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Thursday
April 7, 1988

Briefings on How To Use the Federal Register—
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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.

WASHINGTON, DC

WHEN: April 15; at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: Carolyn Payne, 202–523–3187

BOSTON, MA

WHEN: April 19; at 9 a.m.
WHERE: Thomas P. O'Neill, Jr. Federal Building, Auditorium, 10 Causeway Street, Boston, MA.
RESERVATIONS: Call the Boston Federal Information Center, 617–565–8123

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Presidential Documents

Title 3—

The President

Presidential Determination No. 88–10 of February 29, 1988

Certifications for Narcotics Source and Transit Countries Under P.L. 99–570

Memorandum for the Secretary of State

By virtue of the authority vested in me by Section 481(h)(2)(A)(i) of the Foreign Assistance Act of 1961, as amended by the Anti-Drug Abuse Act of 1986 (P.L. 99–570), I hereby determine and certify that the following major narcotics producing and/or major narcotics transit countries have cooperated fully with the United States, or taken adequate steps on their own, to control narcotics production, trafficking and money laundering:

The Bahamas, Belize, Bolivia, Brazil, Burma, Colombia, Ecuador, Hong Kong, India, Jamaica, Malaysia, Mexico, Morocco, Nigeria, Pakistan, Peru and Thailand.

By virtue of the authority vested in me by Section 481(h)(2)(A)(ii) of the Act, I hereby determine that it is in the vital national interests of the United States to certify the following countries:

Laos, Lebanon, and Paraguay.

Information for these countries as required under Section 481(h)(2)(B) of the Act is enclosed.

I have determined that the following major producing and/or major transit countries do not meet the standards set forth in Section 481(h)(2)(A):

Afghanistan, Iran, Panama and Syria.

In making these determinations, I have considered the factors set forth in Section 481(h)(3) of the Act, based on the information in the International Narcotics Control Strategy Report of 1988.

You are hereby authorized and directed to report this determination to the Congress immediately and to publish it in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, February 29, 1988.

[FR Doc. 88–7745
Filed 4–5–88; 2:06 pm]
Billing code 3195–01–M

Presidential Documents

Proclamation 5788 of April 1, 1988

National Former Prisoners of War Recognition Day, 1988

By the President of the United States of America

A Proclamation

It is truly fitting that America observe April 9 in recognition of our former prisoners of war; that date is the 46th anniversary of the day in 1942 when U.S. forces holding out on the Bataan Peninsula in the Philippines were captured. Later, as prisoners of war, these gallant Americans were subjected to the infamous Bataan Death March and to other inhumane treatment that killed thousands of them before they could be liberated. In every conflict, brutality has invariably been meted out to American prisoners of war; on April 9 and every day, we must remember with solemn pride and gratitude that valor and tenacity have ever been our prisoners' response.

That is clear from the words of then-Captain Jeremiah Denton, USN, when he and other U.S. prisoners of war were freed in 1973 after years of captivity in North Vietnam. "We are honored to have had the opportunity to serve our country under these difficult circumstances," Captain Denton said. Implacable and incredible courage, endurance, faith, and patriotism were behind those words—eloquent and immortal testimony to the spirit of America's Armed Forces in the Vietnam War and throughout our history.

The term "difficult circumstances" referred to nothing less than physical and mental torture, starvation, disease, separation from loved ones, and deprivation of medical treatment—an ordeal that for some, in every conflict, did not end until death. To their brave families we offer solace and salute. To our former prisoners of war who endured so much, we say that with your example and with God's help we will seek to meet the standards of devotion you have set; we will never forget your service or your sacrifice.

The Congress, by Public Law 100–269, has designated April 9, 1988, as "National Former Prisoners of War Recognition Day" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim April 9, 1988, as National Former Prisoners of War Recognition Day, and I urge all Americans to observe this day of remembrance with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of April, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88–7753
Filed 4–5–88; 3:04 pm]
Billing code 3195–01–M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 88-032]

Tuberculosis in Cattle and Bison; State Designations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the regulations governing the interstate movement of cattle and bison because of tuberculosis by raising the designation of Kentucky from a modified accredited state to an accredited-free state.

EFFECTIVE DATE: May 9, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph L. Hosker, Senior Staff Veterinarian, Domestic Programs Support Staff, VS, APHIS, USDA, Room 815, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8438.

SUPPLEMENTARY INFORMATION:

Background

The "Tuberculosis" regulations (contained in 9 CFR Part 77 and referred to below as the regulations) regulate the interstate movement of cattle and bison because of tuberculosis.

In an interim rule published in the **Federal Register** and effective December 30, 1987 (52 FR 49155-49156, Docket Number 87-144), we amended § 77.1 of the regulations by removing Kentucky from the list of modified accredited states and adding it to the list of accredited-free states in that section. Comments on the interim rule were required to be postmarked or received on or before March 1, 1988. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

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 of 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.

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

Cattle and bison moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of the state of Kentucky may affect the marketability of cattle and bison from that state since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free states. This may result in some beneficial economic impact on some small entities. However, based on our experience in similar designations of other states, the impact should not be significant.

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

Paperwork Reduction Act

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

Executive Order 12372

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

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR Part 77 and that was published at 52 FR 49155-49156 on December 30, 1987.

Authority: 21 U.S.C. 111, 114, 114a, 115-117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 4th day of April, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-7613 Filed 4-6-88; 8:45 am]

BILLING CODE 3410-34-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of interim order regarding the application of foreign futures and option rules to certain persons located outside the United States.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has determined to extend the interim relief granted in its order of January 29, 1988, 53 FR 3338 (February 5, 1988), pursuant to which certain persons located outside the United States selling foreign futures products to clients in the U.S. may be permitted to continue those relationships notwithstanding the effective date of the foreign futures and option rules.

DATES: Subject to the terms and conditions specified herein and in the Commission's order of relief dated January 29, 1988, the interim relief granted by the Commission by order of that date is extended to July 5, 1988.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Attorney, Division of

Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: On August 5, 1987, the Commission published in the **Federal Register** final rules governing the offer and sale of foreign futures and option contracts in the United States. 52 FR 28980. By order dated December 21, 1987, the Commission postponed the effective date of the rules from January 4, 1988 to February 1, 1988, 52 FR 48811 (December 28, 1987), and the rules generally became effective on that date.

On January 29, 1988, the Commission issued an interim order regarding the application of the rules to certain persons located outside the United States on whose behalf a foreign regulator and/or foreign exchange had applied for a broad-based exemption under rule 30.10. 53 FR 3338 (February 5, 1988). Specifically, the Commission's interim order permitted such persons to continue selling foreign futures products to existing foreign futures clients located in the U.S. for a sixty-day period, through April 4, 1988, provided the following conditions were satisfied:

(1) A petition for exemption under rule 30.10 had been filed prior to February 1, 1988;

(2) Such persons actually were in the business of selling products which are the subject of the part 30 rules to customers located in the U.S. as defined in rule 30.1(c), 52 FR 28998, prior to January 4, 1988;

(3) Such persons: (a) agreed not to solicit or attempt to solicit and (b) do not solicit or attempt to solicit, transactions in respect of foreign futures products for or on behalf of any new customers located in the U.S. pending a final determination by the Commission on the above-referenced exemption request;

(4) Such persons effected a valid and binding appointment of an agent in the United States for service of process in accordance with the procedures set forth in rule 30.5(a), 52 FR 28999, prior to accepting any new positions on or after February 1, 1988 from or on behalf of existing customers located in the U.S.[1] and

(5) The applicable foreign exchange or regulator notified the National Futures Association of the persons on whose behalf it requested interim relief.

In issuing its interim relief, the Commission stated that it would permit the Commission to address the petitions filed under rule 30.10 of the foreign futures and options rules without requiring the persons covered thereby to cease sales of foreign futures products to customers located in the U.S. on February 1, 1988, the effective date of those rules. 53 FR 3338.

The Commission has determined to extend, for an additional 90 days, to July 5, 1988, the interim relief granted in its order of January 29, 1988 for firms in compliance with the five conditions set forth above provided that, on or before April 15, 1988, the applicable foreign exchange, regulator, or self-regulator acknowledges in writing to the Commission that with respect to each firm in its jurisdiction operating under the interim relief, such firm is, or would be eligible to be, registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards which it has described in the petition for exemption under rule 30.10. In addition, the foreign exchange, regulator or self-regulator must agree to notify the Commission of any material change in the qualification of the firm to be, or remain, registered, licensed or authorized. Further, such acknowledgment should include a representation that the firms covered thereby are operating in accordance with the conditions of the interim relief previously granted. In the event the foreign exchange, regulator or self-regulator fails or is unable to provide the acknowledgment and representations set forth above with respect to any firm currently operating under the interim order, the relief accorded with respect to that firm will be suspended effective April 15, 1988, and the foreign exchange, regulator or self-regulator must so notify that firm. Moreover, in the event the foreign exchange, regulator or self-regulator notifies the Commission that any firm operating under the interim relief is no longer in good standing, the relief accorded such firm will be suspended immediately upon such notification. Any suspension of the interim relief will remain in effect pending a final determination by the Commission on the petition filed pursuant to rule 30.10 and a final determination by the appropriate regulator in the foreign jurisdiction as to the particular firm's qualification for registration, licensing or authorization.

All terms and conditions set forth in the Commission's interim order of relief dated January 29, 1988 in addition to those set forth above will continue to apply with respect to those firms operating under the interim relief granted herein.

Issued in Washington, DC on April 4, 1988, by the Commission.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 88–7654 Filed 4–6–88; 8:45 am]

BILLING CODE 6351-01-M

[1] Under the terms of the interim order of January 29, 1988, absent a valid and binding appointment of an agent in the U.S. for service of process, persons operating under the interim relief are limited to accepting liquidation orders and servicing positions entered into prior to the effective date of the interim relief.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 540

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for an NADA from Maurry Biological Co., Inc., to Norbrook Laboratories, Ltd.

EFFECTIVE DATE: April 7, 1988.

FOR FURTHER INFORMATION CONTACT: John R. Markus, Center for Veterinary Medicine (HFV–142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3442.

SUPPLEMENTARY INFORMATION: Maurry Biological Co., Inc., 6109 South Western Ave., Los Angeles, CA 94007, advised FDA of a change of sponsor of NADA 65–010 (Procaine Penicillin G Suspension) to Norbrook Laboratories, Ltd., Station Works, Newry BT35 6JP, Northern Ireland. The agency is amending the regulations in 21 CFR 510.600(c) (1) and (2) and 540.274b(c)(3)(ii) to reflect the change.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 540

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under

authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510 and 540 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

2. Section 510.600 is amended alphabetically in paragraph (c)(1) and numerically in paragraph (c)(2) by adding a new entry to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * *	*
Norbrook Laboratories, Ltd., Station Works, Newry BT35 6JP, Northern Ireland	055558
* * * *	*

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
055558	Norbrook Laboratories, Ltd., Station Works, Newry BT35 6JP, Northern Ireland.

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

3. The authority citation for 21 CFR Part 540 continues to read as follows:

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

§ 540.274b [Amended]

4. Section 540.274b *Procaine penicillin G aqueous suspension* is amended in paragraph (c)(3)(ii) by removing No. "010719" and adding in its place No. "055558."

Dated: March 31, 1988.

Richard A. Carnevale,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 88-7581 Filed 4-6-88; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Oxytetracycline Hydrochloride Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Anthony Products Co. providing for safe and effective use of a 50- and 100-milligram-per-milliliter (mg/mL) oxytetracycline hydrochloride injection for treatment of diseases due to oxytetracycline-susceptible organisms in beef cattle and nonlactating dairy cattle.

EFFECTIVE DATE: April 7, 1988.

FOR FURTHER INFORMATION CONTACT: Charles E. Haines, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3410.

SUPPLEMENTARY INFORMATION: Anthony Products Co., 5600 Peck Rd., Arcadia, CA 91006, filed NADA 140–582 which provides for intravenous use of an injectable oxytetracycline hydrochloride containing 50- or 100-mg/mL oxytetracycline hydrochloride. It is labeled for over-the-counter use for treating diseases due to oxytetracycline-susceptible organisms in beef cattle and nonlactating dairy cattle as follows: pneumonia and shipping fever complex associated with *Pasteurella* spp. and *Hemophilus* spp.; foot rot and diphtheria caused by *Fusobacterium necrophorum;* bacterial enteritis (scours) caused by *Escherichia coli;* wooden tongue caused by *Actinobacillus lignieresii;* leptospirosis caused by *Leptospira pomona;* acute metritis and wound infections caused by staphylococcal and streptococcal organisms. It is labeled for use by or on the order of a licensed veterinarian for the treatment of anaplasmosis caused by *Anaplasma marginale* and anthrax caused by *Bacillus anthracis.* Anthony Products' 50- and 100-mg/mL oxytetracycline hydrochloride injections are similar to Pfizer's 50- and 100-mg/mL injections. Pfizer's 50-mg/mL injection was one of several oxytetracycline hydrochloride injectable preparations reviewed by the National Academy of Sciences/National Research Council (NAS/NRC) Drug Efficacy Study Group. The evaluation was published in the **Federal Register** of July 21, 1970 (35 FR 11646). In that document, NAS/NRC and FDA concluded that the preparations were probably effective for treating infections in cattle, sheep, swine, horses, cats, dogs, chickens, and turkeys caused by pathogens sensitive to oxytetracycline hydrochloride.

Pfizer responded to the evaluation notice by submitting supplemental NADA 8–769 that revised the labeling for safe and effective use of injections containing 50-mg/mL of oxytetracycline hydrochloride for treating cattle, swine, and poultry. The supplemental application was approved and a regulation was published in the **Federal Register** of September 18, 1974 (39 FR 33509). The regulation reflecting this approval amended 21 CFR 135b.65 (recodified as 21 CFR 522.1662a) by adding a new paragraph (d).

Anthony Products submitted in vitro biological and chemical equivalence data to support the biological equivalence of the intravenous use of Pfizer's 100-mg/mL product and their products. The NADA is approved and the regulations in 21 CFR 522.1662a are amended by adding a new paragraph (k). The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Center for Veterinary Medicine, Part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM, NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 522.1662a is amended by adding a new paragraph (k) to read as follows:

§ 522.1662a Oxytetracycline hydrochloride injection.

* * * * *

(k)(1) *Specifications.* Each milliliter of sterile solution contains either 50 or 100 milligrams of oxytetracycline hydrochloride.

(2) *Sponsor.* See No. 000864 in § 510.600(c) of this chapter.

(3) *Conditions of use in beef cattle and nonlactating dairy cattle.*

(i) *Amount.* 3 to 5 milligrams per pound of body weight daily, 5 milligrams per pound for anaplasmosis, severe foot rot, and severe forms of other diseases.

(ii) *Indications for use.* Treatment of diseases due to oxytetracycline-susceptible organisms as follows: pneumonia and shipping fever complex associated with *Pasteurella* spp. and *Hemophilus* spp.; foot rot and diphtheria caused by *Fusobacterium necrophorum;* bacterial enteritis (scours) caused by *Escherichia coli;* wooden tongue caused by *Actinobacillus lignieresii;* leptospirosis caused by *Leptospira pomona;* acute metritis and wound infections caused by staphylococcal and streptococcal organisms; if labeled for use by or on the order of a licensed veterinarian, it may be used for treatment of anaplasmosis caused by *Anaplasma marginale* and anthrax caused by *Bacillus anthracis.*

(iii) *Limitations.* Administer by intravenous injection. Treatment should be continued 24 to 48 hours following remission of disease symptoms, but not to exceed a total of 4 consecutive days. If no improvement occurs within 24 to 48 hours, reevaluate diagnosis and therapy. Discontinue use at least 19 days prior to slaughter. Not for use in lactating dairy cattle.

Dated: March 28, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88-7582 Filed 4-6-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF STATE

22 CFR Parts 120, 121, 122, 123, 124, 125, 126, 127 and 128

[Departmental Regulations 108.866]

The International Traffic in Arms Regulations (ITAR) and Implementation of the Foreign Relations Authorization Act

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, of December 22, 1987, amended section 38 of the Arms Export Control Act (the Act), the basic authority for the regulation of exports of defense articles and services. The final rule implements several requirements of the Act. It also makes several unrelated changes that clarify or improve the existing regulations.

EFFECTIVE DATE: April 4, 1988.

FOR FURTHER INFORMATION CONTACT: Clyde Bryant, Chief, Compliance Analysis Division, Office of Munitions Control, Department of State (202-875-6650), or Miriam Sapiro, Office of the Legal Adviser, Department of State (202-647-7838).

SUPPLEMENTARY INFORMATION:

Section 1255 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Dec. 22, 1987, Pub. L. 100-204, 101 Stat. 1331, 1429) amended section 38 of the Arms Export Control Act (22 U.S.C. 2778) (the Act), which is the basic authority for the International Traffic in Arms Regulations (22 CFR Parts 120-130). The amendments provide additional authority for the Department of State in its implementation of the Act. They are designed primarily to ensure that individuals or firms convicted of certain offenses or debarred by U.S. Government agencies are denied export privileges.

The statutory amendments provide a valuable addition to existing law on the export of defense articles and defense services. They significantly expand the authority of the U.S. Department of State to deny licenses or other export approvals based on the past behavior of applicants.

The final rule implements some but not all of the recent amendments. For example, new section 38(g) of the Act provides that the President shall (in coordination with law enforcement agencies) develop standards for identifying high risk exports for regular end-use verification. It also provides that the initial standards shall be published in the **Federal Register** no later than October 1, 1988. These standards are not included in the current rule, but will be published subsequently. Additional changes are currently contemplated to improve the regulatory scheme and to implement other recent statutory enactments. Members of the public are invited to submit any recommended changes to the Office of Munitions Control within the next sixty days so that they may be considered in formulating the revisions.

Amended section 38 of the Act provides that applications for licenses and other approvals may not be issued to persons who have been convicted of certain offenses or who are currently ineligible for certain export licenses. Several provisions have been added to the International Traffic in Arms Regulations (ITAR) to deal with this issue, including a new § 127.10 entitled "Past violations."

Amended section 38 of the Act and the final rule authorize the Office of Munitions Control to deny licenses or other approvals to individuals or firms who have either been indicted for or may have committed violations of various statutes; or who have been debarred by agencies of the U.S. Government from importing defense articles or defense services, or from contracting with the U.S. Government. The Office of Munitions Control, in cooperation with the Department of Justice and other agencies, has developed means to identify such persons.

In addition, changes are made in the registration process in order to facilitate implementation of these requirements. The registration requirements of the Arms Export Control Act are primarily a means to ensure that the U.S. Government is aware of who is engaged in the manufacture of defense articles, the export of such articles, or the furnishing of defense services to foreign persons. Registration has never conferred a right to export. Rather, the purpose of registration has been similar to the registration requirement of the Foreign Agents Registration Act of 1938, as amended (June 9, 1939, Pub. L. 75-538, 22 U.S.C. 611-621) in that it is designed to ensure that responsible U.S. Government officials are aware of who is involved in certain activities.

The final rule makes it clear that all registrants will have a continuous duty to inform the U.S. Government of acts that may result in the denial of applications for licenses or other approvals. It amends the registration requirements in a significant way by requiring new and all current registrants to provide information on a timely basis on whether any of their senior officers or officials have been indicted, convicted, or debarred in any way. The obligation to provide this information is in force as of the effective date of the revised ITAR. The failure to provide such information will constitute a violation of the ITAR, and could result in criminal and civil penalties.

Another significant change is the implementation of the statutory prohibition on providing licenses or other approvals to foreign persons (with the exception of foreign governmental

entities in the United States). It has been the general practice of the Department of State to require that applicants be U.S. persons. The recent amendments to the Act codify this practice. The registration requirements have been amended to ensure that appropriate information is provided to the Department of State on whether the applicant is a foreign person. It is not uncommon for firms to be incorporated in more than one country. Firms incorporated in the United States, including firms that may be incorporated also in foreign countries, are generally ineligible for licenses pursuant to the new legislation if the facts demonstrate that the natural persons involved in the export are subject to U.S. laws.

Amended section 38 also requires that each applicant for a license shall identify in the application all consignees and freight forwarders involved in the proposed export. Pending revision of the existing forms, all such information and other information that may be needed to ensure compliance with the Arms Export Control Act and the ITAR shall be provided in an addendum to the current forms or other requests for approval. A new section in the revised regulations specifies the information required (§ 126.13). It is the intention of the Department of State to delete this provision once the application forms have been revised. The obligation to provide this information is in force as of the effective date of the revised ITAR. However, as a matter of administrative discretion, until May 16, 1988, the Office of Munitions Control may nevertheless review applications that omit the required information. Effective May 16, 1988, incomplete applications will be returned and appropriate penalties may be considered under Parts 127 and 128.

Other changes made to the ITAR are not related to the new legislation. Most of the changes are for purposes of accuracy and are not substantive. One substantive change addresses the uncertainty that has existed in the past regarding whether certain Federal Aviation Agency (FAA)-certified aircraft or components were on the U.S. Munitions List (USML). In order to clarify the situation, a change is made to Category VIII of the USML. The change requires that a formal commodity jurisdiction review take place to determine whether any FAA-certified aircraft or components will be removed from the USML after FAA certification. This change conforms the language of the regulations to the current practice of the Department of State, and will ensure that items excluded under section 17(c) of the Export Administration Act, as amended, are properly identified.

The amendment to section 38 and its legislative history make it clear that Congress expects strict enforcement of the new policy on denying export privileges in certain situations based on the past conduct of the parties to an export, and of compliance with the ITAR provisions. Concern has been expressed in particular regarding the failure of some applicants to provide all the required information. The Department of State has in fact noticed that a significant number of applications for licenses and other approvals are egregiously incomplete (e.g., not all of the information expressly required is provided, particularly information on political contributions, fees and commissions). In the past, the Department has generally returned such applications without action. However, the failure to provide required information is now an express basis for denying an application. Henceforth, the Department may chose to deny such applications if this is deemed appropriate. Such denied applications normally will not be reconsidered for a period of 30 days following the denial or the decision to impose administrative penalties, whichever is later. The Department is aware that such a delay could cause an applicant to lose business, and therefore urges all applicants to ensure that applications are properly completed and carefully reviewed prior to submission.

