41643
1169 41643
1170 41643
1331 41643

50 CFR

17 41448
285 43181
380 40668
651 41975
661 ..... 41591, 41592
662 ..... 41975, 41976
663 41594
672 ..... 40394, 41101, 41976
675 ..... 40716, 41101, 41977

Proposed Rules:

16 43097
17 ..... 40444-40458, 41470-41475, 42270, 42813-42820
23 ..... 41282, 41475, 42524, 42529
24 41295
216 41654
222 40699
228 40703
264 40779
265 41296
611 ..... 40716, 41855, 42312
641 ..... 41297, 42439
650 ..... 40463, 41902, 42439
651 ..... 40466, 42439
663 ..... 41855, 42312
672 40716

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List October 20, 1989

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$10.00	Apr. 1, 1989
3 (1988 Compilation and Parts 100 and 101)	21.00	[1] Jan. 1, 1989
4	15.00	Jan. 1, 1989
5 Parts:		
1–699	15.00	Jan. 1, 1989
700–1199	17.00	Jan. 1, 1989
1200–End, 6 (6 Reserved)	13.00	Jan. 1, 1989
7 Parts:		
0–26	15.00	Jan. 1, 1989
27–45	12.00	Jan. 1, 1989
46–51	17.00	Jan. 1, 1989
52	23.00	[2] Jan. 1, 1988
53–209	18.00	Jan. 1, 1989
210–299	24.00	Jan. 1, 1989
300–399	12.00	Jan. 1, 1989
400–699	19.00	Jan. 1, 1989
700–899	22.00	Jan. 1, 1989
900–999	28.00	Jan. 1, 1989
1000–1059	16.00	Jan. 1, 1989
1060–1119	13.00	Jan. 1, 1989
1120–1199	11.00	Jan. 1, 1989
1200–1499	20.00	Jan. 1, 1989
1500–1899	10.00	Jan. 1, 1989
1900–1939	11.00	Jan. 1, 1989
1940–1949	21.00	Jan. 1, 1989
*1950–1999	22.00	Jan. 1, 1989
2000–End	9.00	Jan. 1, 1989
8	13.00	Jan. 1, 1989
9 Parts:		
1–199	20.00	Jan. 1, 1989
200–End	18.00	Jan. 1, 1989
10 Parts:		
0–50	19.00	Jan. 1, 1989
51–199	17.00	Jan. 1, 1989
200–399	13.00	[3] Jan. 1, 1987
400–499	14.00	Jan. 1, 1989
500–End	28.00	Jan. 1, 1989
11	10.00	[2] Jan. 1, 1988
12 Parts:		
1–199	12.00	Jan. 1, 1989
200–219	11.00	Jan. 1, 1989
220–299	19.00	Jan. 1, 1989
300–499	15.00	Jan. 1, 1989
500–599	20.00	Jan. 1, 1989
600–End	14.00	Jan. 1, 1989
13	22.00	Jan. 1, 1989
14 Parts:		
1–59	24.00	Jan. 1, 1989
60–139	21.00	Jan. 1, 1989
140–199	10.00	Jan. 1, 1989
200–1199	21.00	Jan. 1, 1989
1200–End	12.00	Jan. 1, 1989
15 Parts:		
0–299	12.00	Jan. 1, 1989
*300–799	22.00	Jan. 1, 1989
800–End	14.00	Jan. 1, 1989
16 Parts:		
0–149	12.00	Jan. 1, 1989
150–999	14.00	Jan. 1, 1989
1000–End	19.00	Jan. 1, 1989
17 Parts:		
1–199	15.00	Apr. 1, 1989
200–239	16.00	Apr. 1, 1989
240–End	22.00	Apr. 1, 1989
18 Parts:		
*1–149	16.00	Apr. 1, 1989
150–279	12.00	Apr. 1, 1988
280–399	14.00	Apr. 1, 1989
400–End	9.50	Apr. 1, 1989
19 Parts:		
1–199	27.00	Apr. 1, 1988
200–End	5.50	Apr. 1, 1988
20 Parts:		
1–399	13.00	Apr. 1, 1989
400–499	24.00	Apr. 1, 1989
500–End	25.00	Apr. 1, 1988
21 Parts:		
*1–99	13.00	Apr. 1, 1989
100–169	15.00	Apr. 1, 1989
170–199	17.00	Apr. 1, 1989
200–299	6.00	Apr. 1, 1989
300–499	28.00	Apr. 1, 1989
500–599	20.00	Apr. 1, 1988
600–799	8.00	Apr. 1, 1989
*800–1299	17.00	Apr. 1, 1989
1300–End	6.50	Apr. 1, 1989
22 Parts:		
1–299	22.00	Apr. 1, 1989
300–End	17.00	Apr. 1, 1989
23	17.00	Apr. 1, 1989
24 Parts:		
0–199	19.00	Apr. 1, 1989
200–499	28.00	Apr. 1, 1989
500–699	11.00	Apr. 1, 1989
700–1699	23.00	Apr. 1, 1989
1700–End	13.00	Apr. 1, 1989
25	25.00	Apr. 1, 1989
26 Parts:		
§§ 1.0-1–1.60	15.00	Apr. 1, 1989
§§ 1.61–1.169	25.00	Apr. 1, 1989
§§ 1.170–1.300	18.00	Apr. 1, 1989
§§ 1.301–1.400	15.00	Apr. 1, 1989
§§ 1.401–1.500	28.00	Apr. 1, 1989
§§ 1.501–1.640	16.00	Apr. 1, 1989
§§ 1.641–1.850	19.00	Apr. 1, 1989
§§ 1.851–1.1000	28.00	Apr. 1, 1988
§§ 1.1001–1.1400	17.00	Apr. 1, 1989
§§ 1.1401–End	23.00	Apr. 1, 1989
2–29	20.00	Apr. 1, 1989
30–39	14.00	Apr. 1, 1989
40–49	13.00	Apr. 1, 1989
50–299	16.00	Apr. 1, 1989
300–499	16.00	Apr. 1, 1989
500–599	7.00	Apr. 1, 1989
600–End	6.50	Apr. 1, 1989
27 Parts:		
*1–199	24.00	Apr. 1, 1989
200–End	14.00	Apr. 1, 1989
28	25.00	July 1, 1988