The recent statutory amendments provide specific authority to require that licenses or other approvals be obtained prior to the sale or other transfer (as opposed to the export) of USML items to foreign persons. This authority is relied upon in the new amendments to require approval before certain transactions (e.g., sales or proposals to sell) may be made with respect to the prohibited destinations specified in § 126.1, which includes the embassies of such countries. The Department of State intends to consider whether to use this authority for other transactions in the next revision of the ITAR.

Concern has been expressed regarding whether the ITAR prohibits transactions with countries that have repeatedly provided support for acts of terrorism. It has in fact been the policy of the Department of State to deny licenses and other approvals with respect to defense articles and defense services destined for countries that the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act, as amended, have repeatedly provided support for acts of terrorism. The revised ITAR states explicitly that such exports and sales are prohibited. It also identifies the proscribed countries, which are Cuba, Iran, Libya, Syria, South Yemen (P.D.R.Y.) and North Korea.

Finally, the Department wishes to remind all registrants that section 38 of the Act provides expressly that any willful violation of the ITAR is a criminal offense. This includes the failure to provide information expressly required by the ITAR. The failure to comply with the requirements could lead to the criminal and civil penalties prescribed, as well as severely affect the business operations of the U.S. firms concerned. The Department recommends that registrants bring this final rule to the attention of all those involved in the licensing process.

The following amendments deal with a foreign affairs function of the United States and are thus excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. The Department of State believes that the public should generally have an opportunity to comment on proposed amendments dealing with the ITAR before they are promulgated as a final rule. The basic regulations that are amended by this final rule were the subject of public comment because of the desirability of obtaining public views. However, as was the case with the most recent amendments to the ITAR dealing with South Africa (51 FR 47013), these amendments implement statutory requirements that have entered into force and consequently the regulations are promulgated as a final rule.

List of Subjects in 22 CFR Parts 120, 121, 122, 123, 124, 125, 126, 127, and 128

Arms and munitions, Exports.

Accordingly, for the reasons set forth in the preamble, Title 22, Chapter I, Subchapter M (consisting of Parts 120 through 130), of the Code of Federal Regulations, is amended as set forth below:

PART 120—PURPOSE, BACKGROUND, AND DEFINITIONS

1. The authority citation for Part 120 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

2–3. In § 120.1, revise the section heading to read "General"; the current text is designated as new paragraph (a) and the heading "Purpose" is added;

and a new paragraph (b) is added to read as follows:

§ 120.1 General.

(a) *Purpose.* * * *

(b) *Eligibility.* Licenses or other approvals under this subchapter may be granted only to U.S. persons (as defined in § 120.23) and foreign governmental entities in the United States. Foreign persons (as defined in § 120.11) other than governments are not eligible. U.S. persons who have been convicted of violating the U.S. criminal statutes enumerated in § 120.24, or who have been debarred pursuant to Part 127 of this subchapter, are also generally ineligible (*see* § 127.6(c)). Applications for licenses or requests for other approvals will generally be considered only if the applicant has registered with the Office of Munitions Control pursuant to Part 122 of this subchapter. All applications and requests for approval must be signed by a responsible official who has been empowered by the registrant to sign such documents.

4. In § 120.10, the last sentence of paragraph (e) is revised and a new sentence is added as follows:

§ 120.10 Export.

* * * * *

(e) * * * A launch vehicle or payload shall not, by reason of the launching of such vehicle, be considered an export for purposes of this subchapter. Most of the requirements of this subchapter relate only to exports, as defined above. However, for certain limited purposes, the controls of this subchapter apply to sales and other transfers of defense articles and defense services (*see*, e.g., § 126.1) of this subchapter.

§ 120.19 [Amended]

5. In § 120.19, paragraph (b) is amended by removing "VIII (a), (b)(1), (c) and (d)" and adding in its place "VIII (a), (b)(1), (c), (d), (g), (h), and (i)."

6. Section 120.23 is revised to read as follows:

§ 120.23 U.S. Person.

"U.S. Person" means a natural person (as defined in § 120.16 of this part) who is a citizen or national of the United States, or has been lawfully admitted to the United States for permanent residence (and maintains such a residence) under the Immigration and Nationality Act (8 U.S.C. 1101(a), 101(a), 60 Stat. 163). It also means any corporation, business association, partnership, society, trust, or any other entity, organization or group that is incorporated or organized to do business in the United States. It also includes any governmental (federal, state or local) entity. It does not include any foreign person as defined in § 120.11 of this part.

§ 120.24 [Redesignated as § 120.25]

7. Section 120.24 is redesignated as § 120.25, and a new § 120.24 is added to read as follows:

§ 120.24 U.S. criminal statutes.

For purposes of this subchapter, the phrase "U.S. criminal statutes" means:

(a) Section 38 of the Arms Export Control Act (22 U.S.C. 2778);

(b) Section 11 of the Export Administration Act of 1979 (50 U.S.C. App. 2410);

(c) Sections 793, 794, or 798 of Title 18, United States Code (relating to espionage involving defense or classified information);

(d) Section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16);

(e) Section 206 of the International Emergency Economic Powers Act (relating to foreign assets controls; 50 U.S.C. App. 1705);

(f) Section 30A of the Securities Exchange Act of 1934 (15 U.S.C. 78dd–1) or section 104 of the Foreign Corrupt Practices Act (15 U.S.C. 78dd–2);

(g) Chapter 105 of Title 18, United States Code (relating to sabotage);

(h) Section 4(b) of the Internal Security Act of 1950 (relating to communication of classified information; 50 U.S.C. 783(b));

(i) Sections 57, 92, 101, 104, 222, 224, 225, or 226 of the Atomic Energy Act of 1954 (42 U.S.C. 2077, 2122, 2131, 2134, 2272, 2274, 2275, and 2276);

(j) Section 601 of the National Security Act of 1947 (relating to intelligence identities protection; 50 U.S.C. 421);

(k) Section 603(b) or (c) of the Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C. 5113(b) and (c)); and

(l) Section 371 of Title 18, United States Code (when it involves conspiracy to violate any of the above statutes).

PART 121—THE UNITED STATES MUNITIONS LIST

8. The authority citation for Part 121 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

9. In § 121.1, Category VIII, paragraph (h) is revised to read as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

Category VIII—Aircraft, Spacecraft, and Associated Equipment

* * * * *

*(h) Developmental aircraft and components thereof which have a significant military applicability, excluding such aircraft and components that have been certified by the Federal Aviation Administration and determined through the commodity jurisdiction procedure specified in § 120.5 of this subchapter. To be subject to the export control jurisdiction of the Department of Commerce for purposes of section 17(c) of the Export Administration Act, as amended.

* * * * *

PART 122—REGISTRATION OF MANUFACTURERS AND EXPORTERS

10. The authority citation for Part 122 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

11. In § 122.1, a new paragraph (c) is added to read as follows:

§ 122.1 Registration requirements.

* * * * *

(c) *Purpose.* Registration is primarily a means to provide the U.S. Government with necessary information on who is involved in certain manufacturing and exporting activities. Registration does not confer any export rights or privileges. It is generally a precondition to the issuance of any license or other approval under this subchapter.

§ 122.2 and 122.6 [Removed]

12. Sections § 122.2 and 122.6 are removed, § 122.3 and 122.4 are revised, and new § 122.2 is added to read as follows:

§ 122.2 Submission of registration statement.

(a) *General.* An original and two copies of the Department of State Form DSP–9 (Registration Statement) and the transmittal letter required by paragraph (b) of this section must be submitted by an intended registrant with a payment by check or money order payable to the Department of State of one of the fees prescribed in § 122.3(a) of this part. The Registration Statement and transmittal letter must be signed by a senior officer who has been empowered by the intended registrant to sign such documents. The intended registrant shall also submit three copies of documentation that demonstrates that it is incorporated or otherwise authorized to do business in the United States. The Office of Munitions Control will return to the sender any Registration Statement that is incomplete, or that is not accompanied by the required letter or payment of the proper registration fee.

(b) *Transmittal Letter.* A letter of transmittal, signed by an authorized senior officer of the intended registrant, shall accompany each Registration Statement.

(1) The letter shall state whether the chief executive officer, president, vice-presidents, other senior officers or officials (e.g., comptroller, treasurer, general counsel) or any member of the board of directors:

(i) Has ever been indicted for or convicted of violating any of the U.S. criminal statutes enumerated in § 120.24 of this subchapter; or

(ii) Is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from, any agency of the U.S. Government.

(2) The letter shall also declare whether the intended registrant is owned or controlled by foreign persons (as defined in § 120.11 of this subchapter). If the intended registrant is owned or controlled by foreign persons, the letter shall also state whether the intended registrant is incorporated or otherwise authorized to engage in business in the United States.

(c) *Definition.* For purposes of this section, "ownership" means that more than 50 percent of the outstanding voting securities of the firm are owned by one or more foreign persons. "Control" means that one or more foreign persons have the authority or ability to establish or direct the general policies or day-to-day operations of the firm. Control is presumed to exist where foreign persons own 25 percent or more of the outstanding voting securities if no U.S. persons control an equal or larger percentage. The standards for control specified in 22 CFR 60.2(c) also provide guidance in determining whether control in fact exists.

§ 122.3 Registration fees.

(a) *Fees.* A person who is required to register may do so for a period of 1 to 5 years upon submission of a completed form DSP–9, transmittal letter, and payment of a fee as follows:

1 year	$250
2 years	500
3 years	700
4 years	850
5 years	1,000

(b) *Lapses in registration.* A registrant who fails to renew a registration after its lapse and, after an intervening period, seeks to register again must pay registration fees for any part of such intervening period during which the registrant engaged in the business of manufacturing or exporting defense articles or defense services.

(c) *Refund of fee.* Fees paid in advance for future years of a multiple year registration will be refunded upon request if the registrant ceases to engage in the manufacture or export or defense articles and defense services. A request for a refund must be submitted to the Office of Munitions Control prior to the beginning of any year for which a refund is claimed.

§ 122.4 Notification of changes in information furnished by registrants.

(a) A registrant must, within five days of the event, notify the Office of Munitions Control by registered mail if:

(1) Any of the persons referred to in § 122.2(b) are indicted for or convicted of violating any of the U.S. criminal statutes enumerated in § 120.24 of this subchapter, or become ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from any agency of the U.S. government; or

(2) There is a material change in the information contained in the Registration Statement, including a change in the senior officers; the establishment, acquisition or divestment of a subsidiary or foreign affiliate; a merger; a change of location; or the dealing in an additional category of defense articles or defense services.

(b) A registrant must notify the Office of Munitions Control by registered mail at least sixty days in advance of any intended planned sale or transfer to a foreign person of ownership or control of the registrant or any entity thereof. Such notice does not relieve the registrant from obtaining the approval required under this subchapter for the export of defense articles or defense services to a foreign person, including the approval required prior to disclosing technical data. Such notice provides the Office of Munitions Control with the information necessary to determine whether the authority of section 38(g)(6) of the Arms Export Control Act regarding licenses or other approvals for certain sales or transfers (as opposed to exports) of articles or data should be invoked (*see* §§ 120.10(f) and 126.1(f) of this subchapter).

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

13–15. The authority citation for Part 123 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11938, 42 FR 4311; 22 U.S.C. 2658.

§ 123.1 [Amended]

16. In § 123.1, paragraph (b) is amended by removing the second sentence.

PART 124—MANUFACTURING LICENSE AGREEMENTS, TECHNICAL ASSISTANCE AGREEMENTS, AND OTHER DEFENSE SERVICES

17. The authority citation for Part 124 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

18. In § 124.14, paragraph (e) is redesignated as paragraph (f), paragraph (d) is redesignated as paragraph (e), new paragraph (d) is added and newly redesignated paragraph (f) is revised to read as follows:

§ 124.14 Exports to warehouses or distribution points outside the United States.

* * * * *

(d) *Special clauses for agreements relating to significant military equipment.* With respect to agreements for the warehousing and distribution of significant military equipment, the following additional provisions must be included in the agreement:

(1) A completed nontransfer and use certificate (DSP–83) must be executed by the foreign end-user and submitted to the U.S. Department of State before any transfer may take place.

(2) The prior written approval of the U.S. Department of State must be obtained before entering into a commitment for the transfer of the licensed article by sale or otherwise to any person or government outside the approved distribution territory.

(f) *Additional clause.* Unless the articles covered by the agreement are in fact intended to be distributed to private persons or entities (*e.g.*, sporting firearms for commercial resale, cryptographic devices and software for financial and business applications), the following clause must be included in all warehousing and distribution agreements: "Sales or other transfers of the licensed article shall be limited to governments of the countries in the distribution territory and to private entities seeking to procure the licensed article pursuant to a contract with a government within the distribution territory, unless the prior written approval of the U.S. Department of State is obtained."

PART 125—LICENSES FOR THE EXPORT OF TECHNICAL DATA AND CLASSIFIED DEFENSE ARTICLES

19. The authority citation for Part 125 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

20–21. In § 125.4, paragraph (b)(4) is amended by removing the words "additional" and "exported or" in the first sentence and paragraph (b)(7) is amended to read as follows:

§ 125.4 Exemptions of general applicability.

* * * * *

(b) * * *

(7) Technical data, including classified information, being returned to the original source of import;

* * * * *

PART 126—GENERAL POLICIES AND PROVISIONS

22. The authority citation for Part 126 is revised to read as follows:

Authority: Sec. 38, Sec. 42, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778, 2780); E.O. 11958, 42 FR 4311, E.O. 11322, 32 FR 119; 22 U.S.C. 2658; sec. 317, Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C. 5067); E.O. 12571, 51 FR 39505.

23. In § 126.1, the section heading and the fourth sentence of paragraph (a) are revised, and new paragraphs (d), (e) and (f) are added to read as follows:

§ 126.1 Prohibited exports and sales to certain countries.

(a) * * * This policy also applies to countries or areas with respect to which the United States maintains an arms embargo (*e.g.*, Angola) or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States * * *

* * * * *

(d) *Terrorism.* Exports to countries that have repeatedly provided support for acts of international terrorism are contrary to the foreign policy of the United States and are thus subject to the policy specified in paragraph (a) of this section and the requirements of section 40 of the Arms Export Control Act (22 U.S.C. 2780). The countries in this category are Cuba, Iran, Libya, Syria, South Yemen (P.D.R.Y.) and North Korea. These are the same countries identified pursuant to section 6(j) of the Export Administration Act, as amended.

(e) *Chile.* The Government of Chile is subject to a statutory arms embargo. No export license or other approval may be granted under this subchapter to or for the Government of Chile unless the President makes the certifications required pursuant to section 726 of the International Security Development Cooperation Act of 1981, as amended. The prohibition does not apply to the export of cartridge actuated devices, propellant actuated devices, and technical manuals for aircraft of the F–5E/F or A/T–37 type which were sold to the Chilean Air Force by the United States before January 1, 1976, so long as the items are provided only for the purpose of enhancing the safety of the aircraft crew.

(f) *Proposed Sales.* No sale or transfer and no proposal to sell or transfer any defense articles, defense services or technical data subject to this subchapter may be made to any country referred to in this section (including the embassies or consulates of such a country), or to any person acting on its behalf, whether in the United States or abroad, without first obtaining a license or other written approval from the Office of Munitions Control. (*See* § 120.10(f) of this subchapter), in accordance with paragraph (a) of this section, it is the policy of the Department of State to deny licenses and approvals in such cases. Any person who knows or has reason to know of such a proposed or actual sale, or transfer, of such articles, services or data must inform the Office of Munitions Control.

24. In § 126.7, the section heading and paragraph (a) are revised and paragraphs (d) and (e) are added to read as follows:

§ 126.7 Denial, revocation, suspension, or amendment of licenses and other approvals.

(a) *Policy.* Licenses or approvals shall be denied or revoked whenever required by any statute of the United States (*see* § 127.6 and § 127.10 of this subchapter). Any application for an export license or other approval under this subchapter may be disapproved, and any license or other approval or exemption granted under this subchapter may be revoked, suspended, or amended without prior notice whenever:

(1) The Department of State deems such action to be in furtherance of world peace, the national security or the foreign policy of the United States, or is otherwise advisable; or

(2) The Department of State believes that 22 U.S.C. 2778, any regulation contained in this subchapter, or the terms of any U.S. government export authorization (including the terms of a manufacturing license or technical assistance agreement, or export authorization granted pursuant to the Export Administration Act, as amended) has been violated by any party to the export or other person having significant interest in the transaction; or

(3) An applicant is the subject of an indictment for a violation of any of the U.S. criminal statutes enumerated in § 120.24 of this subchapter; or

(4) An applicant or any party to the export or the agreement has been convicted of violating any of the U.S. criminal statutes enumerated in § 120.24 of this subchapter; or

(5) An applicant is ineligible to contract with, or to receive a license or other authorization to import defense articles or defense services from, any agency of the U.S. Government; or

(6) An applicant, any party to the export or agreement, or any person who has a significant interest in the transaction has been debarred, suspended, or otherwise is ineligible to receive an export license or other authorization from any agency of the U.S. government (*e.g.*, pursuant to debarment by the Department of Commerce under 15 CFR Part 388 or by the Department of State under Part 127 or 128 of this subchapter); or

(7) An applicant has failed to include any of the information or documentation expressly required to support a license application or other request for approval under this subchapter or as required in the instructions in the applicable Department of State form.

* * * * *

(d) *Reconsideration of Certain Applications.* Applications for licenses or other requests for approval denied for repeated failure to provide information or documentation expressly required will normally not be reconsidered during the thirty day period following denial. They will be reconsidered after this period only after a final decision is made on whether the applicant will be subject to an administrative penalty imposed pursuant to this subchapter. Any request for reconsideration shall be accompanied by a letter explaining the steps that have been taken to correct the failure and to ensure compliance with the requirements of this subchapter.

(e) *Special Definition.* For purposes of this section, the term "party to the export" means:

(1) The chief executive officer, president, vice-presidents, other senior officers and officials (e.g., comptroller, treasurer, general counsel) and any member of the board of directors of the applicant;

(2) The freight forwarders or designated exporting agent of the applicant; and

(3) Any consignee or end-user of any item to be exported.

§ 126.3 [Amended]

25. In § 126.3, the section heading is revised to read "Exceptions."

26. A new § 126.13 is added to read as follows:

§ 126.13 Required information.

(a) Pending revisions to the application forms, all applications for licenses (DSP–5, DSP–61, DSP–73, and DSP–85), all requests for approval of agreements and amendments thereto under Part 124 of this subchapter, all requests for other written authorizations, and all 30-day prior notifications of sales of significant military equipment under § 126.8(c) of this part must include the original and seven copies of a letter signed by a responsible official empowered by the applicant and addressed to the Director, Office of Munitions Control, stating whether:

(1) The applicant or the chief executive officer, president, vice-presidents, other senior officers or officials (e.g., comptroller, treasurer, general counsel) or any member of the board of directors is the subject of an indictment for or has been convicted of violating any of the U.S. criminal statutes enumerated in § 120.24 of this subchapter since the effective date of the Arms Export Control Act, Pub. L. 94–329, 90 Stat. 729 (June 30, 1976);

(2) The applicant of the chief executive officer, president, vice-presidents, other senior officers or officials (e.g., comptroller, treasurer, general counsel) or any member of the board of directors is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from, any agency of the U.S. Government;

(3) To the best of the applicant's knowledge, any party to the export as defined in § 126.7(e) has been convicted of violating any of the U.S. criminal statutes enumerated in § 120.24 of this subchapter since the effective date of the Arms Export Control Act, Pub. L. 94–329, 90 Stat. 729 (June 30, 1976), or is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from any agency of the U.S. government; and

(4) The natural person signing the application, notification or other request for approval is a citizen of the United States, has been lawfully admitted to the United States for permanent residence (and maintains such a residence) under the Immigration and Nationality Act (8 U.S.C. 1101(a), 101(a) 20, 60 Stat. 163), or is an official of a foreign governmental entity in the United States.

(b) In addition, all applications for licenses must include, on the application or an addendum sheet, the complete names and addresses of all U.S. consignors and freight forwarders, and all foreign consignees and foreign intermediate consignees involved in the transaction. If there are multiple consignors, consignees or freight forwarders, and all the required information cannot be included on the application form, an addendum sheet and seven copies containing this information must be provided. The addendum sheet must be marked at the top as follows: "Attachment to Department of State License Form (*insert* DSP–5, 61, 73, or 85, as appropriate) for Export of (*insert* commodity) valued at (*insert* U.S. dollar amount) to (*insert* country of ultimate destination)." The Office of Munitions Control will impress one copy of the addendum sheet with the Department of State seal and return it to the applicant with each license. The sealed addendum sheet must remain attached to the license as an integral part thereof. District directors of customs and Department of Defense transmittal authorities will permit only those U.S. consignors or freight forwarders listed on the license or sealed addendum sheet to make shipments under the license, and only to those foreign consignees named on the documents. Applicants should list all freight forwarders who may be involved with shipments under the license to ensure that the list is complete and to avoid the need for amendments to the list after the license has been approved.

(c) If there are unusual or extraordinary circumstances that preclude the specific identification of all the U.S. consignors and freight forwarders and all foreign consignees, the applicant must provide a letter of explanation with each application.

PART 127—VIOLATIONS AND PENALTIES

27. The authority citation for Part 127 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 401; 22 U.S.C. 2658.

28. In § 127.1, paragraph (a)(1) is revised to read as follows:

§ 127.1 Violations in general.

(a) * * * (1) to export or attempt to export from the United States any defense article or technical data or to furnish any defense service for which a license or written approval is required by this subchapter without first obtaining the required license or written approval from the Office of Munitions Control * * *

* * * * *

29. Section 127.6 is revised to read as follows:

§ 127.6 Debarment.

(a) *General.* Section 38 of the Arms Export Control Act authorizes the denial of applications for licenses or other approvals based on the past conduct of the applicant or other party to the export. Section 126.7 of this subchapter is the primary means used to deny individual applications in such cases. In implementing section 38, the Assistant Secretary of State for Politico-Military Affairs may also prohibit any person from participating directly or indirectly in the export of defense articles or technical data or in the furnishing of defense services for which a license or approval is required by this subchapter for any of the reasons listed below. Any such prohibition is referred to as a debarment for purposes of this subchapter. The Assistant Secretary of State shall determine the appropriate period of time for debarment, which shall generally be for a period of three years.

(b) *Grounds.* (1) The basis for a statutory debarment, as described in paragraph (c) of this section, is any conviction for violating the Arms Export Control Act (see § 127.3 of this subchapter) or any conspiracy to violate the Arms Export Control Act.

(2) The basis for administrative debarment, described in Part 128 of this subchapter, is any violation of 22 U.S.C. 2778 or any rule or regulation issued thereunder when such a violation is of such a character as to provide a reasonable basis for the Office of Munitions Control to believe that the violator cannot be relied upon to comply with the statute or these rules or regulations in the future, and when such violation is established in accordance with Part 128 of this subchapter.

(c) *Statutory Debarment.* Section 38(g)(4) of the Arms Export Control Act prohibits the issuance of licenses to persons who have been convicted of violating the U.S. criminal statutes enumerated in § 120.24 of this subchapter. Discretionary authority to issue licenses is provided, but only if certain statutory requirements are met. It is the policy of the Department of State not to consider applications for licenses or requests for approvals involving any person who has been convicted of violating the Arms Export

Control Act or conspiracy to violate that Act for a three year period following conviction. Such individuals shall be notified in writing that they are debarred pursuant to this policy. A list of persons who have been convicted of such offenses and debarred for this reason shall be published periodically in the **Federal Register.** Debarment in such cases is based solely upon the outcome of a criminal proceeding, conducted by a court of the United States, that established guilt beyond a reasonable doubt in accordance with due process. The procedures of Part 128 of this subchapter are not applicable in such cases.

(d) *Appeals.* Any person who is ineligible pursuant to paragraph (c) of this section may appeal to the Under Secretary of State for Security Assistance, Science and Technology for reconsideration of the ineligibility determination. The procedures specified in § 128.13 of this subchapter are applicable in such appeals.

30. Section 127.7 is revised to read as follows:

§ 127.7 Interim suspension.

(a) The Director of the Office of Munitions Control is authorized to order the interim suspension of any person when the Director believes that grounds for debarment (as defined in § 127.6 of this part) exist and where and to the extent the Director finds that interim suspension is reasonably necessary to protect world peace or the security or foreign policy of the United States. The interim suspension orders prohibit that person from participating directly or indirectly in the export of any defense article for which a license or approval is required by this subchapter. The suspended person shall be notified in writing as provided in § 127.6(c) of this part (statutory debarment) or § 128.3 of this subchapter (administrative debarment) of this subchapter, whichever is appropriate. In both cases, a copy of the interim suspension order will be served upon that person in the same manner as provided in § 128.3 of this subchapter. The interim suspension order may be made effective immediately, without prior notice. The order will briefly recite the relevant facts, state the grounds for issuance of the order, and describe the nature and duration of the interim suspension. No person may be suspended for a period exceeding 60 days unless proceedings under § 127.6(c) of this part or under Part 128 of this subchapter, or criminal proceedings, are initiated before the expiration of that period.

(b) A motion or petition to vacate or modify an interim suspension order may be filed at any time with the Under Secretary of State for Security Assistance, Science and Technology. After a final decision is reached, the Director of the Office of Munitions Control will issue an appropriate order disposing of the motion or petition and will promptly inform the respondent accordingly.

31. In § 127.9, paragraph (b) is revised to read as follows:

§ 127.9 Civil penalty.

* * * * *

(b) The Office of Munitions Control may make (1) the payment of a civil penalty under this section or (2) the completion of any administrative action pursuant to Part 127 or 128 of this subchapter a prior condition for the issuance, restoration, or continuing validity of any export license or other approval.

32. Section 127.10 is added to read as follows:

§ 127.10 Past violations.

(a) *General.* Pursuant to section 38 of the Arms Export Control Act, licenses or other approvals may not be granted to persons who have been convicted of violating any of the U.S. criminal statutes enumerated in § 120.24 of this subchapter or who are ineligible to receive any export licenses from any agency of the U.S. government, subject to a narrowly defined statutory exception. This provision establishes a presumption of denial for licenses or other approvals involving such persons. This presumption is applied by the Office of Munitions Control to all persons convicted or deemed ineligible in this manner since the effective date of the Arms Export Control Act, Pub. L. 94–329, 90 Stat. 729 (June 30, 1976).

(b) *Policy.* It is the policy of the Department of State to deny applications for licenses or other approvals that involve persons described in paragraph (a) of this section. An exception shall not be considered unless there are extraordinary circumstances surrounding the conviction or ineligibility to export, and only if the applicant demonstrates, to the satisfaction of the Office of Munitions Control, with the concurrence of the Office of the Legal Adviser, that the applicant has taken appropriate steps to mitigate any law enforcement and other legitimate concerns, and to deal with the causes that resulted in the conviction, ineligibility, or debarment. Any person described in paragraph (a) of this section who wishes to request consideration of any application must explain, in a letter to the Director, Office of Munitions Control, the reasons why the Department of State should consider the application. If the Department of State concludes that the application and written explanation have sufficient *prima facie* merit, it shall consult with the Department of the Treasury regarding law enforcement concerns. The Department of State may also request the views of other departments, including the Department of Justice. If the Department of State does grant the license or other approval, subsequent applications from the same person need not repeat the information previously provided. The applicant should instead refer to the favorable decision.

(c) *Debarred Persons.* Persons debarred pursuant to § 127.6(c) (statutory debarment) of this part may not utilize the procedures provided by this section while the debarment is in force. Such persons may utilize only the procedures provided by § 127.6(d) of this part.

Date: April 4, 1988.

John C. Whitehead,

Acting Secretary.

[FR Doc. 88–7709 Filed 4–5–88; 11:13 am]

BILLING CODE 4710–25–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

Surface Coal Mining and Reclamation Operations Under the Federal Lands Program; State-Federal Cooperative Agreements, North Dakota

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

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is adopting an amendment to the cooperative agreement between the Department of the Interior and the State of North Dakota for the regulation of surface coal mining and reclamation operations on Federal lands in North Dakota under the permanent regulatory program. Cooperative agreements are provided for under section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This final rule provides the terms of the amendment to the cooperative agreement.

EFFECTIVE DATE: May 9, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry R. Ennis, Director, Casper Field Office, Office of Surface Mining

Reclamation and Enforcement, Federal Building, 100 East "B" Street, Room 2128, Casper, Wyoming 82601–1918; Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background
II. Public Comment and Summary of Amendment to Cooperative Agreement
III. Procedural Matters

I. Background

Section 523(c) of SMCRA, 30 U.S.C. 1201 *et seq.*, and the implementing regulations at 30 CFR Parts 740 and 745, allow a State and the Secretary of the Interior to enter into a permanent program cooperative agreement if the State has an approved State program for the regulation of surface coal mining and reclamation operations, including surface operations and surface impacts incident to underground mining operations, on non-Federal and non-Indian lands.

Permanent program cooperative agreements are authorized by the first sentence of section 523(c), which provides that "[a]ny State with an approved State program may elect to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State, provided the Secretary determines in writing that such State has the necessary personnel and funding to fully implement such a cooperative agreement in accordance with the provision(s) of (SMCRA)." 30 U.S.C. 1273(c).

On November 14, 1980, the State of North Dakota requested a cooperative agreement between the Department of the Interior and the State of North Dakota to give the State primacy in the administration of its approved regulatory program on Federal lands in North Dakota. The Secretary approved the cooperative agreement on September 15, 1983 (48 FR 41387). The text of the existing cooperative agreement can be found at 30 CFR 934.30.

On February 10, 1987, OSMRE promulgated revised regulations concerning the consideration which must be accorded historic properties during the permitting of surface coal mining operations (52 FR 4244–4263). Specific to this proposed amendment, OSMRE has revised 30 CFR 773.12 to require that where Federal and Indian lands are involved, each regulatory program shall provide for the coordination of review and issuance of permits for surface coal mining and reclamation operations with applicable requirements of the Archaeological Resources Protection Act of 1979.

On June 9, 1987, OSMRE notified North Dakota of the change to 30 CFR 773.12 and the need for a corresponding amendment pursuant to 30 CFR 732.17(d). The State responded on July 28, 1987, and indicated its intent to modify the existing cooperative agreement to satisfy OSMRE's requirement to amend the State program.

On September 16, 1987, the State of North Dakota submitted to OSMRE a proposed amendment to its approved cooperative agreement under the permanent regulatory program. The proposed amendment consists of the addition of the Archaeological Resources Protection Act of 1979 to the list of other applicable laws for permit coordination in Appendix A of the agreement.

II. Public Comment and Summary of Amendment to Cooperative Agreement

The proposed amendment which the published in the **Federal Register** on December 28, 1987, announced that the public comment period would close January 27, 1988, and that a public hearing would be held, if it were requested. Since no one asked to testify, a public hearing was not held. No substantive comments were received from the respondents.

The proposed amendment adds the Archaeological Resources Protection Act of 1979 to the list of other applicable laws for permit coordination in Appendix A of the agreement. There are no other changes to the document.

III. Procedural Matters

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

On October 21, 1982, the Department of the Interior received from the Office of Management and Budget an exemption for State-Federal cooperative agreements from the requirements of sections 3 and 7 of Executive Order 12291.

The Department has reviewed this proposed agreement in light of the Regulatory Flexibility Act (Pub. L. 96–354). Having conducted this review, the Department has determined that this document will not have a significant economic effect on a substantial number of small entities because no significant departure from either the State or Federal requirements already in effect will occur and no new or additional information will be required by the proposed agreement.

2. Paperwork Reduction Act of 1980

This proposed amendment to the North Dakota Cooperative Agreement does not contain information collection requirements which require clearance from the Office of Management and Budget under 44 U.S.C. 3507.

3. National Environmental Policy Act

Proceedings relating to adoption or amendment of a permanent program State-Federal cooperative agreement are part of the Secretary's implementation of the Federal lands program pursuant to section 523 of the Act. Such proceedings are exempt under section 702(d) of the Act from the requirements to prepare a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Author

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

List of Subjects in 30 CFR Part 934

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

J. Steven Griles,

Assistant Secretary—Land and Minerals Management.

Date: April 1, 1988.

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

PART 934—NORTH DAKOTA

1. The authority citation for Part 934 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; 16 U.S.C. 470 *et seq.*, and Pub. L. 100–34.

2. In § 934.30, State-Federal Cooperative Agreement, Appendix A is amended by redesignating items 14 and 15 as items 15 and 16, respectively, and adding new item 14 to read as follows:

§ 934.30 State-Federal Cooperative Agreement.

* * * * *

Appendix A

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14. The Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa., *et seq.*

* * * * *

Approved:
Donald Paul Hodel,
Secretary of the Interior.
Date: March 23, 1988.
George A. Sinner,
Governor of North Dakota.
Date: September 10, 1987.
Dale Sandstrom,
President, North Dakota Public Service Commission.
Date: August 18, 1987.
Bruce Hagen,
Commissioner, North Dakota Public Service Commission.
Date: August 18, 1987.
Leo M. Reinbold,
Commissioner, North Dakota Public Service Commission.
Date: August 18, 1987.
[FR Doc. 88-7670 Filed 4-6-88; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-88-11]

Special Local Regulations for Harborfest 1988; Waterside Area of the Elizabeth River Between Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.
ACTION: Notice of implementation of 33 CFR 100.501.

SUMMARY: This notice implements 33 CFR 100.501 for Harborfest 1988, an annual event held in the Waterside area of the Elizabeth River between Norfolk and Portsmouth, Virginia. These special local regulations are needed to control vessel traffic within the immediate vicinity of the Waterside due to the confined nature of the waterway and the expected vessel congestion during the Harborfest 1988 activities. The effect will be to restrict general navigation in the regulated area for the safety of participants and spectators.

EFFECTIVE DATES: The regulations in 33 CFR 100.501 are effective as follows:
a. 9:30 a.m. to 8:00 p.m., June 3, 1988
b. 9:00 a.m. to 10:00 p.m., June 4, 1988
c. 9:00 a.m. to 10:00 p.m., June 5, 1988

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Commander Robert J. Reining, project attorney, Fifth Coast Guard District Legal Office.

Discussion

The City of Norfolk, Virginia, has submitted an application to hold Harborfest 1988 on June 4, 5, and 6, 1988, in the Waterside area of the Elizabeth River, which is the area covered by 33 CFR 100.501 and generally includes the waters of the Elizabeth River between Town Point Park, Norfolk, Virginia; the mouth of the Eastern Branch of the Elizabeth River; and Hospital Point, Portsmouth, Virginia.

Since this event is the type of event contemplated by this regulation and the safety of the participants and spectators viewing the event would be enhanced by the implementation of special local regulations for the Elizabeth River, 33 CFR 100.501 will be in effect during Harborfest 1988.

Harborfest 1988, a three day event, sponsored by Norfolk Harborfest, Inc., will consist of a Navy jet fly over, aerobatic demonstrations, an air/sea rescue demonstration, fire works, and numerous other water events, including a parade of sails, water ski exhibitions, and various boat races. Commercial vessels will be permitted to transit the regulated area between events, and thus commercial traffic should not be severely disrupted at any given time.

In addition to this notice implementing 33 CFR 100.501, two notices of proposed rulemaking are being published in this same issue of the **Federal Register.** One proposes to amend 33 CFR 100.501 to establish special anchorage areas to be used as spectator anchorages in conjunction with events regulated by that regulation. If adopted the proposed rule will be applied to Harborfest 1988. The second proposal would regulate the openings of the Berkley Street Drawbridge over the Eastern Branch of the Elizabeth River during Harborfest 1988.

Dated: March 17, 1988.
R.M. Polant,
Acting Captain, U.S. Coast Guard Commander, Fifth Coast Guard District.
[FR Doc. 88-6468 Filed 4-6-88; 8:45 am]
BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 36

Increase in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

AGENCY: Veterans Administration.
ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is increasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also increased. These increases are necessary because previous rates were not competitive enough to induce lenders to make guaranteed or insured home loans without substantial discounts, or to make manufactured home loans. The increase in the interest rates will assure a continuing supply of funds for home mortgages, home improvement and manufactured home loans.

EFFECTIVE DATE: April 4, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202-233-3042).

SUPPLEMENTARY INFORMATION: The Administrator is required by section 1819(f), title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by the VA as he finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general increase in interest rates charged on conventional manufactured home loans, and the increase in other short-term and long-term interest rates—have shown that the manufactured home capital markets have become more restrictive. It is now necessary to increase the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans in order to assure an adequate supply of funds from lenders and investors to make these types of VA loans.

The Administrator is also required by section 1803(c), title 38, United States Code, to establish maximum interest rates for home and condominium loans, including graduated payment mortgage

loans, and for loans for home improvement purposes. Recent market indicators—including the rate of discount charged by lenders on VA loans and the general increase in interest rates charged by lenders on conventional loans, have shown that the mortgage money market has become more restrictive. The maximum rates in effect for VA guaranteed home and condominium loans and those for energy conservation and home improvement purposes have not been sufficiently competitive to induce private sector lenders to make these types of VA guaranteed or insured loans without imposing substantial discounts. To assure a continuing supply of funds for home mortgages through the VA loan guaranty program, it has been determined that an increase in the maximum permissible rates applicable to home and improvement loans is necessary. The increased return to the lender will make VA loans competitive with other available investments and assure a continuing supply of funds for guaranteed and insured mortgages.

Regulatory Flexibility Act/Executive Order 12291

For the reasons discussed in the May 7, 1981 **Federal Register** (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to chapter 37 of title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. The VA finds that they do not come within the definition of a "major rule" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, the VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured, and direct home and condominium loans, loans for energy conservation and other home improvement purposes, and loans for manufactured home purposes would create an acute shortage of funds pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers 64.113, 64.114, and 64.119)

These regulations are adopted under authority granted to the Administrator by sections 210(c), 1803(c)(1), 1811(d)(1), and 1819 (f) and (g) of title 38, United States Code. The regulations are clearly within that statutory authority and are consistent with Congressional intent.

These increases are accomplished by amending §§ 36.4212(a) (1), (2), and (3), and 36.4311 (a), (b), and (c), and 36.4503(a), title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

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

Approved: April 1, 1988.

Thomas K. Turnage,

Administrator.

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

PART 36—[AMENDED]

1. In § 36.4212, paragraph (a) is revised as follows:

§ 36.4212 Interest rates and late charges.

(a) The interest rate charged the borrower on a loan guaranteed or insured pursuant to 38 U.S.C. 1819 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to the respective effective date:

(Authority: 38 U.S.C. 1819(f))

(1) Effective April 4, 1988, 12½ percent simple interest per annum for a loan which finances the purchase of a manufactured home unit only.

(2) Effective April 4, 1988, 12 percent simple interest per annum for a loan which finances the purchase of a lot only and the cost of necessary site preparation, if any.

(3) Effective April 4, 1988, 12 percent simple interest per annum for a loan which will finance the simultaneous acquisition of a manufactured home and a lot and/or the site preparation necessary to make a lot acceptable as the site for the manufactured home.

* * * * *

2. In § 36.4311, paragraphs (a), (b), and (c) are revised as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 10 per centum per annum, effective April 4, 1988, the interest rate on any home or condominium loan, other than a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 10 per centum per annum on the unpaid principal balance.

(Authority: 38 U.S.C. 1803(c)(1))

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 10¼ per centum per annum, effective April 4, 1988, the interest rate of any graduated payment mortgage loan guaranteed or insured wholly or in part on or after such date may not exceed 10¼ per centum per annum.

(Authority: 38 U.S.C. 1803(c)(1))

(c) Effective April 4, 1988, the interest rate on any loan solely for energy energy conservation improvements or other alterations, improvements or repairs, which is guaranteed or insured wholly or in part on or after such date may not exceed 11½ per centum per annum on the unpaid principal balance.

(Authority: 38 U.S.C. 1803(c)(1))

* * * * *

3. In § 36.4503, paragraph (a) is revised as follows:

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loan made on or after October 1, 1980, shall not exceed an amount which bears the same ratio to $33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $27,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by the VA shall bear interest at the rate of 10 percent per annum. Loans solely for the purpose of energy conservation

improvements or other alterations, improvements, or repairs shall bear interest at the rate of 11½ percent per annum.

(Authority: 38 U.S.C. 1811(d)(1) and (2)(A))

* * * * *

[FR Doc. 88-7628 Filed 4-6-88; 8:45 am]
BILLING CODE 8320-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 416, 418, 442, and 482

[BERC-358-F]

Medicare/Medicaid Programs; Fire Safety Standards for Hospitals, Skilled Nursing Facilities, Hospices, Intermediate Care Facilities and Ambulatory Surgical Centers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule amends the fire safety standards for hospitals, skilled nursing facilities, hospices, intermediate care facilities and ambulatory surgical centers. It incorporates by reference the 1985 edition, rather than the 1981 edition now required, of the Life Safety Code of the National Fire Protection Association. This change primarily affects new applicants to the program. The incorporation of the 1985 edition of the LSC is intended to ensure that patients, personnel, providers and the public have the benefit of the most current fire protection standards.

EFFECTIVE DATE: The regulations are effective May 9, 1988.

FOR FURTHER INFORMATION CONTACT: Samuel Kidder, (301) 966-4620.

SUPPLEMENTARY INFORMATION:

I. Legislative and Regulatory Background

A. Summary of Proposed Rule

We published a proposed rule in the **Federal Register** on January 22, 1987 (52 FR 2430) proposing to amend the fire safety standards for hospitals, skilled nursing facilities, intermediate care facilities, hospices and ambulatory surgical centers. It proposed to incorporate by reference the 1985 edition of the Life Safety Code (LSC) of the National Fire Protection Association (NFPA). Current regulations incorporate the 1981 edition of the LSC. The incorporation of the 1985 edition of the LSC is intended to ensure that Medicare and Medicaid providers and recipients have the benefit of the most current fire protection standards.

B. Health Care Entities Affected by the LSC

In the proposal published on January 22, 1987, we cited the legislative history and requirements for the entities affected by the LSC. Listed below is a legislative and regulatory summary for those entities.

- Section 1861(e)(9) of the Social Security Act (the Act) and 42 CFR 440.10 requires that, to participate in Medicare, or Medicaid a hospital must meet the health and safety requirements as set forth by the Secretary. Those requirements are set forth in the regulations at 42 CFR Part 482, Subpart C—Basic Hospital Functions.
- Sections 1861(j)(13) and 1902(a)(28) of the Act requires skilled nursing facililties (SNFs) participating in Medicare or Medicaid to meet those provisions of the LSC of the NFPA applicable to nursing facilities. Those requirements are set forth in regulations at 42 CFR 405.1134, Conditions of participation-physical environment.
- Section 1861(dd) of the Act authorizes coverage of and reimbursement for hospice care. To participate in Medicare, hospices must meet the requirements in the regulations at 42 CFR Part 418, Subpart C—Conditions of Participation. the current hospice standard on fire protection, contained in 42 CFR 418.100(d), requires that a hospice meet the health care occupancy provisions of the 1981 edition of the LSC of the NFPA.
- Section 1905(c) of the Act authorizes optional Medicaid coverage for services in intermediate care facilities (ICFs). Those requirements are set forth in the regulations at 42 CFR Parts 442.321, 442.322 and 442.323, Subpart F—Standards for Intermediate Care Facilities Other Than Facilities for the Mentally Retarded.
- Section 1832(a)(2)(F) of the Act authorizes the Secretary to specify health and safety regulations for ambulatory surgical centers (ASCs). ASCs must meet the requirements in regulations at 42 CFR Part 416, Subpart B—Ambulatory Surgical Centers: Coverage and Benefits.