Title	Price	Revision Date
29 Parts:		
0–99	17.00	July 1, 1988
100–499	6.50	July 1, 1988
500–899	24.00	July 1, 1988
900–1899	11.00	July 1, 1988
1900–1910	29.00	July 1, 1988
1911–1925	8.50	July 1, 1988
1926	10.00	July 1, 1988
1927–End	24.00	July 1, 1988
30 Parts:		
0–199	20.00	July 1, 1988
200–699	12.00	July 1, 1988
700–End	18.00	July 1, 1988
31 Parts:		
0–199	13.00	July 1, 1988
200–End	17.00	July 1, 1988
32 Parts:		
1–39, Vol. I	15.00	[4] July 1, 1984
1–39, Vol. II	19.00	[4] July 1, 1984
1–39, Vol. III	18.00	[4] July 1, 1984
1–189	21.00	July 1, 1988
190–399	27.00	July 1, 1988
400–629	21.00	July 1, 1988
630–699	13.00	[5] July 1, 1986
700–799	15.00	July 1, 1988
800–End	16.00	July 1, 1988
33 Parts:		
1–199	27.00	July 1, 1988
200–End	19.00	July 1, 1988
34 Parts:		
1–299	22.00	July 1, 1988
300–399	12.00	July 1, 1988
400–End	26.00	July 1, 1988
35	9.50	July 1, 1988
36 Parts:		
1–199	12.00	July 1, 1988
200–End	20.00	July 1, 1988
37	13.00	July 1, 1988
38 Parts:		
0–17	21.00	July 1, 1988
18–End	19.00	July 1, 1988
39	13.00	July 1, 1988
40 Parts:		
1–51	23.00	July 1, 1988
52	27.00	July 1, 1988
53–60	28.00	July 1, 1988
61–80	12.00	July 1, 1988
81–99	25.00	July 1, 1988
100–149	25.00	July 1, 1988
150–189	24.00	July 1, 1988
190–299	24.00	July 1, 1988
300–399	8.50	July 1, 1988
400–424	21.00	July 1, 1988
425–699	21.00	July 1, 1988
700–End	31.00	July 1, 1988
41 Chapters:		
1, 1–1 to 1–10	13.00	[6] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[6] July 1, 1984
3–6	14.00	[6] July 1, 1984
7	6.00	[6] July 1, 1984
8	4.50	[6] July 1, 1984
9	13.00	[6] July 1, 1984
10–17	9.50	[6] July 1, 1984
18, Vol. I, Parts 1–5	13.00	[6] July 1, 1984
18, Vol. II, Parts 6–19	13.00	[6] July 1, 1984
18, Vol. III, Parts 20–52	13.00	[6] July 1, 1984
19–100	13.00	[6] July 1, 1984
1–100	10.00	July 1, 1988
101	25.00	July 1, 1988
102–200	12.00	July 1, 1988
201–End	8.50	July 1, 1988