II. The Life Safety Code of the National Fire Protection Association

Since the beginning of the Medicare and Medicaid programs, we have been concerned with ensuring that health care facilities meet certain health and safety requirements to make certain that patients are safe from fire. Generally, the Life Safety Code (LSC) developed by the National Fire Protection Association (NFPA) serves as the basis for governmental regulations, including those of the Medicare and Medicaid programs. Many Federal, State, and local governmental authorities have adopted the LSC as the basis for laws and regulations and have enforced provisions of the LSC. The LSC is a nationally recognized consensus standard, and includes fire protection requirements necessary to protect patients and residents in health care facilities.

The LSC is designed to provide a reasonable degree of safety from fire and similar emergencies. The LSC covers construction, fire protection, and occupancy features to minimize danger to life from fire, smoke, fumes, and panic. The code many be applied to both new and existing buildings. The development and maintenance of a body of fire safety codes and standards is one of the NFPA's primary functions. The standards development is accomplished by technical committees, which are composed of experts in the fire safety field, and represent a broad spectrum of interests including fire marshals, architects, engineers, and representatives from private industry and government.

The Fire Safety Evaluation System (FSES) for health care facilities was introduced in 1978 and was included as part of the 1981 LSC. The FSES provides health care facilities with an alternative method for achieving compliance other than waivers, if the facility does not meet the Health Care Occupancy Chapter of the LSC.

The NFPA revises the LSC every 3 to 4 years to reflect advancements in fire protection. In the past, whenever the Secretary determined that a revised LSC contained significant changes which would be in the interest of health and safety, we have revised the regulations accordingly.

A significant change in the 1985 LSC is the inclusion of a new Chapter 21 of the LSC entitled "Residential Board and Care Occupancies." Also, included in the 1985 LSC is a new equivalency evaluation system for Residential Board and Care Occupancies, extending the principles of the FSES developed earlier for other types of occupancies, entitled "Fire Safety Evaluation System for Board and Care Homes" (FSES/BC). Both Chapter 21 and the FSES/BC allow flexibility in the physical plant requirements that a facility must meet depending on the clients and the staffing of the facility. If the facility has a high staff client ratio, and clients who are

mobile and capable of understanding fire hazard, then the physical plant requirement need not be as rigid.

The 1985 LSC contains several other features that clarify code requirements for health care occupancies:

- A gift shop is no longer automatically considered to be a hazardous area and is not required to be sprinklered or separated by 1 hour fire-rated construction. Fire protection requirements will be dependent upon the fuel load (combustibles) in the area and other factors.
- Stairway doors may now be held open, if this is accomplished by means of approved devices and methods.
- Atriums are now permitted in health care facilities, but some smoke barriers are required.

III. Provisions of the Proposed Regulations

On January 22, 1987, we proposed to amend, §§ 405.1134 (SNFs), 416.44(b) (ASCs), 418.100(d) (Hospices), 442.321 (ICFs), and 482.41 (Hospitals) to incorporate by reference the 1985 LSC. We proposed to retain the existing requirements in each of these sections for waivers. In addition, we proposed to retain acceptance of a State's fire and safety code in lieu of the LSC for hospitals, SNFs and ICFs that meet the Health Care Occupancies Chapters of the LSC. We also proposed to retain existing grandfathering provisions for hospitals, SNFs, and ICFs that meet the Health Care Occupancies Chapters of the LSC, and we proposed to add provisions for grandfathering ASCs and hospices. In addition, we proposed to rewrite §§ 405.1134(a), 416.44(b), 418.100 (d) and (e), and 482.41(b) to improve their clarity without substantive change.

IV. Discussion of Public Comments on the Proposed Rule

We received 8 pieces of timely correspondence concerning suggested changes to the present fire safety standards for hospitals, SNFs, hospices, ICFs and ASCs. We received comments from the Texas Department of Human Services, the Council of American Building Officials (CABO), the Building Officials and Code Administrators International (BOCA), the American Health Care Association (AHCA), the American Hospital Association (AHA), the City of Middleton, Ohio, the City of Philadelphia, Pennsylvania, and the City of St. Louis, Missouri.

1. Comment: Five commenters urged the Department to recognize three building codes, as well as the LSC of the NFPA. The building codes recommended are promulgated by the following organizations: International Conference of Building Officials (ICBO), BOCA, and Southern Building Code Congress International (SBCCI). Their codes are applicable in different States, when adopted by State law, but generally the BOCA code is used in the northeast and midwest States. The ICBO code is used in the west and northwest and the SBCCI code is used in the south and the southeast.

These commenters maintain that the building codes are equivalent to the LSC in terms of fire safety and in addition contain standards for other hazards, such as earthquakes, which the LSC does not contain. They also stated that they have unsuccessfully petitioned the Department on numerous occasions to recognize the building codes.

Response: The Secretary's authority to adopt a standard for fire protection other than that of the NFPA on a nationwide basis is very limited. For SNFs, section 1861(j)(13) requires the Secretary to adopt the LSC of the NFPA. For nursing facilities, section 4211 of Pub. L. 100–203 (at section 1919(d)) requires the Secretary to adopt the standards of the NFPA by October 1, 1990 (nursing facilities under this provision include all SNFs and ICFs that are Medicaid certified). This only leaves hospitals, hospices, and ambulatory care centers for which the Secretary could conceivably adopt one of the building codes on a nationwide basis.

However, the law under the new statute as well as current law, allows the Secretary to adopt a different fire safety standard in a particular State if the State imposes that requirement and the Secretary finds that it adequately protects residents and personnel. In order to assist States in determining whether the various building codes adequately protect residents and personnel, we have asked the National Institute of Building Sciences to evaluate these building codes. This evaluation will assist the Secretary in deciding whether State adopted building codes provide adequate protection. It will also help in judging the adequacy of these codes for hospitals, hospices and ambulatory surgical centers on a nationwide basis. Once this evaluation has been completed we will publish a recommendation as a notice in the **Federal Register** reflecting the results of the analysis and containing our conclusions as to whether the codes are comparable to the LSC of the NFPA. However, we could not accept any of the building codes for skilled nursing facilities under Medicare or nursing facilities under Medicaid on any other than a State by State basis.

2. Comment: Two commenters asserted that the Department should prepare a regulatory impact statement on the cost to health care providers of having to meet two different codes. These commenters maintain that States and local governments adopt one of the three building codes. Consequently, a particular health care facility must comply with two different codes (a building code and a fire safety code required for Medicare and Medicaid participation), which at times are conflicting. The commenter asked the Department to prepare a regulatory impact statement on the cost of this conflict.

Response: We do not believe this problem results in any substantial economic impact. The differences, if any, are worked out in plan review by building code experts and fire safety code experts before construction. Moreover, architects are responsible for knowing the requirements of these codes and for developing plans that satisfy all codes. One commenter in discussing the problem of compliance with duplicate codes stated that, in all cases in his jurisdiction, the facilities that have been built under the BOCA code and who have had simultaneous review by the State agency, there have been no discrepancies noted for those facilities that were not caught on the plan review from the BOCA code. In most cases, the plan review deficiencies from the LSC review and the local review have ended up with duplicate "notations" which had to be corrected before the permits were issued or the buildings were approved. The commenter was speaking about duplicate agencies reviewing plans for nursing homes and hospitals and the duplicate fees from these agencies. This example does, however, illustrate the fact that differences in these codes, where they do exist, may be worked out at the plan review stage and do not necessarily result in expensive construction costs or retrofitting.

3. Comment: Two commenters complimented the Department for proposing the adoption of the 1985 LSC. They were particularly pleased with the provisions that would allow existing facilities to remain in the program if they continue to comply with previous editions of the LSC (grandfathering). One commenter did not like the grandfathering provision because it would allow older facilities to remain in the program while only complying with older editions of the LSC.

Response: Traditionally the Department has not required facilities to meet the provisions of a new code as long as they meet and continue to meet the provisions of the previous code. This

grandfathering is a necessary feature of the fire safety standards because to do otherwise would result in requiring facilities to meet specific standards that, if later changed, would require physical plant modifications and attendant expenditures.

4. Comment: One commenter was concerned about the definition of "new applicant." This term is used in the preamble to explain that facilities already in the program under one of the previous LSCs (for example, the 1967, 1973 or the 1981 editions of the LSC) did not have to meet the 1985 edition unless they were a new applicant. The commenter asked whether a new applicant would be a facility that was terminated (for reasons not related to fire safety) or a facility that changed ownership.

Response: The term "new applicant" is used only in the preamble. The regulation text does not use this term, but it does specify the date at which a facility can no longer comply with a previous code (the effective date of the final regulation adopting the newer code). The regulation text goes on to say that the facility is considered to be in compliance with the fire safety standard if it "continues to remain in compliance with that edition of the code." This means that a facility will not have a newer code applied to it under circumstances of change of ownership or decertification (for other than fire safety reasons) as long as it continues to meet the provisions of the applicable previous code. If, however, the facility is decertified for fire safety reasons, then it will be required to comply with the provisions of the currently applicable code if and when it reapplies for participation in the program.

5. Comment: One commenter stated that existing ICFs that currently comply with the LSC for health care facilities (Chapter 12 or 13) should not be required to comply with Chapter 21 of the LSC. Chapter 21 of the LSC establishes more flexible physical plant requirements depending upon the mobility status of the clients and the number of staff present in the facility.

Response: There is nothing in this regulation that would force an ICF to meet Chapter 21 of the LSC. The regulation requires the facility to meet the "applicable provisions" of the 1985 edition of the LSC. This allows a facility to meet Chapter 21, if applicable, but if it wishes, the facility may comply with the more stringent Chapters 12 or 13. As explained in the proposed rule, when we use the term "applicable provisions of the 1985 LSC", we mean that the surveyor has the discretion to apply the chapter of the Code that is pertinent to the type of occupancy being surveyed. For example, if the surveyor determines that a facility provides only personal care, he or she will apply the Residential Board and Care Occupancies Chapter in most cases. On the other hand, if nursing care is provided, the Health Care Occupancies Chapters will be applied in most cases.

6. Comment: One commenter stated that there is a need for clarification about retaining the "alternative provisions for sprinkler requirements" for nonsprinklered one-story protected combustible facilities. This alternative provision can be found in the LSC survey report forms (Form HCFA 2786A, B and D). This provision allows a facility to remain in the program if it does not have sprinklers but does have equivalent or "alternative" provisions.

The alternative provisions require the facility to have: sprinklers in hazardous areas, automatic fire detection devices, patient room walls of 1 hour fire resistance rating, and an adequate fire department response time in lieu of sprinklers throughout the facility.

Response: This regulation does not affect the inclusion of the alternative provisions for sprinkler requirements presently contained in the survey report form. These "alternative provisions" have been in the survey report form since the early 1970s and before the FSES was adopted in 1982. (This is a system which allows a facility to be determined in compliance by having compensating building safety features even though it does not meet the exact building features of the LSC). Since the "alternative provisions" in the survey report form are basically equivalency features much like those found in the FSES, we do not intend to delete them.

V. Provisions of the Final Notice

Based on our analysis of the comments, we do not agree that any of the comments necessitate a change in the proposed rule. Therefore, as proposed, the following changes are being made:

A. SNFs: § 405.1134—Condition of Participation—Physical Environment

- We are amending the regulations to require newly participating SNFs to meet the applicable provisions of the 1985 edition of the LSC rather than the 1981 edition currently required.
- We are retaining the existing provisions for waivers of specific requirements of the LSC, and the use of a State's fire and safety code, in lieu of the LSC, if that code adequately protects patients in SNFs.
- We are retaining the provision that allows a SNF to continue to comply with previous editions, including the 1981 edition, of the LSC. However, we are deleting the December 4, 1980, date up to which the 1967 and 1973 LCSs could apply. Currently, the regulations specify two dates: December 4, 1980 and November 26, 1982. It is not administratively feasible to establish two dates up to which previous codes could apply. Thus, we have retained the latest date possible.
- We are retaining the provision that prohibits the placement of blind, non-ambulatory and physically handicapped patients above the street level floor, if the facility is two or more stories and participating on the basis of a waiver of construction type or height and is not of fire resistive construction.

B. ASCs: § 416.44—Condition for Coverage—Environment

- We are revising the regulations to require newly participating ASCs to meet the applicable provisions of the 1985 edition of the LSC rather than the 1981 edition currently required.
- We are retaining the existing provision for waiver of specific requirements of the LSC, if the waiver will not adversely affect the health and safety of the patients and rigid application of specific provisions of the code would result in unreasonable hardship for the ASC.
- We are including a provision that will allow ASCs in compliance with the 1981 edition of the LSC to be considered to be in compliance with this standard as long as the facility continues to remain in compliance with that edition of the Code.

C. Hospices: § 418.100—Condition of Participation for Freestanding Hospices Providing Inpatient Care Directly

- We are revising § 418.100(d) to require newly participating hospices to meet the applicable provisions of the 1985 LSC rather than the 1981 edition currently required.
- We are retaining the existing provision for waiver of specific requirements of the LSC, if the waiver will not adversely affect the health and safety of the patients and rigid application of specific provisions of the Code would result in unreasonable hardship for the hospice.
- We are including a provision that will allow hospices in compliance with the 1981 edition of the LSC to be considered to be in compliance with this standard as long as the facility continues to remain in compliance with that edition of the Code.
- We are retaining the provision for hospices that prohibits the placement of

blind, non-ambulatory and physically handicapped patients above the street level floor, if the facility is two or more stories and participating on the basis of a waiver of construction type or height and is not of fire resistive construction.

D. ICFs: § 442.321—Fire Protection

- We are revising the regulations to require newly participating ICFs to meet the applicable provisions of the 1985 LSC rather that the 1981 edition currently required.
- We are retaining the existing provisions for waivers of specific requirements of the LSC, and the use of a State's fire and safety code, in lieu of the LSC, if that code adequately protects patients in ICFs.
- We are retaining the provision that allows an ICF to continue to comply with previous editions, including the 1981 edition, of the LSC.
- We are retaining the provision that prohibits the placement of blind, non-ambulatory and physically handicapped patients above the street level floor, if the facility is two or more stories and participating on the basis of a waiver of construction type or height and is not of fire resistive construction.

(We note that final regulations concerning fire safety for ICFs/MR were published in the **Federal Register** on April 18, 1986 (51 FR 13224) and comparably amended fire safety requirements for those facilities).

E. ICFs: § 442.322—Fire protection: Exception for Smaller ICFs

- We are deleting the existing provision that allows smaller ICFs (15 beds or less) primarily engaged in the treatment of alcoholism and drug abuse to comply with the less stringent lodging and rooming houses section of the residential occupancy requirement of the 1981 edition of the LSC. These less stringent requirements are allowed in the above facilities if a physician certifies that the residents are ambulatory, engaged in active treatment, and capable of following directions. The ICF regulations have been amended by this regulation to require the facility to meet the "applicable provisions" of the LSC. Chapter 21, the Residential Board and Care chapter, will be among the "applicable provisions." Thus, Chapter 21 would be applied to smaller ICFs primarily engaged in the treatment of alcoholism and drug abuse; depending on the evacuation capability of the residents and staff, the facility could be subject to less stringent physical plant requirements.

F. ICFs: § 442.323—Fire Protection: Waivers

- We are rewriting this section for clarity, without making any substantive changes.

G. Hospitals: § 482.41(b)—Condition of Participation—Physical Environment

- We are revising the regulations to require newly participating hospitals to meet the applicable provisions of the 1985 edition of the LSC rather than the 1981 edition currently required.
- We are retaining the existing provisions for the use of a State's fire and safety code, in lieu of the LSC, if that code adequately protects patients in hospitals.
- We are retaining the provision that allows a hospital to continue to comply with previous editions, including the 1981 edition, of the LSC.
- We are retaining the existing provision for waiver of specific requirements of the LSC, but only if the waiver will not adversely affect the health and safety of the patients.

VI. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final regulation that meet one of the E.O. criteria for a "major rule" that would be likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Although we cannot develop an estimate, we believe that the impact of this rule, considering both costs and savings, will not exceed the annual $100 million threshold or other threshold criteria under Executive Order 12291. Therefore, we have not prepared a regulatory impact analysis.

Any impact of this rule will result primarily from previously implemented regulations. The 1985 LSC is an update of previously implemented requirements. Providers who continue to meet earlier editions of the code as appropriate have an option of converting to 1985 code requirements or, in certain circumstances, may meet the equivalency requirements of the FSES, instead of the LSC.

B. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare and publish a regulatory flexibility analysis unless the Secretary certifies that a regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals, SNFs, ICFs, ASCs, and hospices to be small entities.

The 1985 LSC is basically a modernization of previous requirements. Without sacrificing patient health and safety certain providers are given alternatives that were not previously available in meeting code requirements. In addition, the major cost factor in the 1985 LSC, the requirement that all new health care facilities 75 feet or higher must be fully sprinklered, is limited to new applicants. We anticipate only a small number of new facilities 75 feet or higher will apply to participate in the program, and that these requirements will not be unduly burdensome for them.

We cannot estimate quantitatively the potential impact of this regulation. We anticipate that the adoption of the Residential Board and Care Chapter of the LSC and the Fire Safety Evaluation System for Board and Care Homes (FSES/BC) will enable some small ICFs to serve more residents in a wider variety of settings with reduced capital expenditures for fire protection features. Since the Residential Board and Care Occupancy Chapter of the LSC and FSES/BC provides for various methods of achieving needed fire protection features, facilities will be able to tailor fire protection capital improvements to the specific needs of residents and staff.

For these reasons, we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on a substantial number of small entities. We have therefore not prepared a regulatory flexibility analysis.

C. Paperwork Reduction Act of 1980

These changes do not impose information collection requirements. Consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Incorporation by reference, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and

recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 416

Health facilities, Health professions, Incorporation by reference, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 418

Health facilities, Hospice care, Incorporation by reference, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 442

Grant programs-health, Health facilities, Health professions, Incorporation by reference, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 482

Administrative practice and procedure, Certification of compliance, Contracts (Agreements), Health care, Health facilities, Incorporation by reference, Health professions, Hospitals, Laboratories, Medicare, Onsite surveys, Outpatient providers, Reporting requirements, Rural areas, X-rays.

42 CFR Chapter IV is amended as set forth below:

I. Part 405 is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart K—Conditions of Participation; Skilled Nursing Facilities

1. The authority citation for Subpart K continues to read as follows:

Authority: Secs. 1102, 1861(j), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(j), and 1395hh), unless otherwise noted.

2. In § 405.1134, the introductory language preceding paragraph (a) is republished, and paragraph (a) and the footnote are revised to read as follows:

§ 405.1134 Condition of participation—physical environment.

The skilled nursing facility is constructed, equipped, and maintained to protect the health and safety of patients, personnel, and the public.

(a) *Standard: Life safety from fire.* Except as provided in paragraphs (a)(1) through (a)(3) of this section, the skilled nursing facility must meet the applicable provisions of the 1985 edition of the Life Safety Code of the National Fire Protection Association (which is incorporated by reference).[1]

[1] Incorporation of the 1985 edition of the National Fire Protection Association's Life Safety Code (published February 7, 1985; ANSI/NFPA) was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51 that govern the use of incorporations by reference. The Code is available for inspection at the Office of the **Federal Register** Information Center, Room 8401, 1100 L Street, NW., Washington, D.C. Copies may be obtained from the National Fire Protection Association, Batterymarch Park, Quincy, Mass. 02269. If any changes in this code are also to be incorporated by reference, a notice to that effect will be published in the **Federal Register**.

(1) A skilled nursing facility is considered to be in compliance with this standard as long as the facility—

(i) On November 26, 1982, complied, with or without waivers, with the requirements of the 1967 or 1973 editions of the Life Safety Code and continues to remain in compliance with those editions of the Code; or

(ii) On May 9, 1988, complied, with or without waivers, with the 1981 edition of the Life Safety Code and continues to remain in compliance with that edition of the Code.

(2) After consideration of State survey agency findings, HCFA may waive specific provisions of the Life Safety Code which, if rigidly applied, would result in unreasonable hardship upon the facility, but only if the waiver does not adversely affect the health and safety of patients.

(3) The provisions of the Life Safety Code do not apply in a State where HCFA finds, in accordance with applicable provisions of section 1861(j)(13) of the Social Security Act, that a fire and safety code, imposed by State law, adequately protects patients in skilled nursing facilities.

(4) Any facility of two or more stories that is not of fire resistive construction and is participating on the basis of a waiver of construction type of height, may not house blind, nonambulatory, or physically handicapped patients above the street-level floor unless the facility—

(i) Is one of the following construction types (as defined in the Life Safety Code):

(A) Type II (1, 1, 1)—protected non-combustible.

(B) Fully sprinklered Type II (0, 0, 0)—non-combustible.

(C) Fully sprinklered Type III (2, 1, 1)—protected ordinary.

(D) Fully sprinklered Type V (1, 1, 1)—protected wood frame; or

(ii) Achieves a passing score on the Fire Safety Evaluation System (FSES).

* * * * *

II. Part 416 is amended as follows:

PART 416—AMBULATORY SURGICAL SERVICES

Subpart B—Ambulatory Surgical Centers: Coverage and Benefits

1. The authority citation for Part 416 continues to read as follows:

Authority: Secs. 1102, 1832(a)(2), 1833, 1863 and 1864 of the Social Security Act (42 U.S.C. 1302, 1395k(a)(2), 1395(l), 1395z and 1395aa).

2. In § 416.44 paragraph (b) and the footnote are revised to read as follows:

§ 416.44 Condition for coverage—Environment.

* * * * *

(b) *Standard: Safety from fire.* (1) Except as provided in paragraphs (b) (2) and (3) of this section, the ASC must meet the provisions of the 1985 edition of the Life Safety Code of the National Fire Protection Association (which is incorporated by reference)[1] that are applicable to ambulatory surgical centers.

(2) In consideration of a recommendation by the State survey agency, HCFA may waive, for periods deemed appropriate, specific provisions of the Life Safety Code which, if rigidly applied, would result in unreasonable hardship upon an ASC, but only if the waiver will not adversely affect the health and safety of the patients.

(3) Any ASC that, on May 9, 1988, complies with the requirements of the 1981 edition of the Life Safety Code, with or without waivers, will be considered to be in compliance with this standard, so long as the ASC continues to remain in compliance with that edition of the Life Safety Code.

* * * * *

III. Part 418 is amended as follows:

PART 418—HOSPICE CARE

Subpart C—Conditions of Participation

1. The authority citation for Part 418 continues to read as follows:

Authority: Secs. 1102, 1811–1814, 1861–1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395c–1395f, 1395x–1395cc and 1395hh).

2. Section 418.100 is amended by revising paragraph (d) to read as follows: removing paragraph (e); redesignating the current paragraphs (f)–(l) as (e)–(k); and by amending redesignated (f)(2) by changing the reference "(g)(i)(v) and (vi)" to "(f)(i)(v) and (vi)."

[1] See footnote to § 405.1134(a) of this chapter.

§ 418.100 Condition of participation for freestanding hospices providing inpatient care directly.

* * * * *

(d) *Standard: Fire protection.* (1) Except as provided in paragraphs (d) (2) and (3) of this section, the hospice must meet the provisions of the 1985 edition of the Life Safety Code of the National Fire Protection Association (which is incorporated by reference) [1] that are applicable to hospices.

(2) In consideration of a recommendation by the State survey agency, HCFA may waive, for periods deemed appropriate, specific provisions of the Life Safety Code which, if rigidly applied would result in unreasonable hardship for the hospice, but only if the waiver would not adversely affect the health and safety of the patients.

(3) Any hospice that, on May 9, 1988, complies with the requirements of the 1981 edition of the Life Safety Code, with or without waivers, will be considered to be in compliance with this standard, as long as the hospice continues to remain in compliance with that edition of the Life Safety Code.

(4) Any facility of two or more stories that is not of fire resistive construction and is participating on the basis of a waiver of construction type or height, may not house blind, nonambulatory, or physically handicapped patients above the street-level floor unless the facility—

(i) Is one of the following construction types (as defined in the Life Safety Code):

(A) Type II (1, 1, 1)—protected non-combustible.

(B) Fully sprinklered Type II (0, 0, 0)—non-combustible.

(C) Fully sprinklered Type III (2, 1, 1)—protected ordinary.

(D) Fully sprinklered Type V (1, 1, 1)—protected wood frame; or

(ii) Achieves a passing score on the Fire Safety Evaluation System (FSES).

* * * * *

IV. Part 442 is amended as follows:

PART 442—STANDARDS FOR PAYMENTS FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

Subpart F—Standards for Intermediate Care Facilities Other Than Facilities for the Mentally Retarded

1. The authority citation for Part 422 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. In § 442.321 paragraphs (a) and (c) are revised to read as follows:

§ 442.321 Fire protection.

(a) Except as provided in § 442.323 and paragraph (b) of this section, the ICF must meet the applicable provisions of the 1985 edition of the Life Safety Code of the National Fire Protection Association which is incorporated by reference.[1]

* * * * *

(c) Any facility that on November 26, 1982 complies with the requirements of the 1967 edition of the Life Safety Code, or, on May 9, 1988, complies with the requirements of the 1981 edition of the Life Safety Code, with or without waivers, will be considered to be in compliance with this standard as long as the facility continues to remain in compliance with that edition of the Code.

§ 442.322 [Removed]

3. Section 442.322 is removed.

4. Section 442.323 is revised to read as follows:

§ 442.323 Fire protection: waivers.

The State survey agency may waive specific provisions of the Life Safety Code required by § 442.321, for so long as it considers appropriate, if—

(a) The waiver would not adversely affect the health and safety of the residents;

(b) Rigid application of specific provisions of the Life Safety Code would result in unreasonable hardship for the ICF; and

(c) The waiver is granted in accordance with guidelines issued by HCFA.

(d) Any facility of two or more stories that is not of fire resistive construction and is participating on the basis of a waiver of construction type or height may not house blind, nonambulatory, or physically handicapped patients above the street-level floor unless the facility—

(i) Is one of the following construction types (as defined in the Life Safety Code):

(A) Type II (1, 1, 1)—protected non-combustible.

(B) Fully sprinklered Type II (0, 0, 0)—non-combustible.

(C) Fully sprinklered Type III (2, 1, 1)—protected ordinary.

(D) Fully sprinklered Type V (1, 1, 1)—protected wood frame; or

(ii) Achieves a passing score on the Fire Safety Evaluation System (FSES).

V. Part 482 is amended as follows:

PART 482—CONDITIONS OF PARTICIPATION

Subpart C—Basic Hospital Functions

1. The authority citation for Part 482 continues to read as follows:

Authority: Secs. 1102, 1814(a)(7), 1861 (e), (f), (k), (r), (v)(1)(G), and (z), 1864, 1871, 1883, 1886, and 1905(a) of the Social Security Act (42 U.S.C. 1302, 1395f(a)(7), 1395x (e), (f), (k), (r), (v)(1)(G), and (z), 1395aa, 1395hh, 1395tt, 1395ww, and 1396 d(a)).

2. In § 482.41, paragraph (b)(1) and the footnote are revised to read as follows:

§ 482.41 Condition of participation—physical environment.

* * * * *

(b) *Standard: Life safety from fire.* (1) Except as provided in paragraphs (b)(1)(i) through (b)(1)(iii) of this section, the hospital must meet the applicable provisions of the 1985 edition of the Life Safety Code of the National Fire Protection Association (which is incorporated by reference).[1]

(i) Any hospital that on November 26, 1982, complied, with or without waivers, with the requirements of the 1967 edition of the Life Safety Code, or on May 9, 1988, complied with the 1981 edition of the Life Safety Code, is considered to be in compliance with this standard as long as the facility continues to remain in compliance with that edition of the Code.

(ii) After consideration of State survey agency findings, HCFA may waive specific provisions of the Life Safety Code which, if rigidly applied, would result in unreasonable hardship upon the facility, but only if the waiver does not adversely affect the health and safety of patients.

(iii) The provisions of the Life Safety Code do not apply in a State where HCFA finds that a fire and safety code imposed by State law adequately protects patients in hospitals.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.714 Medical Assistance Program; 13.743, Medicare—Hospital Insurance; and 13.744, Medicare—Supplementary Medical Insurance)

Dated: October 27, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: December 10, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 88-7588 Filed 4-6-88; 8:45 am]

BILLING CODE 4120-01-M

[1] See footnote to § 405.1134(a) of this chapter.

[1] See footnote to § 405.1134(a) of this chapter.

[1] See footnote to § 405.1134(a) of this chapter.

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6920]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Deletion of final rule.

SUMMARY: The Federal Insurance Administration has erroneously published the final flood elevation determination for the City of Ormond Beach, Volusia County, Florida. This notice will serve to delete that publication. Following an engineering analysis and review, a new notice of final flood elevation determination will be issued.

EFFECTIVE DATE: April 7, 1988.

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: As a result of a recent engineering analysis, the Federal Emergency Management Agency has determined that the notice of final flood elevation determination for the City of Ormond Beach, Volusia County, Florida, published at 53 FR 7917, on March 11, 1988, should be deleted, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (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 67.

Issued: April 1, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-7618 Filed 4-6-88; 8:45 am]

BILLING CODE 6718-21-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 70355-7127]

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 permitted in the Incidental longline category. Closure of this fishery is necessary because the total annual quota of 145 short tons (st) for this category will be exceeded by the effective date. The intent of this action is to prevent further overharvest of the total annual quota established for the U.S. fishery and thereby maintain the United States' obligations under the International Commission for the Conservation of Atlantic Tunas.

EFFECTIVE DATE: 0001 hours local time, April 7, 1988, through December 31, 1988.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, 617-281-3600, extension 324.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971-971h) regulating fishing for Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction appear at 50 CFR Part 285.

Section 285.22(f)(1) of the regulations provides for an annual quota of 145 st of Atlantic bluefin tuna to be taken by vessels permitted in the Incidental longline category in the Regulatory Area. Of this amount, 115 st is allocated for the area south of 36°00'N. latitude. The southern area was closed on March 16, 1988 (53 FR 8631, March 16, 1988), when it was determined that the 115 st quota for that area was reached.

The Assistant Administrator for Fisheries, NOAA, is required under § 285.20(b)(1) to monitor the landing statistics and, on the basis of these statistics, to project a date when any quota under § 285.22 will be reached. He is further required under § 285.20(b)(1) to prohibit the fishing for, or retention of, Atlantic bluefin tuna by the category of vessels subject to the quotas. The Assistant Administrator has determined, based on the reported landings of Atlantic bluefin tuna, that the annual quota of Atlantic bluefin tuna allocated to vessels permitted in the Incidental longline category has been attained. Fishing for or retention of any Atlantic bluefin tuna by these vessels must cease at 0001 hours, local time, on April 7, 1988.

Notice of this action has been mailed to all Atlantic bluefin tuna dealers and vessel owners holding a valid vessel permit for this fishery.

Other Matters

This action is taken under the authority of 50 CFR 285.20, and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

(16 U.S.C. 971 *et seq.*)

Dated: April 4, 1988.

Ann D. Terbush,

Acting Director, Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-7691 Filed 4-4-88; 4:44 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 67
Thursday, April 7, 1988

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

Rural Electrification Administration

7 CFR Part 1700

Cushion of Credit Payments Program; Rural Economic Development Subaccount

AGENCY: Rural Electrification Administration, USDA

ACTION: Advance notice of proposed rulemaking

SUMMARY: The Rural Electrification Administration (REA) is proposing to amend 7 CFR Chapter XVII, by adding a new part. The new part will establish policies and procedures to implement the provisions of section 313 of the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*) (the "RE Act") relating to the Cushion of Credit Payments Program and the creation of a Rural Economic Development Subaccount in the Rural Electrification and Telephone Revolving Fund (the "RETRF"). Section 313 authorizes the Administrator of REA to utilize funds in this subaccount to provide grants or zero interest loans to RE Act borrowers for the purpose of promoting rural economic development and job creation projects, including funding for project feasibility studies, start-up costs, incubator projects, and other reasonable expenses for the purposes of fostering rural development.

DATE: Public comments must be received by REA no later than May 9, 1988.

ADDRESSES: Submit written comments to Mr. Blaine D. Stockton, Jr., Assistant Administrator—Management, Rural Electrification Administration, Room 4063, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500. Comments received may also be inspected at Room 4063 between 8:15 a.m. and 4:45 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Blaine D. Stockton, Jr., Assistant Administrator—Management, Rural Electrification Administration, Room 4063, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone number (202) 382–9552.

SUPPLEMENTARY INFORMATION: Under section 313 of the RE Act, the Administrator of REA is to develop and promote a program to encourage RE Act borrowers to voluntarily make deposits into cushion of credit accounts established within the RETRF. Balances in such cushion of credit accounts shall bear interest at an annual rate of 5 percent.

Additionally, the Administrator is to maintain a Rural Economic Development Subaccount in the RETRF, which is to be credited monthly with the difference between interest earned by the RETRF on outstanding cushion of credit deposits made after October 1, 1987, and the amount of interest accruing to the borrower on these funds. Balances in the Rural Economic Development Subaccount are to be fully used on a fiscal year basis to make zero interest loans and grants for the purposes contemplated by section 313 of the RE Act.

It is anticipated that this proposed new Part of 7 CFR Chapter XVII will establish the policies and procedures relating to the Rural Economic Development loans and grants. Since a cushion of credit program already exists and a number of telephone and electric borrowers have made deposits into such accounts, the REA policies and procedures covering the cushion of credit program, including procedures for making deposits, the crediting of accrued interest, and the use of cushion of credit balances for scheduled loan payments will be covered in another Part of 7 CFR Chapter XVII.

Some of the issues that will need to be addressed in the regulations covering rural economic development loans and grants include: Eligibility of borrowers, qualifying projects, application procedures, review and evaluation of proposals, eligibility criteria for grants, eligibility criteria for zero interest loans, loan terms and conditions, and security for loans. Interested parties wishing to make suggestions on any of these areas and their coverage in the proposed regulations are invited to provide written comments to the Assistant Administrator—Management at the address shown above. The rural electrification program is listed in the Catalog of Federal Domestic Assistance as 10.850, Rural Electrification Loans and Loan Guarantees and 10.851, Rural Telephone Loans and Loan Guarantees.

Further public comment will be solicited when the proposed rule is published.

List of Subjects in 7 CFR Part 1700

Loans programs—electric; Loans programs—telephony, Rural economic development.

Dated: April 1, 1988.

Harold V. Hunter,

Administrator.

[FR Doc. 88–7689 Filed 4–6–88; 8:45 am]
BILLING CODE 3410–15–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917 and 1918

[Docket No. H–004J]

Occupational Exposure to Lead

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of limited reopening of lead remand rulemaking record.

SUMMARY: For the limited purpose of seeking public comment on certain documents, this notice reopens the rulemaking record for the OSHA lead standard regarding the feasibility of meeting the permissible exposure level (PEL) specified in the lead standard (29 CFR 1910.1025(e)(1)) through engineering and work practice controls in nine remand industry sectors. The nine industry sectors are: lead chromate pigments (SIC 2816), lead chemicals (SIC 2816/2819), nonferrous foundries (SIC 3362/3369), brass and bronze ingot production (SIC 3341/3362), secondary copper smelting (SIC 3341), independent battery breaking (SIC 5093), leaded steel (SIC 3312/3313), shipbuilding and ship repair (SIC 3731), and stevedoring (SIC 4463).

DATE: Written comments must be received by May 9, 1988.

ADDRESSES: Comments should be mailed or delivered in quadruplicate to the Docket Officer, Occupational Safety and Health Administration, Docket No. H–004J, Room N–3670, U.S. Department

of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone 202–523–7894. All materials submitted will be available for public inspection and copying from 8:15 a.m. to 4:15 p.m., Monday through Friday at the above address.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone 202–523–8148.

SUPPLEMENTARY INFORMATION:

I. Background and Judicial History

On November 14, 1978, OSHA promulgated the lead standard (29 CFR 1910.1025), which, in part, limited occupational exposure to airborne concentrations of lead to 50 micrograms per cubic meter of air ($\mu g/m^3$), based on an 8-hour time-weighted average (TWA) (43 FR 52952 and 43 FR 54354, November 21, 1978). On August 15, 1980, the United States Court of Appeals for the District of Columbia Circuit upheld the validity of the lead standard in most respects; however, it remanded the record to OSHA for reconsideration of the question of technological and economic feasibility for 38 industry sectors. *United Steelworkers of America v. Marshall*, 647 F.2d 1189 (D.C. Cir. 1980), cert. denied., 453 U.S. 913 (1981).

After conducting an expedited rulemaking (45 FR 63476, September 24, 1980), OSHA filed its response to the remand order on January 19, 1981, in which OSHA concluded that attainment of the 50 $\mu g/m^3$ PEL through engineering and work practice controls was feasible in the expanded list of remand industries. *See*, 46 FR 6134. However, after requesting and receiving time from the court to reconsider the matter, OSHA, on December 11, 1981 (46 FR 60758), stated that it lacked sufficient information to reach a feasibility determination for eight of the remand industries and that it wished to reexamine applicability of the lead standard for the stevedoring industry. Therefore, OSHA requested the Court of Appeals for the District of Columbia Circuit to remand the record concerning these nine industries for supplementary administrative proceedings (46 FR 60761, December 10, 1981). The court granted the motion on March 31, 1987 and ordered OSHA to return the record on the nine remand industries by October 1, 1987. On July 31, 1987, the court granted OSHA's motion to extent to January 1, 1988 the date for return of the record. (A fuller explanation of the background and legal history surrounding the lead standard can be found at 52 FR 28727).

After the March 31, 1987 remand, OSHA contracted with Meridian Research, Inc., a private consulting firm, to collect and develop new data concerning the feasibility of compliance with the PEL through the use of engineering and work practice controls in each of the remand industries. The Meridian study was placed into the rulemaking record on August 3, 1987 for public review and comment, and OSHA set a September 15, 1987 date for an informal public hearing (52 FR 28727, August 3, 1987). Thereafter, at industry request and without objection from other parties to the rulemaking, the deadline for prehearing comment and the date for public hearings were twice deferred (52 FR 32312, August 27, 1987 and 52 FR 35731, September 23, 1987).

During the extended prehearing comment period, OSHA received very little useful recent air lead exposure data from industry. Consequently, on October 27, 1987, OSHA by letter made specific requests to 14 companies for such data to be entered into the rulemaking record (Ex. 646).

Thereafter, a public hearing was held in Washington, DC, from November 3–6, 1987. At the close of the hearing, the administrative law judge, contingent upon the court granting a deferral of its January 1, 1988 return date, ordered that the closing date for submission of additional post hearing information and data would be January 8, 1988, and that the closing date for submission of post hearing comments and briefs would be February 5, 1988. On November 25, 1987, OSHA requested the court to extend until July 15, 1988 the deadline for return of the record to allow the Agency time to receive and evaluate more data, to conduct post hearing plant visits and produce necessary reports, and to develop and publish a final rule. The court granted the motion by its order of December 16, 1987.

II. Request for Comments

Interested parties are requested to submit in quadruplicate written comments on the documents described below (Exhibits 684–690) for purposes of providing more information for OSHA to determine the technological and economic feasibility of compliance with the 50 $\mu g/m^3$ PEL by means of engineering and work practice controls. The documents on which OSHA seeks public comment include: (1) Documents relating to eight site visits recently conducted by OSHA in four of the remand industries; and (2) certain other supplemental documents consisting of: (a) updates of the Meridian Research, Inc. reports on each of the nine industry sectors and of other documents already in the lead rulemaking record, and (b) excerpts from standardized textbooks and reference materials.

A. Plant Visit Reports and Related Documents

During the remand hearing, certain industry participants expressed concern about the lack of recent plant visits by OSHA or its contractor, Meridian, in preparing the 1987 update of feasibility data. No Plant visits had been conducted by OSHA in the remand industries since 1981–82. While OSHA considered the existing record sufficient to make a basic feasibility determination for each of the remand sectors, the Agency agreed that site visits and receipt of more recent data would useful. Therefore, at the close of the administrative hearing OSHA proposed that it conduct expedited post hearing site visits on a voluntary basis in some of the remand industry sectors. (Tr. 1289–90). The purpose of the site visits was to collect information on manufacturing processes, employment, exposure levels, engineering and work practice controls, and costs and other economic data which would aid OSHA in its determination of feasibility.

OSHA successfuly negotiated with industry representatives to make eight site visits in four industry sectors. (As indicated by Exhibit 690, A–B, during negotiations, representatives from one industry sector in which OSHA sought to make site visits declined to arrange them and representatives from another industry, when they were unable to schedule a suitable date for the site visit, withdrew their offer to arrange plant visits.)

The eight plant visits were conducted during January and February 1988. As specified in agreements executed between OSHA and each plant (Ex. 685, A–F), factual reports on each site visit were prepared by the OSHA team and each plant was afforded the opportunity to review the report for accuracy, completeness and trade secrets prior to its submission into the lead rulemaking record. OSHA is entering the eight trip reports into the lead rulemaking record as Exhibit 684, A–H, and by this notice reopens the rulemaking record to invite public comment on these trip reports and related exposure data by interested parties.

B. Other Supplemental Documents

In addition to the trip reports, OSHA is inserting in the record and inviting comment on certain other supplemental

documents. (Exhibits 686–689). These documents provide incremental or cumulative information to the rulemaking record consisting of updates of documents already in the record and excerpts from standardized textbooks and reference materials.

1. Updates of Meridian Reports on the Nine Remand Industries and of Other Documents in the Record

OSHA is entering into the lead rulemaking record for public comment updates of the industry-by-industry feasibility assessments by Meridian Research, Inc., OSHA's contractor in the lead remand proceedings (Ex. 686, A–I). These updates are based on the current lead remand rulemaking record, including testimony at the remand hearing and post hearing submissions as well as the 1988 OSHA post hearing site visit reports. Material supporting the Meridian updates also is included to facilitate comment by interested parties (Ex. 687).

Public comment also is invited on other updates of air lead monitoring data such as those submitted by a leaded steel plant and a shipbuilding and ship repair yard in response to the October 27, 1987 letter from Frank A. White, Deputy Assistant Secretary of Labor (Ex. 688, A–E)

2. Excerpts from Standardized Textbooks and Reference Materials

OSHA is also entering Exhibit 689, A–O, into the lead rulemaking record, which consists of excerpts from standardized textbooks and reference materials. These excerpts, for example, include six chapters from the Foundry Environmental Control series produced by the American Foundreymen's Society, Inc., and three chapters on forging and casting from the Metals Handbook produced by the American Society for Metals. They also include a submission to the chromium rulemaking record (41 FR 18869, May 7, 1976) by the DuPont Company containing process descriptions and exposure data for a lead pigments plant in Newark, then owned by the company.

OSHA believes that excerpts from standardized textbooks and reference materials need not necessarily be inserted into the record, and indeed the Agency in the past has relied on such materials without entering them into the record. Nevertheless, OSHA believes that placing such standardized reference materials in the record will facilitate full and thorough public comment which will assist the Agency in making the best informed decision possible.

Comments received in response to this limited reopening of the lead rulemaking record will be carefully reviewed and used, as appropriate, by OSHA in determining the feasibility of implementing paragraph (e)(1) of the OSHA lead standard in each of the nine remand industry sectors.

III. Public Comment Procedures

Written comments must be received by May 9, 1988. Comments should be mailed or delivered in quadruplicate to the Docket Officer, Occupational Safety and Health Administration, Docket No. H–004J, Room N–3670, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. Telephone 202–523–7894. All materials submitted will be available for public inspection and copying from 8:15 a.m. to 4:15 p.m., Monday through Friday at the above address.