Title	Price	Revision Date
42 Parts:		
1–60	15.00	Oct. 1, 1988
61–399	5.50	Oct. 1, 1988
400–429	22.00	Oct. 1, 1988
430–End	22.00	Oct. 1, 1988
43 Parts:		
1–999	15.00	Oct. 1, 1988
1000–3999	26.00	Oct. 1, 1988
4000–End	11.00	Oct. 1, 1988
44	20.00	Oct. 1, 1988
45 Parts:		
1–199	17.00	Oct. 1, 1988
200–499	9.00	Oct. 1, 1988
500–1199	24.00	Oct. 1, 1988
1200–End	17.00	Oct. 1, 1988
46 Parts:		
1–40	14.00	Oct. 1, 1988
41–69	14.00	Oct. 1, 1988
70–89	7.50	Oct. 1, 1988
90–139	12.00	Oct. 1, 1988
140–155	12.00	Oct. 1, 1988
156–165	13.00	Oct. 1, 1988
166–199	14.00	Oct. 1, 1988
200–499	20.00	Oct. 1, 1988
500–End	10.00	Oct. 1, 1988
47 Parts:		
0–19	18.00	Oct. 1, 1988
20–39	18.00	Oct. 1, 1988
40–69	9.00	Oct. 1, 1988
70–79	18.00	Oct. 1, 1988
80–End	19.00	Oct. 1, 1988
48 Chapters:		
1 (Parts 1–51)	28.00	Oct. 1, 1988
1 (Parts 52–99)	18.00	Oct. 1, 1988
2 (Parts 201–251)	18.00	Oct. 1, 1988
2 (Parts 252–299)	18.00	Oct. 1, 1988
3–6	20.00	Oct. 1, 1988
7–14	25.00	Oct. 1, 1988
15–End	26.00	Oct. 1, 1988
49 Parts:		
1–99	13.00	Oct. 1, 1988
100–177	24.00	Oct. 1, 1988
178–199	20.00	Oct. 1, 1988
200–399	19.00	Oct. 1, 1988
400–999	24.00	Oct. 1, 1988
1000–1199	18.00	Oct. 1, 1988
1200–End	18.00	Oct. 1, 1988
50 Parts:		
1–199	17.00	Oct. 1, 1988
200–599	13.00	Oct. 1, 1988
600–End	13.00	Oct. 1, 1988
CFR Index and Findings Aids	29.00	Jan. 1, 1989
Complete 1989 CFR set	620.00	1989
Microfiche CFR Edition:		
Complete set (one-time mailing)	125.00	1984
Complete set (one-time mailing)	115.00	1985
Subscription (mailed as issued)	185.00	1987
Subscription (mailed as issued)	185.00	1988
Subscription (mailed as issued)	188.00	1989
Individual copies	2.00	1989

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan.1, 1988 to Dec.31, 1988. The CFR volume issued January 1, 1988, should be retained.

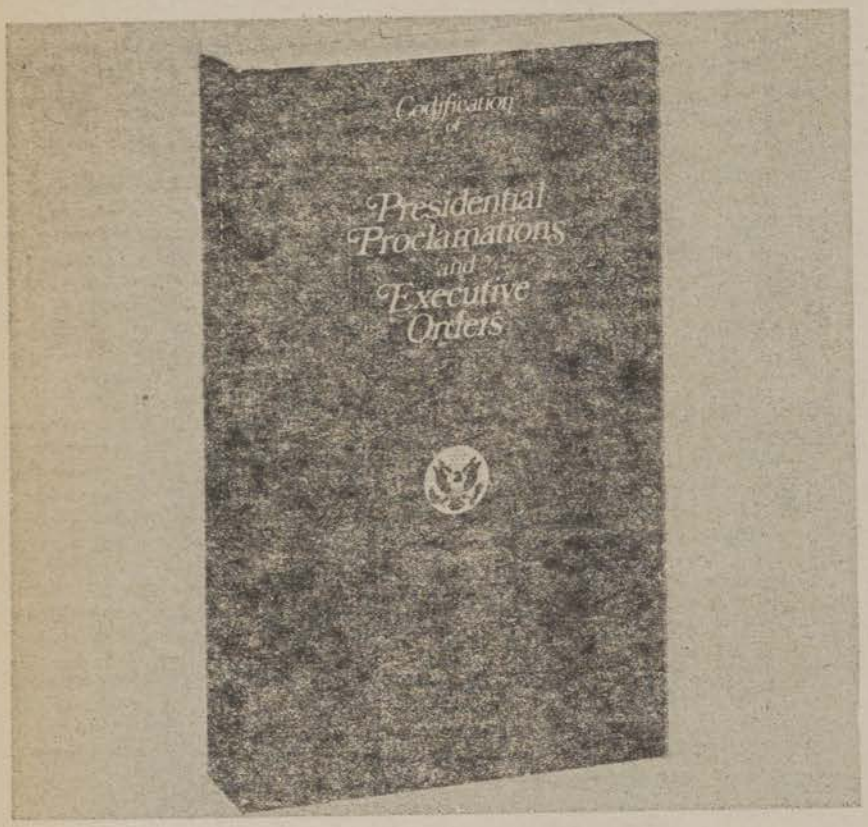
[3] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1988. The CFR volume issued January 1, 1987, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

New edition .... Order now !



For those of you who must keep informed about **Presidential Proclamations and Executive Orders,** there is a convenient reference source that will make researching these documents much easier.

Arranged by subject matter, this edition of the *Codification* contains proclamations and Executive orders that were issued or amended during the period April 13, 1945, through January 20, 1989, and which have a continuing effect on the public. For those documents that have been affected by other proclamations or Executive orders, the codified text presents the amended version. Therefore, a reader can use the *Codification* to determine the latest text of a document without having to "reconstruct" it through extensive research.

Special features include a comprehensive index and a table listing each proclamation and Executive order issued during the 1945–1989 period—along with any amendments—an indication of its current status, and, where applicable, its location in this volume.

Published by the Office of the Federal Register, National Archives and Records Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325

Superintendent of Documents **Publications** Order Form

Order Processing Code:
***6661**

P3

Charge your order. It's easy!

To fax your orders and inquiries—(202) 275-0019

☐ **YES,** please send me the following indicated publication:

_____ copies of the CODIFICATION OF PRESIDENTIAL PROCLAMATIONS AND EXECUTIVE ORDERS, S/N 069-000-00018-5 at $32.00 each.

The total cost of my order is $_____. (International customers please add 25%.) Prices include regular domestic postage and handling and are good through 1/90. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

_____
(Company or personal name) (Please type or print)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

Please Choose Method of Payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

89

Mail To: Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325