IV. Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593; 29 U.S.C. 655), and section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941).

Signed at Washington, D.C., this 4th day of April 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 88–7692 Filed 4–6–88; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Bank Secrecy Act; Recordkeeping Requirements by Casinos

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: Treasury is proposing two amendments to the Bank Secrecy Act regulations regarding casinos. The first amendment adds a requirement that casinos subject to the regulations retain the records which they use for monitoring their customers' gaming activity. The second amendment adds a requirement that casinos which input, retain, or store certain information on computer disk, tape, or other machine-readable media retain such information in machine-readable form. The second amendment goes on to require that casinos retain the indexes, books, file descriptions, programs, and similar materials that would enable a person readily to access and review the records which are required to be made and retained under the Bank Secrecy Act regulations and are kept in machine-readable form.

DATES: Deadline for comments: May 9, 1988.

ADDRESS: Send comments to: Amy G. Rudnick, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Amy G. Rudnick, Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue NW., Washington, DC 20220, (202) 566–8022.

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act, Pub. L. No. 91–508, (codified at 12 U.S.C. 1829b, 12 U.S.C. 1951 *et seq.*, and 31 U.S.C.. 5311–5324), authorizes the Secretary of the Treasury to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax, and regulatory matters. Pursuant to 31 U.S.C. 5312(a)(2)(U), the Secretary has designated certain casinos as "financial institutions" for purposes of the Bank Secrecy Act. *See* 31 CFR 103.11(g)(7). The Secretary has imposed particular recordkeeping requirements on these casinos. *See* 31 CFR 103.36

Under this proposed rule, casinos would have to retain additional records and information which the Secretary has determined have a high degree of usefulness in criminal, tax, and regulatory matters. Specifically, new § 103.36(b)(8) would require casinos to retain the records which they use to monitor their customers' gaming activity. This retention requirement is aimed at so-called "player rating forms" or "player rating records" which are prepared during play and are used for determining complimentary services and items. Frequently, these records are the only records in the casino that reflect cash gaming activity of players on the casino floor.

In addition, the proposed rule provides new requirements regarding the media on which casinos keep records and related information. New § 103.36(c) would prescribe that, if a casino inputs, retains, or stores any record required to be maintained pursuant to §§ 103.33 and 103.36 on

computer disk, tape or other machine-readable media, the casino must retain the record in machine-readable form for a period of five years. Thus, if a casino keeps track of a player's gaming activity by inputting some of the data from a rating card on that player into a computer, even for a short period of time, such data must be retained in machine-readable form. For purposes of the proposed rule, the term "machine-readable" means capable of being read by the automated data processing system used by the casino. The data may be transferred to other computer disks, tapes, or machine-readable media and may be retained off-line.

It is emphasized that this proposal, if adopted as a final rule, would not impose a requirement on casinos to use automated data processing systems to comply with the recordkeeping requirements of §§ 103.33 and 103.36. Rather, the requirement would be that casinos which do use such systems must retain the inputted information in machine-readable form. Further, the instructions, manuals, software, etc. which would enable a person readily to access and review the records required to be retained by §§ 103.33 and 103.36, and which are in machine-readable form, would also have to be retained.

Treasury believes that casinos could comply with these requirements without great cost or administrative burden. The law enforcement benefits of the first proposed amendment are apparent in that a record which tracks a player's gaming activity would reflect the point at which a report as described in 31 CFR 103.22(a)(2) should have been filed. The second amendment is intended to lessen significantly the amount of time involved in reviewing specific records required of casinos under the Bank Secrecy Act regulations in connection with examinations for Bank Secrecy Act compliance. The requirement that the instructions, manuals, software, etc. be retained is essential to insure accessibility of the records required of casinos under the regulations which are kept in machine-readable form.

Executive Order 12291

This proposed rule, if adopted, would not be a major rule for purposes of Executive Order 12291. It is not anticipated to have an annual effect on the economy of $100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. It will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. A Regulatory Impact Analysis therefore is not required.

Regulatory Flexibility Act

It is hereby certified under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information requirements contained in this Notice of Proposed Rulemaking has been submitted to the Office of Management and Budget pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on these requirements should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Departmental Offices, Department of the Treasury. Copies of such comments should also be submitted to the Department at the address previously specified.

Drafting Information

The principal author of this document is the Office of the Assistant General Counsel (Enforcement). However, personnel from other offices participated in its development.

Comments

Treasury requests comments from all interested persons concerning the proposed amendments. All comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future action. The Treasury Department will not recognize any materials or comments, including the name of any person submitting comments, as confidential. Any material not intended to be disclosed to the public should not be included in the comments. All comments submitted will be available for public inspection during the hours that the Treasury Library is open to the public. The Treasury Library is located in Room 5030, 1500 Pennsylvania Avenue NW., Washington, DC. Appointments must be made to view the comments. Persons wishing to view the comments submitted should contact the Office of Financial Enforcement at the number listed above. Treasury requests comments on all aspects of this proposal, but is particularly interested in specific information about the anticipated increased costs to individual casinos that would result because of imposition of the new requirements.

List of Subjects in 31 CFR Part 103

Authority delegation, Banks and banking, Currency, Foreign Banking, Investigation, Law Enforcement, Reporting and recordkeeping requirements, Taxes.

Proposed Amendments

For the reasons set forth in the preamble, 31 CFR Part 103 is proposed to be amended as follows:

PART 103—[AMENDED]

1. The authority citation for Part 103 would continue to read as follows:

Authority: Pub. L. 91–508, Title I, 84 Stat. 1114, 1116 (12 U.S.C. 1829(b), 1951–1959); and the Currency and Foreign Transactions Reporting Act, Pub. L. No. 91–508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311–5324).

2. It is proposed to amend § 103.36 by adding a new paragraph (b)(8) to read as follows:

§ 103.36 Additional records to be made and retained by casinos.

* * * * *

(b) * * *

(8) All records which are prepared or used by a casino to monitor a player's gaming activity.

* * * * *

3. It is proposed to amend further § 103.36 by adding at the end a new paragraph (c) to read as follows:

* * * * *

(c)(1) Casinos which input, store, or retain, in whole or in part, for any period of time, any record required to be maintained by § 103.33 or this section on computer disk, tape, or other machine-readable media shall retain the same on computer disk, tape, or machine-readable media.

(2) All indexes, books, programs, record layouts, manuals, formats, instructions, file descriptions, and similar materials which would enable a person readily to access and review the records that are described in § 103.33 and this section and that are input, stored, or retained on computer disk, tape, or other machine-readable media shall be retained for the period of time such records are required to be retained.

Dated: March 14, 1988.

Francis A. Keating, II,

Assistant Secretary (Enforcement).

[FR Doc. 88–7690 Filed 4–6–88; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 110

[CGD 05-88-12]

Special Anchorage Areas; Waterside Area of Elizabeth River between Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking proposes the establishment of special anchorage areas to be used as spectator anchorages during events when the special local regulations in 33 CFR 100.501 are in effect. 33 CFR 100.501 applies to special events held throughout the year in the Waterside area of the Elizabeth River between Norfolk and Portsmouth, Virginia.

DATES: Comments must be received May 9, 1988.

ADDRESSES: Comments should be mailed to Commander (bb), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments and other materials referenced in this notice of proposed rulemaking will be available for inspection and copying at the above address, Room 209. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705 (804)398-6204.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 05-88-12), and the specific section of the proposal to which their comments apply, and give the reasons for each comment.

The Commander, Fifth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Commander Robert J. Reining, project attorney, Fifth Coast Guard District Legal Office.

Discussion of Proposed Regulation

This notice proposes the establishment of special anchorage areas to be used as spectator anchorages during events when the special local regulations in 33 CFR 100.501 are in effect. These special anchorage areas are needed to accommodate spectator craft during the special events held throughout the year in the Waterside area of the Elizabeth River between Norfolk and Portsmouth, Virginia.

The proposal also amends 33 CFR 100.501 to permit vessels to remain in the regulated area established by that regulation without the permission of the Patrol Commander if the vessels are anchored within one of the special anchorage areas.

These special anchorage areas will only be in effect when an event regulated by 33 CFR 100.501 is being held. At all other times vessels are prohibited from anchoring in these areas by 33 CFR 110.168.

The regulations in 33 CFR 100.501 are normally in effect during the annual Harborfest, fireworks displays through out the year, marine parades, and various boat races.

Vessels of not more than 65 feet in length, when at anchor in a special anchorage area are not required to carry or exhibit the white anchor lights required by the Inland Navigation Rules, 33 U.S.C. 2001 *et seq.*

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 F.R. 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. No commercial entities will be affected by the establishment of these limited duration special anchorage areas.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects

33 CFR Part 100

Marine safety, Navigation (water)

33 CFR Part 110

Special anchorage areas, Anchorage grounds.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Parts 100 and 110 of Title 33, Code of Federal Regulations, as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g). Section 110.1a and each section listed in § 110.1a are also issued under 33 U.S.C. 1223 and 1231.

3. Section 100.501 is amended by adding paragraph (b)(5) to read as follows:

§ 100.501 Norfolk Harbor, Elizabeth River, Norfolk, Virginia and Portsmouth, Virginia

* * * * *

(b) * * *

(5) Vessels anchored in the special anchorage areas described in § 110.72aa(a) of this title may remain in the regulated area without the permission of the Patrol Commander.

* * * * *

4. Section 110.72aa is added to read as follows:

§ 110.72aa Elizabeth River Spectator Vessel Anchorage Areas, between Norfolk and Portsmouth, Virginia.

(a) Special Anchorage Areas:

(1) The waters of the Elizabeth River bounded by the shore and a line drawn between Hospital Point at latitude 36°50'50.5" North, longitude 76°18'09" West, and the tip of the channelside pier at the Holiday Inn Marina at latitude 36°50'29.5" North, longitude 76°17'52.5" West.

(2) The waters of the Elizabeth River adjacent to the Port Norfolk Reach section of the Elizabeth River, bounded by the shore and a line drawn between Hospital Point at latitude 36°50'55" North, longitude 76°18'14.5" West, and the tip of the southern most railroad pier at Port Norfolk at latitude 36°51'14.5" North, longitude 76°18'44" West.

(b) These special anchorage areas in paragraph (a) are only in effect when the regulations in § 100.501 of this title are in effect.

Dated: March 30, 1988.

A. D. Breed,

Rear Admiral, U. S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 88-7659 Filed 4-6-88; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD2-88-01]

Drawbridge Operation Regulations; Green River, KY

AGENCY: Coast Guard, DOT.

ACTION: Proposed Rule.

SUMMARY: The Coast Guard is considering a change to the regulations governing the operation of the Seaboard System Railroad bridges at Spottsville, Mile 8.3, Livermore, Mile 71.2, Smallhouse, Mile 79.6 and the Paducah & Louisville (formerly Illinois Central Gulf) Railroad bridge at Rockport, Mile 94.8, presently listed as located at Mile 95.8. This change would accurately describe the operation of the draw, correct the river mile number, and reflect the name change of the bridge at Rockport. It would also delete the requirement in the existing regulation that owners of drawbridges at Spottsville, Livermore, Smallhouse, and Rockport post a summary of the regulation at Green River Locks 1, 2, 3 and 4. This revision will not change the requirement in the existing regulation that advance notice be given for bridge openings when river levels affect vertical clearance at these bridges. This proposal is being made because the existing regulation does not adequately reflect the operation of the bridge at Rockport, and incorrectly publishes the river mile number for this bridge as 95.8 instead of 94.8. In addition, compliance with the existing posting requirement is not feasible, as explained below in the "Discussion of Proposed Regulation." This action should provide an adequate description of the automatic operation of the bridge at Rockport, should correct the river mile to show structure is located at Mile 94.8, should result in bridge owners complying with posting requirements contained in § 117.55, and still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before May 23, 1988.

ADDRESS: Comments should be mailed to Commander (ob), Second Coast Guard District, 1430 Olive Street, St. Louis, MO 63103-2398. The comments and other materials referenced in this notice will be available for inspection and copying at 1430 Olive Street, Room 400, St. Louis, MO 63103-2398. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Second Coast Guard District, telephone (314) 425-4607.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, Second Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Wanda G. Renshaw, bridge administration specialist, project officer, and Commander F.P. Hopkins, project attorney.

Discussion of Proposed Regulations

The bridge over the Green River at Rockport, Kentucky, is a single leaf bascule drawspan that is operated automatically. River mile for this bridge was incorrectly published as 95.8 in the Final Rule that reorganized drawbridge operation regulations contained at 33 CFR Part 117 Final Rule was published in the **Federal Register** of Tuesday, April 24, 1984 (49 FR 17450). The Paducah & Louisville Railroad recently purchased this structure from Illinois Central Gulf Railroad. Position of the drawspan is regulated by a device on the bridge pier that determines if drawspan will open based on water elevation. When water level is at normal pool or lower, a vertical clearance of 34 feet or more is available, and bridge is in the closed-to-navigation position. Vessels requiring more than 34 feet vertical clearance must provide 8 hours advance notice for a bridge opening. When vertical clearance beneath the draw is less than 34 feet, drawspan is automatically raised to the open-to-navigation position and closed automatically for passage of rail traffic.

To ensure the safety of navigation, the former bridge owner had installed warning lights and sound devices on the bridge's superstructure to signal river traffic when drawspan is open and span's closing cycle has been activated. When drawspan is in the open position, and a train approaches the bridge, a siren sounds continuously and amber lights, mounted on the bridge and oriented upstream and downstream, begin flashing. After five minutes, the amber flashing lights change to red, and the drawspan begins to close. If a boat is under, or enters under, the drawspan while it is closing, the boat is automatically detected by an electronic device, and the drawspan stops its downward motion and returns to the open position. After the boat passes, the drawspan closes. When the drawspan is fully closed, the siren stops and channel lights flash red. After the train has passed, the draw opens fully, and the flashing red light changes to steady green. When bridge is operating automatically, rotating red lights are displayed atop the bridge.

In addition to the lights mounted on the bridge structure, a warning light located on the left bank 1,000 feet upstream of the bridge is tied into the bridge's operating circuits. If water level is high, and bridge has closed for a train, upstream light will show red. If water level is high and drawspan is in the up position, upstream light will show green. If water level is at normal pool or lower, drawspan will be in the closed-to-navigation position, and light will show green.

The existing regulation further requires that owners of bridges at Spottsville, Livermore, Smallhouse, and Rockport, each post a summary of the operating regulation at Green River Navigation Locks 1, 2, 3, and 4. Navigation Locks 3 and 4 have been closed to navigation. Lock operators report that there are no summaries of drawbridge operation regulations posted at Locks 1 and 2. The Commander, U.S. Army Engineer District, Louisville, Kentucky, advised that installation of signs or fixtures, other than those pertaining to lock operations, is prohibited at locks in the Louisville District. Therefore, consistent with the Corps of Engineers' policy and procedures for operation and maintenance of Green River navigation locks, the posting requirement in the existing regulation would be deleted, and the bridge owners would be governed by the posting requirements contained in 33 CFR 117.55.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This proposal will not change the operation of the bridges for rail or river traffic. It merely describes the operation of warning signals and devices in conjunction with the automatic

operation of the drawspan at Rockport. It also deletes the requirement that the bridge owners each post summaries of the operation regulation at Green River Locks 1, 2, 3 and 4. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.415 is revised to read as follows:

§ 117.415 Green River.

(a) The draw of the Seaboard System railroad bridge, Mile 8.3 at Spottsville, shall open on signal when there is 40 feet or less of vertical clearance beneath the draw. When vertical clearance is more than 40 feet, at least four hours notice shall be given. The owners of, or agencies controlling, the bridge shall arrange for ready telephone communication with the authorized representative at any time from the bridge or its immediate vicinity.

(b) The draws of the Seaboard System railroad bridges, Miles 71.2 and 79.6 at Livermore and Smallhouse, are normally maintained in the fully open position and a vessel may pass through the draw without further signals. When the draws are in the closed position, they shall open on signal when there is 40 feet or less of vertical clearance. When the vertical clearance is more than 40 feet, at least four hours notice shall be given. During this period, if the drawtender is informed at the time the vessel passes through the draw that the vessel will return within four hours, the drawtender shall remain on duty until the vessel returns but is not required to remain for longer than four hours. The owners of, or agencies controlling, the bridge shall arrange for ready telephone communication with the authorized representative at any time from the bridge or its immediate vicinity.

(c) The Paducah and Louisville railroad bridge, Mile 94.8 at Rockport, is operated as follows:

(1) When river stage permits a vertical clearance of 34 feet or more under the closed draw, as determined from gauges attached to the bridge, drawspan is in the closed-to-navigation position. Draw will open on signal for vessels requiring greater clearance if at least eight hours advance notice is given.

(2) When vertical clearance under the closed draw is less than 34 feet, drawspan is automatically raised to and maintained in the open to navigation position and closes automatically for passage of rail traffic. When drawspan is in the "open" position, and a train approaches the bridge, a siren sounds continuously and amber lights, mounted on the bridge and oriented upstream and downstream, begin flashing. After five minutes the amber flashing lights change to red, and the drawspan begins to close. If a boat is under, or enters under, the drawspan while it is closing, the boat is automatically detected by an electronic device, and the drawspan stops its downward motion and returns to the open position. After the boat passes, the drawspan closes. When the drawspan is fully closed, the siren stops and channel lights flash red. After the train has passed, the draw opens fully, and the flashing red light changes to steady green. When the bridge is being maintained in the open position and automatically closes for trains, rotating red lights are displayed atop the bridge.

(3) A warning light located on the left bank 1,000 feet upstream of the bridge is tied into the bridge's operating circuits. If water level is high, and bridge has closed for a train, upstream light will show red. If water level is high and bridge is in the open position, upstream light will show green. If water level is at normal pool or lower, bridge will be in the closed position and will also show green.

Date: March 24, 1988.

R. T. Nelson,

Rear Admiral (Lower Half) U.S. Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 88–7655 Filed 4–6–88; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD 05–88–13]

Drawbridge Operations Regulations; Berkley Bridge, Eastern Branch of the Elizabeth River, Norfolk, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to restrict openings of the Berkley drawbridge during Harborfest 1988, which will be held in Norfolk, Virginia, on June 3, 4, and 5, 1988, and other special marine events that are regulated under 33 CFR 100.501.

DATE: Comments must be received May 9, 1988.

ADDRESSES: Comments should be mailed to Commander (oan), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments and other materials referenced in this notice of proposed rulemaking will be available for inspection and copying at the above address, Room 507. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, at the above address, or telephone number (804) 398–6222.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 05–88–13), and give reasons for concurrence with or any recommended change in the proposal. The Commander, Fifth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Billy J. Stephenson, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and CDR Robert J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Proposed Regulations

The Coast Guard is considering a proposal to restrict openings of the Berkley drawbridge during Harborfest 1988, which will be held in Norfolk, Virginia, on June 3, 4, and 5, 1988, and other special marine events that are regulated under 33 CFR 100.501. The proposal will enhance the Patrol Commander's authority to restrict vessel traffic by limiting access to the regulated area from the Eastern Branch of the Elizabeth River. 33 CFR 100.501 authorizes the Patrol Commander to control vessel traffic in the Waterside area of the Elizabeth River. (The Waterside area of the Elizabeth River includes the waters between Town Point

Park, Norfolk, Virginia; the mouth of the Eastern Branch of the Elizabeth River; and Hospital Point, Portsmouth, Virginia.) The Berkley bridge in the closed position is an effective barrier to larger vessels attempting to enter this area from the Eastern Branch.

The proposal will also help reduce traffic congestion before, during, and after the events by reducing the number of possible bridge openings during the events and within one hour of the start and ending of the events.

Economic Assessment and Certification

The proposed regulations are considered to be non-major under Executive Order 12291 on Federal regulations and non-significant under the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The proposed regulation will not affect commercial navigation or industries on the Eastern Branch of the Elizabeth River, since their access between the Elizabeth River and its Eastern Branch will be regulated by the Coast Guard Patrol Commander under 33 CFR 100.501. Generally, commercial vessels will be allowed to pass through the bridge between scheduled events, except at times of peak traffic flows. Since the economic impact of this proposal is expected to be so minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. However, the authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499, 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.1007 is amended by adding paragraph (c) to read as follows:

§ 117.1007 Elizabeth River—Eastern Branch

* * * * *

(c) The draw of the Berkley bridge, mile 0.4 at Norfolk, may not open during or within one hour of an event regulated under § 100.501 of this title unless directed to do so by the Patrol Commander designated under § 100.501.

Dated: March 22, 1988.

A.D. Breed,

Rear Admiral, U. S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 88–7660 Filed 4–6–88; 8:45 am]

BILLING CODE 4910–14–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 201–33

Reutilization of Excess and Exchange/Sale Automatic Data Processing Equipment With an Original Acquisition Cost Below $1,000,000

AGENCY: Information Resources Management Service, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This regulation delegates to Federal agencies authority and responsibility for the screening of excess and exchange/sale automatic data processing equipment (ADPE) with an original acquisition cost (OAC) below $1,000,000 on a component basis. A recent analysis of the ADPE reported to GSA for interagency reuse during the last two years revealed that there is a minimal amount of savings to be realized for the reuse of ADPE with an OAC under $1,000,000. Additionally, these savings are further reduced when the costs of nationwide interagency screening are considered. Since all ADPE under $1,000,000 OAC will be screened by the agencies, excess auxiliary or accessorial ADPE with an OAC of $1,500 or less will no longer be reported to the Federal Supply Service (FSS) for interagency screening. Additionally the regulation implements the standard reports numbering system that is essential to electronic reporting.

DATE: Comments are due May 9, 1988.

ADDRESS: Comments should be submitted to the General Services Administration (Project No. 88–05A) Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Phillip R. Patton, Regulations Branch, (KMPR), Office of Information Resources Management Policy, (202) 566–0194, or FTS 566–0194. The full text of the proposed rule is available upon telephone request.

SUPPLEMENTARY INFORMATION: (1) The purpose of this amendment is to simplify and streamline the reuse and disposal of excess and exchange/sale ADPE.

(2) Explanation of the changes being made by this issuance are shown below:

In Part 201–33, the following changes will be made.

(a) Wherever the old address, "General Services Administration (KHE), Washington, DC 20405," appears in the part, it will be replaced with the current address, "General Services Administration (WKHE), 4040 North Fairfax Drive, Suite 900, Arlington, VA 22203."

(b) Paragraph (b) of § 201–33.001 will be amended by removing the provision that provides for the separate reporting of auxiliary and accessorial ADPE with an original acquisition cost (OAC) of $1,500 or less. Since all ADPE with an OAC under $1,000,000 will be screened for reuse by agencies and it is not readily apparent what is auxiliary and accessorial ADPE, separate reporting is no longer efficient and effective and will be discontinued.

(c) Section 201–33.002 will be amended by adding a provision requiring agencies to implement screening procedures for excess and exchange/sale ADPE with an original acquisition cost (OAC) under $1,000,000 on a component basis.

(d) Section 201–33.003 will be amended by removing the reference to excess auxiliary and accessorial ADPE with an OAC of $1,500 or less. It will also provide that the availability of ADPE with an OAC under $1,000,000 shall be determined by following agency procedures.

(e) Section 201–33.003–2 will be amended and revised to provide that the availability of ADPE for reuse with an OAC below $1,000,000 shall be determined by following agency procedures. Reference to a sole source finding and determination will also be removed.

(f) Section 201–33.006 will be amended by adding a provision to provide that the holding agency and the requesting agency shall deal directly with each other for the reuse of ADPE with an OAC below $1,000,000. Specifically the SF 122 for transfer of excess and exchange/sale ADPE shall be submitted directly from the requesting agency to the holding agency for transfer approval. It will also remove the reference to excess auxiliary and accessorial ADPE with an OAC of $1,500 or less.

(g) Section 201–33.008 will be recaptioned and revised to require agencies to report ADPE to the Federal Supply Service for surplus disposition in accordance with Subchapter H of the FPMR. The section will continue to require agencies to hold ADPE pending disposition.

(h) Section 201–33.011 will be revised to remove the reference to excess

auxiliary and accessorial ADPE with an OAC of $1,500 or less. It will also establish the new standard reports numbering system that shall be followed in the submission of SF 120s.

(3) The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. GSA actions are based on adequate information concerning the need for, and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Governmentwide regulation that will have little or no net cost effect on society. It is therefore certified this rule will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 41 CFR Part 201–33

Computer technology, Government property management, Information resources activities.

Dated: January 21, 1988.

Fred L. Sims,

Acting Deputy Commissioner for Federal Information Resources Management.

[FR Doc. 88–7610 Filed 4–6–88; 8:45 am]

BILLING CODE 6820–BR–M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1505 and 1506

[FRL–3356–9]

Acquisition Regulation Concerning Expert Services

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This document proposes a rule change regarding the Environmental Protection Agency's (EPA) procurement procedures when contracting for expert services. The Superfund Amendments and Reauthorization Act of 1986 authorizes the use of other than competitive procedures in acquiring the services of experts. The expert services would be used in preparing or prosecuting a civil or criminal action under the Act. The intended effect of this proposed rule is to implement the provisions of the Act by an amendment to the EPA Acquisition Regulation.

DATES: Comments must be submitted on or before May 9, 1988.

FOR FURTHER INFORMATION CONTACT: Grafton Young, Environmental Protection Agency, Procurement and Contracts Management Division (PM–214F), 410 M Street, SW., Washington, DC 20460, Telephone 202/475-7204.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Regulation (FAR) Subpart 6.1 requires full and open competition, with certain limited exceptions, in soliciting offers and awarding Government contracts.

The Superfund Amendments and Reauthorization Act of 1986 (SARA) section 109(e) authorizes the use of other than competitive procedures, i.e. other than full and open competition, in procuring the services of experts for use in preparing or prosecuting a civil or criminal action under SARA. Section 109(e) reads as follows:

(e) PROCUREMENT PROCEDURES—Notwithstanding any other provision of law, any executive agency may use competitive procedures or procedures other than competitive procedures to procure the services of experts for use in preparing or prosecuting a civil or criminal action under this Act, whether or not the expert is expected to testify at trial. The executive agency need not provide any written justification for the use of procedures other than competitive procedures when procuring such expert services under this Act and need not furnish for publication in the Commerce Business Daily or otherwise any notice of solicitation or synopsis with respect to such procurement.

The purpose of this proposed rule is to recognize the provisions of SARA and provide procedures to be employed when the SARA exception for other than full and open competition applies.

B. Executive Order 12291

OMB Bulletin No. 85–7, dated December 14, 1984, establishes the requirements for OMB review of agency procurement regulations. This regulation does not fall within any of the categories cited in the Bulletin requiring OMB review.

C. Regulatory Flexibility Act

The EPA certifies that this rule does not have a significant impact on a substantial number of small entities. The rule permits the EPA to use other than full and open competition in acquiring the services of experts in preparing or prosecuting a civil or criminal action under the authority of the Superfund Amendments and Reauthorization Act of 1986 (SARA). The method of contracting for such services must necessarily be the same for both small and large entities.

List of Subjects in 48 CFR Parts 1505 and 1506

Government procurement, Publicizing contract actions, Competition requirements.

For the reasons set out in the preamble, Chapter 15 of Title 48, Code of Federal Regulations is proposed to be amended as set forth below:

The authority citation for 48 CFR Parts 1505 and 1506 continues to read as follows:

Authority: Section 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

PART 1505—[AMENDED]

1. Section 1505.202 is revised to read as follows:

1505.202 Exceptions.

(a) The contracting officer need not submit the notice required by FAR 5.201 when the contracting officer determines in writing that the contract is for the services of experts for use in preparing or prosecuting a civil or criminal action under the Superfund Amendments and Reauthorization Act of 1986.

(b) The Head of the Contracting Activity (HCA) is delegated the authority to make the written determination in FAR 5.202(b).

PART 1506—[AMENDED]

2. Subpart 1506.3 is amended by adding section 1506.302–5 to read as follows:

1506.302–5 Authorized or required by statute.

(a) *Authority.* Section 109(e) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) is cited as authority.

(b) *Application.* (1) The contracting officer may use other than full and open competition to acquire the services of experts for use in preparing or prosecuting a civil or criminal action under SARA whether or not the expert is expected to testify at trial. The contracting officer need not prepare the written justification under FAR 6.303 when acquiring expert services under the authority of section 109(e) of SARA. The contracting officer shall document the official contract file when using this authority.

(2) The contracting officer shall give notice to the Agency's Competition Advocate whenever a contract award is made using other than full and open competition under this authority. The notice shall contain a copy of the contract and the summary of negotiations.

Date: March 16, 1988.

John C. Chamberlin,

Director, Office of Administration.

[FR Doc. 88-7638 Filed 4-6-88; 8:45 am]

BILLING CODE 6560-50-M

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 840

Rules Pertaining to Notification of Railroad Accidents; Proposed Amendment

AGENCY: National Transportation Safety Board.

ACTION: Proposed rule.

SUMMARY: The purpose of the proposed rule is to amend § 840.3 by reducing the time limit for notification of accidents to 4 hours in those instances where a report is required to be made based on a property damage estimate and to 2 hours for all other required reports. This rule would afford Board personnel access to the accident site before initiation of clean-up efforts.

DATES: Interested parties are invited to submit written comments on or before June 6, 1988.

ADDRESSES: Comments should be sent in triplicate to the General Counsel, National Transportation Safety Board, 800 Independence Avenue SW., Washington, DC 20594. Late filed comments will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Mr. William G. Zielinski, Chief, Railroad Accident Division, 800 Independence Avenue SW., Washington, DC 20594 ((202) 382-6840).

SUPPLEMENTARY INFORMATION: Currently, § 840.3(a) requires notification to the National Transportation Safety Board of certain railroad and rail rapid accidents at the earliest practical time, but in no event later than 6 hours after their occurrence. In order to provide a convenient mechanism for complying with this rule, a toll-free telephone number ((800) 424-0201) is maintained, as prescribed by § 840.3(c), to accept such accident reports. Notwithstanding the 6-hour time limit which has been in effect since 1980, as well as the availability of telephonic reporting, it appears that there are still numerous instances where, for a variety of reasons, reports required to be made pursuant to § 840.3(a) have not been made in a sufficiently expeditious manner to afford Board personnel access to the accident site before the initiation of clean-up efforts. In order to remedy this situation, the Board proposes to amend § 840.3 to require notification within 2 hours after the occurrence of an accident, except in those cases requiring a preliminary monetary estimate of damages. In the latter instances, a 4-hour limit would be placed on the notification time.

Section 840.3(a)(3) presently requires notification of all railroad accidents involving evacuation of a passenger train or at least $25,000 damage thereto. In order to clarify the distinction between the proposed general reporting time limit of 2 hours and the 4-hour limit which would be applicable for accident reports based solely on property damage estimates, the evacuation reporting criterion has been removed from subparagraph (3) and placed in a new subparagraph (4). Previous subparagraphs (4) and (5) have consequently been renumbered as subparagraphs (5) and (6).

Additionally, although virtually all railroad trains and facilities are at present equipped for radio communication, the Board recognizes that in certain extraordinary circumstances, communication from the site of an accident immediately after its occurrence may be problematical. This could be the case in accidents occurring in remote areas where radio transmission is ineffective. In such instances the reporting time limits prescribed in section 840.3(a) would be computed from the time railroad personnel, other than those at the accident site at the time of its occurrence, have received notice thereof. This provision is contained in paragraph (d) of the proposed revised regulation.

Under the criteria of the Regulatory Flexibility Act, this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because the rule will only require somewhat more expeditious reporting but will not result in any increase in the number of incidents for which notification must be made, and the costs of complying with the rule will not be substantial.

List of Subjects in 49 CFR Part 840

Administrative practice and procedure, Investigations, Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

PART 840—[AMENDED]

Accordingly, the National Transportation Safety Board proposes to amend Part 840, Chapter VIII, Title 49, Code of Federal Regulations as follows:

1. The authority citation for Part 840 continues to read as follows:

Authority: Sec. 304(a)(1)(C), Independent Safety Board Act of 1984, as amended (49 U.S.C. 1903).

2. Section 840.3 is amended by revising paragraph (a) and adding new paragraph (d) to read as follows:

§ 840.3 Notification of railroad accidents.

(a) A railroad shall notify the Board in a manner prescribed by paragraph (c) of this section at the earliest practicable time after the occurrence of an accident which results in:

(1) A passenger or employee fatality or serious injury to two or more crewmembers or passengers requiring admission to a hospital; or

(2) Damage (based on a preliminary gross estimate) of $150,000 or more for repairs, or the current replacement cost, to railroad and nonrailroad property; or

(3) Damage of $25,000 or more to a passenger train and nonrailroad property; or

(4) The evacuation of a passenger train; or

(5) Damage to a tank car or container resulting in release of hazardous materials or involving evacuation of the general public; or

(6) A fatality at a grade crossing.

Except as provided in paragraph (d) of this section, the notification required by this paragraph shall be made no later than 2 hours after an accident described in paragraphs (a)(1),(4),(5), and (6) of this section or 4 hours after an accident described in paragraphs (a)(2) and (3) of this section.

* * * * *

(d) Where an accident for which notification is required by paragraph (a) of this section occurs in a remote area, the time limits set forth in that paragraph shall commence from the time the first railroad employee who was not at the accident site at the time of its occurrence has received notice thereof.

Signed at Washington, DC on March 31, 1988.

Jim Burnett, Jr.,

Chairman.

[FR Doc. 88-7615 Filed 4-6-88; 8:45 am]

BILLING CODE 7533-01-M

Notices

Federal Register
Vol. 53, No. 67
Thursday, April 7, 1988

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

Forms Under Review by Office of Management and Budget

April 1, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the folllowing information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Revision

• Agricultural Stabilization and Conservation Service
Payer's Request for Identifying Number
On occasion
Individuals or households; 3,000 responses; 250 hours; not applicable under 3504(h)
Karl V. Choice (202) 447-8782

• Farmers Home Administration
7 CFR 1951–E, Servicing of Community Programs Loans and Grants
451–33
On occasion
State or local governments; Non-profit institutions; 446 responses; 248 hours; not applicable under 3504(h)
Jack Holston (202) 382-9736

Reinstatement

• Food and Nutrition Service
Sponsor Application for Participation and Site Information
Form FNS 81; Form FNS 81–1
Annually
State or local governments; Federal agencies or employees; Non-profit institutions; 18,910 responses; 62,970 hours; not applicable under 3504(h)
Albert V. Perna (703) 756-3600

New

• Farmers Home Administration
7 CFR 1920–C, Supervised Bank Accounts
FmHA 1902–7
Businesses or other for-profit; Small businesses or organizations; 50 responses; 63 hours; not applicable under 3504(h)
Jack Holston (202) 382-9736

Donald E. Hulcher,
Acting Departmental Clearance Officer.

[FR Doc. 88–7623 Filed 4–6–88; 8:45 am]
BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket No. 87–189]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit To Field Test Genetically Engineered Herbicide Tolerant Tomato Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that an environmental assessment and finding of no significant impact has been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to E.I. du Pont de Nemours & Co., Inc., to allow the field testing of genetically engineered tomato plants, designed to be tolerant to sulfonylurea herbicides. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tomato plants does not present a risk of plant pest introduction or dissemenation and also will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 406, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Quentin B. Kubicek, Staff Biotechnologist, Biological Assessment and Support Staff, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 625A, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–5055. For copies of the environmental assessment call Ms. Mary Petrie at Area Code (301) 436–7472, or write her at this same address. The environmental assessment should be requested under accession number 87–331–01.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1987, the Animal and Plant Health Inspection Service (APHIS) published a final rule in the **Federal Register** (52 FR 22899–22915) which established a new Part 340 in Title 7 of the Code of Federal Regulations (7 CFR 340) entitled, "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" (hereinafter "the rule"). The rule regulates the

introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products which are plant pests or which there is reason to believe are plant pests (regulated articles). The rule sets forth procedures for obtaining a permit for the release into the environment of a regulated article and for obtaining limited permits for the importation or interstate movment of a regulated article. A permit must be obtained before a regulated article can be introduced in the United States.

APHIS has stated that it would prepare environmental assessments and, where necessary, environmental impact statements prior to issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

E.I. du Pont de Nemours & Co., Inc., of Wilmington, Delaware, has submitted an application for a permit for release into the environment of genetically engineered tomato plants that are designed to be toerant to sulfonylurea herbicides. In the course of reviewing the permit application, APHIS assessed the impact to the environment of releasing the tomato plants under the conditions described in the E.I. du Pont de Nemours & Co., Inc., application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will also not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact which is based on data submitted by E.I. du Pont de Nemours & Co., Inc., as well as a review of other relevant literature, provides the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene for herbicide tolerance has been inserted into a tomato chromosome. In nature, genetic material contained in a chromosome can only be transferred to other sexually compatible plants by cross-pollination. In this field test the introduced gene cannot spread to any other sexually compatible plant by cross-pollination, because the field test plot is located a sufficient distance from any sexually compatible plant with which these experimental tomato plants could cross-pollinate.

2. Neither the herbicide tolerance gene itself, nor its gene product, confers on the tomato plants any plant pest characteristic. Traits such as weediness are polygenic and cannot be conferred by adding a single herbicide tolerance gene. These experimental tomato plants remain sensitive to a wide range of other herbicides which could be used to kill these plants.

3. The tobacco cultivar from which the herbicide tolerance gene was obtained is not a plant pest.

4. The herbicide tolerance gene does not provide the transformed tomato plants with any measurable selective advantage over nontransformed tomato plants in its ability to be disseminated or to become established in the environment.

5. The vector used to transfer the herbicide tolerance gene to tomato plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a plasmid with known plant pathogenic potential, has been disarmed; that is, genes that are necessary for tumorogenicity have been removed from the vector. The vector has been tested and shown to be not pathogenic to susceptible plants.

6. The vector agent, the phytopathogenic baterium which was used to deliver the vector DNA with the herbicide tolerance gene into the tomato cells, has been shown to be killed and no longer associated with the regenerated transformed tomato plants.

7. Horizontal movement of the introduced gene is not possible. The vector acts by delivering and inserting the gene into the tomato genome (i.e., Chromosomal DNA). The vector does not survive in or on a transformed plant. No mechanism is known to exist in nature to move an inserted gene from the chromosome of a transformed plant to any other organism.

8. Sulfonylurea herbicides are a new class of herbicides noted for their high herbicidal activity at very low use rates, excellent crop selectivity, and low mammalian toxicity.

9. The size of the enclosed field test trial plot is small (50 feet wide by 72 feet long). The plot has good physical security. Physical isolation will be ensured and incursion by large animals and humans will be prevented by a chain-link fence on three sides of the farm and the Bradenton River on the fourth side. Security guards are also on site.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331*et seq.*); (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR Part 1b); and (4) APHIS guidelines implementing NEPA (44 FR 50381–50384 and 44 FR 51272–71274).

Done at Washington, DC, this 4th day of April, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–7614 Filed 4–6–88; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Black Diamond Mine Project, Angeles National Forest, Los Angeles County, CA; Availability of Draft Environmental Impact Statement

The Department of Agriculture, Forest Service, Angeles National Forest has prepared a Draft Environmental Impact Report for the Black Diamond Mine, which would permit the establishment of a mining operation, in the Sand Canyon Area, approximately 45 miles north of the city of Los Angeles, CA.

United General's plan of operation was submitted pursuant to Forest Service locatable mineral regulations 36 CFR Part 228, Subpart A.

The Environmental Impact Statement considered five (5) alternatives for the project, including a benchmark of "No Action", for analysis.

Government Agencies and the public who may be interested in or affected by the proposal are invited to participate in a public meeting:

Date: May 24, 1988.

Time and Location: 7–10 p.m. Sulphur Springs School, 16628 W. Lost Canyon Rd., Canyon Country, CA 91351.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

The Draft Environmental Impact Statement will be available at the following locations:

Supervisors Office, Angeles National Forest, 701 N. Santa Anita Ave., Arcadia, CA 91006.

Tujunga Ranger District Office, 12371 N. Little Tujunga Canyon Road, San Fernando, CA 91342.

Questions concerning the proposed action or the Draft Environmental Impact Statement should be directed to Richard Borden, Special Projects Coordinator, Angeles National Forest, telephone (818) 574-5255.

Written comments or input to the Draft Environmental Impact Report should be sent to the Forest Supervisor,

Angeles National Forest, Supervisor's Office, 701 N. Santa Anita Ave., Arcadia, CA 91006.George A. Roby, Forest Supervisor, Angeles National Forest, Arcadia, CA is the responsible official.

George A. Roby,

Forest Supervisor.

Date: March 25, 1988.

[FR Doc. 88-7624 Filed 4-6-88; 8:45 am]

BILLING CODE 3410-11-M

Threemile Timber Sale, Colville National Forest, WA; Cancellation of Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of Environmental Impact Statement cancellation.

SUMMARY: The Department of Agriculture, Forest Service, has withdrawn its intent to prepare an environmental impact statement (EIS) for the Threemile Timber Sale on the Sullivan Lake Ranger District of the Colville National Forest. As a result of on going planning and environmental analyses for the Forest Land and Resource Management Plan, it was determined that the issues and concerns raised for the Threemile Timber Sale would be more appropriately considered and addressed in the Environmental Impact Statement for the Colville National Forest Land and Resource Management Plan.

The Notice of Intent, published in the **Federal Register** of September 27, 1985, is hereby rescinded (50 FR 39156).

FOR FURTHER INFORMATION CONTACT: Kim Asman, Sale Planner, Sullivan Lake Ranger District, Metaline Falls, Washington 99153 (telephone (509) 446-2681).

Date: March 17, 1988.

Edward L. Shultz,

Forest Supervisor.

[FR Doc. 88-7590 Filed 4-6-88; 8:45 am]

BILLING CODE 3410-11-M

Leola-Sullivan Timber Sale, Metaline Falls, WA; Cancellation of Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of Environmental Impact Statement cancellation.

SUMMARY: The Department of Agriculture, Forest Service, has withdrawn its intent to prepare an environmental impact statement (EIS) for the Leon-Sullivan Timber Sale on the Sullivan Lake Ranger District of the Colville National Forest. As a result of on going planning and environmental analyses for the Forest Land and Resource Management Plan, it was determined that the issues and concerns raised for the Leola-Sullivan Timber Sale would be more appropriately considered and addressed in the Environmental Impact Statement for the Colville National Forest Land and Resource Management Plan.

The Notice of Intent, published in the **Federal Register** of September 27, 1985, is hereby rescinded (50 FR 39156).

FOR FURTHER INFORMATION CONTACT: Kim Asman, Sale Planner, Sullivan Lake Ranger District, Metaline Falls, Washington 99153 (telephone (509) 446-2681).

Date: March 17, 1988.

Edward L. Schultz,

Forest Supervisor.

[FR Doc. 88-7591 Filed 4-6-88; 8:45 am]

BILLING CODE 3410-11-M

Cuddy Mountain Roadless Area, Payette National Forest, ID; Intent to Prepare Environmental Impact Statement

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 proposed development within the Cuddy Mountain Roadless area which is within the Weiser and Council Ranger Districts, Payette National Forest, Adams County, Idaho. Development is the established direction in the preferred alternative of the Payette Forest Plan. Development alternatives were reviewed by the public earlier in the Payette Draft Forest Plan.

A range of alternatives for this area will be considered. One of these will be nondevelopment of the site. Other alternatives will consider development designs for timber production, wildlife and fishery habitat activities, and recreation opportunities.

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

1. Identification of 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. Determination of potential cooperating agencies and assignment of responsibilities.

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

Philip Jahn, Council District Ranger, and Harold Laird, Weiser District Ranger, are the responsible officials.

The anlaysis is expected to take about seven months. The draft environmental impact statement is expected to be filed with the Environmental Protection Agency and to be available for review by June, 1988. 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 will be 45 days from the date the EPA notice of availability appears in the **Federal Register.** The final environmental impact statement is scheduled to be completed by September, 1988.

DATE: Written comments and suggestions concerning the cope of the analysis should be sent to Veto J. LaSalle, Forest Supervisor, Payette National Forest, P.O. Box 1026, McCall, ID 83638, by May 1, 1988

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Phil Gilman, Branch Chief Planning, Programing, and Information, Payette National Forest, phone 208-634-8151.

Date: March 30, 1988.

Phil Gilman,

Branch Chief, Planning, Program, and Information.

[FR Doc. 88-7589 Filed 4-6-88; 8:45 am]

BILLING CODE 3410-11-M

Transfer of Administrative Jurisdiction; Libby Dam and Lake Koocanusa, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of joint interchange of lands.

SUMMARY: On November 23, 1987, and July 22, 1987, the Secretary of the Army and the Secretary of Agriculture respectively signed a joint interchange order agreeing to the transfer of administrative jurisdiction of 219.82 acres, more or less, from the Department of Agriculture to the Department of the Army and 3,062.08 acres of fee lands, more or less, and 20.10 acres, more or

less, of easement from the Department of the Army to the Department of Agriculture within the exterior boundaries of the Kootenai National Forest, Montana. The 45-day Congressional oversight requirement of the Act of July 26, 1956 (70 Stat. 656, 16 U.S.C 505a, 505b) has been met. A copy of the Joint Order, as signed, appears at the end of this notice.

EFFECTIVE DATE: The order is effective April 6, 1988.

FOR FURTHER INFORMATION CONTACT: Kenneth Johnson, Lands Staff, Room 1010–RP–E, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, Telephone: (703) 235–2406

March 29, 1988.

George M. Leonard,

Associate Chief.

Department of Defense, Department of the Army

[Interchange Order No. 4]

Libby Dam and Lake Koocanusa Project, Montana; Kootenai River; Joint Order Interchanging Administrative Jurisdiction of Department of the Army Lands and National Forest Lands

By virtue of the authority vested in the Secretary of the Army and the Secretary of Agriculture by the Act of July 26, 1956 (70 Stat. 656; 16 U.S.C. 505a, 505b), it is ordered as follows:

(1) The lands under the jurisdiction of the Department of the Army, described in Exhibit A, attached hereto and made a part hereof, are hereby transferred from the jurisdiction of the Secretary of the Army to the jurisdiction of the Secretary of Agriculture. Subject, however, to interest outstanding in third parties; and to continued use by the Corps of Engineers as necessary for the protection and unrestricted operation, maintenance, and administration of the water storage, electrical power generation, and floor control facilities, and functions of the Libby Dam and Lake Koocanusa Project.

(2) The obligation to grant a no-cost right of way easement for relocated State Highway No. 37 across land tranferred to the Secretary of Agriculture is hereby assumed by the Department of Agriculture.

(3) The National Forest lands described in Exhibit B, attached hereto and made a part hereof, which are a part of the Kootenai National Forest, Montana, are hereby transferred from the jurisdiction of the Secretary of Agriculture to the jurisdiction of the Secretary of the Army, subject to interests outstanding in third parties and such rights of access as are mutually determined to be necessary for National Forest purposes.

(4) Pursuant to section 2 of the aforementioned Act of July 26, 1956, the National Forest lands transferred to the Secretary of the Army by this order are hreinafter subject only to laws applicable to Department of the Army lands comprising the Libby Dam and Lake Koocanusa Project. Department of the Army lands transferred to the Secretary of Agriculture by this order are hereinafter subject to the laws applicable to the lands acquired under the Act of March 1, 1911 (36 Stat. 961), as amended.

This order will be effective as of date of publication in the **Federal Register.**

John O. Marsh, Jr.,

Secretary of the Army.

Date: November 23, 1987.

Richard E. Lyng,

Secretary of Agriculture.

Date: July 22, 1987.

Exhibit A—Lands Transferred from the Secretary of the Army to the Secretary of Agriculture

Those lands under the jurisdiction of the Department of the Army, for or in connection with the Libby Dam and Lake Koocanusa Project, Lincoln County, Montana, being more particularly described as follows:

All, or portions thereof, of the following tracts as shown on the indicated map segments.

LIBBY INTERCHANGE NO. 4

Segment No.	Dated	Tract No.	Acreage
1	15 Mar. 1977	101 (part)	26.23
2	do	200 (part)	23.51
		201 (part)	29.32
		Subtotal	52.83
3	do	302 (part)	24.65
4	8 Mar. 1977	405	12.30
5	do	505	136.38
7	do	706	7.38
		707	15.94
		Subtotal	23.32
8	do	808	10.02
9	15 Mar. 1977	917	19.11
11	8 Mar. 1977	1107	8.49
12	do	1201–1	469.76
		1202–2	4.18
		1209	46.26
		Subtotal	520.20
13	do	1307	36.36
		1308–2	4.82
		1310	4.67
		1311	3.58
		1312–1	1.02
		1312–2	0.29
		Subtotal	50.74
14	do	1403	16.07

LIBBY INTERCHANGE NO. 4—Continued

Segment No.	Dated	Tract No.	Acreage
15	....do	1504	32.26
16	....do	1603	47.00
'7	....do	1703	13.45
		1704-2	6.43
		1704-3	5.14
		1705	7.58
		1707 (part—see seg. 18)	4.20
		Subtotal	36.80
18	....do	1707 (remaidner—see seg. 17)	1.54
		1807	40.66
		1807-C-1	0.01
		1807-C-2	0.01
		1808	1.93
		Subtotal	44.15
20	....do	2004	12.30
		2005	12.17
		Subtotal	24.47
21	....do	2103	9.00
		2104	11.65
		Subtotal	20.65
22	....do	2203	30.79
23	....do	2304	25.36
24	....do	2404	18.37
		2406	22.18
		Subtotal	40.55
25	....do	2503	1.86
27	....do	2704	22.62
29	15 Mar. 1977	2907	15.42
30	8 Mar. 1977	3000	19.48
		3001	216.85
		3006	5.39
		Subtotal	241.72
31	15 Mar. 1977	3101-1	30.33
		3101-2	2.90
		3101C	0.01
		3105	5.50
		3132	68.81
		Subtotal	107.55
34	8 Mar. 1977	3409	45.00
		3411-1	0.72
		3411-2 (part—see seg. 36)	1.53
		3414	0.50
		Subtotal	47.75
35	....do	3500	72.97
		3511	18.19
		Subtotal	91.16
36	....do	3411-2 (remainder—see seg. 34)	0.40
		3620	58.31
		Subtotal	58.71
37	....do	3604-2 (part)	4.91
		3704 (part)	9.41
		3707	13.58
		Subtotal	27.90
38	....do	3506 (part—see segs. 39&56)	268.59
		3802 (part)	77.50
		3805	33.78
		3807	0.54
		3808	0.74
		3809	0.40

LIBBY INTERCHANGE NO. 4—Continued

Segment No.	Dated	Tract No.	Acreage
		3810	0.11
		Subtotal	381.66
39	do	3506 (part—see segs. 38&56)	88.69
		3900C	0.01
		3902-1	57.48
		3902-2 (part)	67.66
		3903 (part)	57.30
		3906	3.02
		3913	23.15
		Subtotal	297.31
51	do	5100 (part)	3.09
52	do	5201-2	0.92
		5202 (part)	3.35
		5203-2	5.74
		5207	0.01
		Subtotal	10.02
53	do	5305 (part)	3.19
		5306 (part)	1.56
		Subtotal	4.75
54	do	5403-1 (part)	0.78
55	do	5500-2 (part)	0.54
		5501-3 (part)	0.85
		Subtotal	1.39
56	do	3506 (part—see segs. 38&39)	81.15
		3901-2 (part)	222.97
		5600	140.00
		5601-1	20.00
		5604C-1	0.01
		5604C-2	0.01
		5606 (part)	16.25
		5608	1.17
		Subtotal	481.56
58	do	5802	64.46
		Total *FEE* acreage this interchange	3,062.08
38	do	3811E	3.39
40	do	4005E	1.06
42	do	4202E-1	0.69
43	do	4304E	0.46
44	do	4401E	1.68
45	do	4508E	0.59
46	do	4600E-7	1.41
		4604E	0.66
		Subtotal	2.07
47	do	4702E	0.87
48	do	4802E	1.08
49	do	4902E	4.30
		4902-1	0.52
		4902E-2	0.72
		Subtotal	5.54
52	do	5202E-5	0.03
		5202E-6	0.03
		5208E	0.74
		5209E	0.05
		Subtotal	0.85
53	do	5312E	0.86
55	do	5504E	0.96
		Total *Easement* acreage this interchange	20.10
52	5205L	0.00	

All lands transferred herein consist of 3,082.18 acres, more or less.

Real estate segment maps depicting the location of the transferred tracts and legal descriptions are on file in the Office of the District Engineer, U.S. Army, Corps of Engineers, Seattle, Washington, and the Office of the Forest Supervisor, Kootenai National Forest, Libby, Montana.

Exhibit B—Land Transferred From The Secretary of Agriculture To The Secretary of The Army

Those lands under the jurisdiction of the Secretary of Agriculture, which are a part of the Kootenai National Forest, Montana, being more particularly described as follows:

That portion of the south half of the southwest quarter (S½†SW¼) lying westerly of the westerly margin of the right-of-way for Montana State Highway No. 37 and Government Lot 5, Section 4, Township 30 North, Range 29 West, Principal Meridian Montana; identified as Tract A, as shown on Segment 2 (dated 15 March 1977).

Contains 69.03 acres, more or less.

That portion of the east half of the east half of the southeast quarter (E½†E½†SE¼) lying easterly of the easterly margin of the right-of-way for the Forest Development Road No. 92–7 in Section 32, Township 31 North, Range 29 West, Principal Meridian Montana; identified as Tract A, as shown on Segment 2 (dated 15 March 1977).

Contains 1.29 acres, more or less.

Government Lots 6 and 8, the northwest quarter of the southwest quarter (NW¼†SW¼), the north half of the north half of the northeast quarter of the southwest quarter (N½†N½†NE¼†SW¼), the southeast quarter of the northeast quarter of the northeast quarter of the southwest quarter (SE¼†NE¼†NE¼†SW¼), the east half of the east half of the southeast quarter of the northeast quarter of the southwest quarter (E½†E½†SE¼†NE½†SW¼) and the south 800 feet of the east 700 feet of Government Lot 7, all in Section 28, Township 31 North, Range 29 West, Principal Meridian Montana; identified as Tract A, as shown on Segment 3 (dated 15 March 1977).

Excepting Therefrom all those lands lying westerly and northerly of the easterly and southerly margin of the right-of-way for the Forest Development Road No. 92–7 in said Section 28.

Contains 75.66 acres, more or less.

Government Lots 5 and 9, the northeast quarter of the southeast quarter (NE¼†SE¼) in Section 28, Township 31 North, Range 29 West, Principal Meridian Montana; identified as a part of Tract 300, as shown on Segment 3 (dated 15 March 1977).

Excepting Therefrom the Burlington Northern Railroad Company right-of-way.

Contains 73.84 acres, more or less.

All the lands transferred herein consist of 219.82 acres, more or less.

Real estate segment maps depicting the location of the transferred tracts and legal descriptions are on file in the Office of the District Engineer, U.S. Army, Corps of Engineers, Seattle, Washington, and the Office of the Forest Supervisor, Kootenai National Forest, Libby, Montana.

[FR Doc. 88–7506 Filed 4–6–88; 8:45 am]
BILLING CODE 3410–11–M

Base Indexes for 9 Timber Species

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to adjust indexes; request for comments.

SUMMARY: The Forest Service hereby gives notice of its intent to adjust lumber base price indexes for certain species of western timber. The need for adjustment arises from proposed modifications to index logs released by the Western Wood Products Association. Comment is invited on the proposed base index adjustments which the Agency plans to implement in July 1988.

DATE: Comments must be received in writing by April 30, 1988.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (2420), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090. The public may inspect comments on this proposal in the Office of the Director of the Timber Management Staff, Room 3205, South Building, 12th and Independence Avenue, SW., Washington, DC between the hours of 8:30 a.m. and 4:30 p.m. local time.

FOR FURTHER INFORMATION CONTACT: Jim Pharo, Timber Management Staff, (202) 475–3756.

SUPPLEMENTARY INFORMATION: Each month Western Wood Products Association (WWPA) calculates and publishes lumber price indexes for eight Western Inland and two Pacific Northwest Coast species or species combinations. These indexes, total dollars received for timber products divided by total volume sold by timber species and grade, provide average monthly estimates of sawtimber value according to industry manufacturing practice. Manufacturing practice is reflected through periodic survey of industry sale reports. These reports are used to develop average grade recovery components whose sums are commonly known as "index logs."

As industry production practices change, index logs reflecting that practice also must change. The WWPA monitors index logs by comparing monthly receipts with monthly lumber price indexes. The Forest Service audits WWPA lumber price index procedures to ensure they properly reflect market end product and timber selling prices. Lumber price indexes are used by Government agencies to appraise public timber offered for sale and to adjust prices billed for timber already under contract. Such sales are called "escalated sales." Index log changes require base index adjustments in escalated sales.

This proposal makes public an intent to adjust base indexes for nine species effective July 1, 1988. The basis for these adjustments are recent WWPA grade recovery studies and proposals to change index logs.

The Western Wood Products Association proposes to replace current index logs for Pacific Northwest Douglas Fir and Hem-Fir, Coast Inland North Ponderosa Pine, Rocky Mountain Ponderosa Pine, Idaho White Pine, Sugar Pine, White Fir, Inland Dry Douglas Fir—Larch, and White Woods with new indexes based upon a 1985–1986 product recovery study. When index logs change, new escalated sales are subject to the new base index. However, escalated sales already under contract must have their base indexes adjusted to reflect the new index log. A 24-month transition period for base index adjustments is used as follows. The new 24-month index is subtracted from the old 24-month index. This difference plus the old contract base index is the adjusted base index for escalated sales already under contract.

Tables at the end of this notice provide a review of proposed changes. Table I presents old and new grade recovery, their averages, and differences for the 30-month period from January 1985 through June 1987. Table III displays the base index adjustment factor process that the Forest Service proposes to use.

There may be minor changes to the adjustment factors over the next few

months. These changes, due to grade recovery or transition period changes, will be covered in a final notice prior to implementation. The final notice will consider and address written comments received in the **Federal Register.**

Date: March 28, 1988.

George M. Leonard,

Associate Chief, Forest Service.

Table I—Grade Recovery Comparisons

[Prepared by Western Wood Products Association]

PACIFIC NORTHWEST COAST DOUGLAS FIR INDEX LOGS

Grade Components	Grade Component Percents		
	Old 1978–79	New 1985–86	New–Old Difference
C Select: One inch & Thkr B&Btr, B, C & C&Btr Select	4.88	2.23	−2.65
D Select: One inch & Thkr D&Btr, D, Mldg & Mldg&Btr	3.32	2.14	−1.18
Shop: One Inch and Thkr Shop (inc. Factory, Nos. 1, 2, and 3 Shop)	1.71	1.00	−.71
Common Boards:			
Std & Btr	.80	.58	−.22
Utility & Btr (inc. Utility)	1.40	.66	−.74
Two Inch Dimension:			
No. 1 & Btr (inc. Select Str & No. 1)	8.76	10.53	+1.77
No. 2 & Btr (inc. No. 2)	25.79	33.95	+8.16
Std & Btr (inc. Const & Btr, Const & Std)	9.20	12.28	+3.08
Utility & No. 3	8.37	6.63	−1.74
Studs: All (except economy)	11.03	12.33	+1.30
Three and Four Inch Dimension:			
No. 1 & Btr (inc. Select Str & No. 1)	2.40	2.01	−.39
No. 2 & Btr (inc. No. 2)	5.34	4.20	−1.14
Std & Btr (inc. Const & Btr, Const & Std)	1.93	1.32	−.61
Utility & No. 3	1.74	1.01	−.73
Five Inch and Thicker Dimension:			
No 1 & Btr (inc. Select Str & No. 1)	2.40	2.18	−.22
Utility & Btr & No. 3 & Btr (inc. Utility)	2.57	2.20	−.37
Short Dimension: E & Shop Outs	1.14	1.22	+.08
Economy: All (inc. Dunnage)	7.22	3.53	−3.69
Total	100.00	100.00	0.00

PACIFIC NORTHWEST COAST HEM-FIR INDEX LOGS

Grade Components	Grade Component Percents		
	Old 1978–79	New 1985–86	New–Old Difference
C Select: One inch and Thkr B&Btr, B, C & C&Btr Select	1.47	0.53	−0.94
D Select: One inch and Thkr D&Btr, D, Mldg & Mldg&Btr	2.03	1.93	−0.10
Shop: One inch and Thkr Shop (inc. Factory, Nos. 1, 2, & Shop)	2.53	2.23	−0.30
Common Boards: Utility & Btr (inc. Utility)	1.45	1.04	−0.41
Two inch Dimension:			
No. 1 & Btr (inc. Select Str & No. 1)	5.46	2.62	−2.85
No. 2 & Btr (inc. No. 2)	22.12	27.16	+5.04
Std & Btr (inc. Const & Btr, Const & Std)	12.30	11.07	+1.23
Utility & No. 3	12.87	7.39	−3.48
Studs:			
All (except economy)	19.96	31.50	+11.54
Three Inch and Thicker:			
No. 1 & Btr (inc. Select Str & No. 1)	2.76	0.69	−2.07
No. 2 & Btr (inc. No. 2)	1.48	1.22	−0.26
Std & Btr (inc. Const & Btr, Const & Std)	3.74	3.78	+0.04
Utility & Btr & No. 3 & Btr	1.19	1.72	+0.53
Utility & No. 3	0.77	0.53	−0.24
Short Dimension: E & Shop Outs	0.60	0.71	+0.11
Economy: All (inc. Dunnage)	9.27	5.89	−3.38
Total	100.00	100.00	0.00

COAST-INLAND NORTH PONDEROSA PINE INDEX LOGS

Grade Components	Grade Component Percents		
	Old 1975–76	New 1985–86	New–Old Difference
C Select: 4/4 & Thkr C and C&Btr Select	2.37	1.25	−1.12
D Select:			
4/4 & Thkr Mldg & Btr, D and D&Btr Select	5.87	5.65	−0.22
Moulding Stock	3.18	1.61	−1.57

COAST-INLAND NORTH PONDEROSA PINE INDEX LOGS—Continued

Grade Components	Grade Component Percents		
	Old 1975–76	New 1985–86	New-Old Difference
Stained Select: Short, Pitchy & Aust. Clears	0.35	0.42	+0.07
Shop:			
4/4 Factory Select	1.22	0.59	−0.63
44 Nos. 1 & 2 Shop	2.83	3.09	+0.26
54 & Thkr Factory No. 1 Shop	3.01	2.96	−0.05
5/4 & Thkr No. 2 Shop	12.13	16.64	+4.51
5/4 & Thkr No. 3 Shop (inc. stained)	8.82	14.96	+6.14
Common:			
4/4 & Thkr No. 2 & Btr Common	8.02	12.21	+4.19
4/4 & Thkr No. 3 & Btr Common	19.50	20.39	+0.89
4/4 & Thkr No. 4 and Btr Common	8.67	5.11	−3.56
4/4 & Thkr No. 5 Common and Dunnage	1.05	0.62	−0.43
Short Common: (Inc. Box Lumber, Shop, Short & Rejects, Short Dim and Shop Common)	4.75	4.71	−0.04
Dimension, Timbers and Studs:			
Std & Btr and No. 2 & Btr	11.55	7.57	−3.98
Uty & Btr and No. 3 & Btr	2.38	1.45	−0.93
Economy All	1.43	0.77	−0.66
Studs All (except Economy)	2.87	In Dim	−2.87
Total	100.00	100.00	0.00

ROCKY MOUNTAIN PONDEROSA PINE INDEX LOGS

Grade Components	Grade Component Percents		
	Old 1975–76	New 1985–86	New-Old Difference
C Select: 4/4 & Thkr C & C&Btr Select	0.23	4.38	−3.23
D Select:			
4/4 & Thkr Mldg & Btr, D and D&Btr Select	5.04		
Moulding Stock	2.34		
Shop:			
4/4 Factory Select	0.39	1.49	−1.11
Nos. 1 and 2 Shop	2.21		
5/4 & Thkr Factory Select and No. 1 Shop	0.91	0.78	−0.13
5/4 & Thkr No. 2 Shop	6.02	6.61	+0.59
5/4 & Thkr No. 3 Shop (inc. stained)	8.43	11.41	+2.98
Common:			
4/4 & Thkr No. 2 & Btr Common	2.39	2.95	+0.56
4/4 & Thkr No. 3 & Btr Common	18.09	16.74	−1.35
4/4 & Thkr No. 4 & Btr Common	12.47	8.85	−3.62
4/4 & Thkr No. 5 Common and Dunnage	2.97	1.49	−1.48
Short Common: (Inc. Box Lumber, Shop, Short & Rejects, Short Dim and Shop Common)	2.25	6.35	+4.10
Dimension, Timbers and Studs:			
Std & Btr and No. 2 & Btr	27.37	27.00	−0.37
Uty & Btr and No. 3 & Btr	4.93	7.99	+3.06
Economy All	3.96	3.96	0.00
Total	100.00	100.00	0.00

IDAHO WHITE PINE INDEX LOGS

Grade Components	Grade Component Percents		
	Old 1971	New 1985–86	New-Old Difference
Choice Select: 4/4 & Thkr Choice and Choice & Btr Select	2.16	2.12	−0.04
Quality Select: 4/4 & Thkr Quality, Quality & Btr, Mldg Stock, Stained, Short and Pitchy Select	5.64	6.12	+0.48
Shop:			
4/4 Shop	5.84	3.95	−4.27
5/4 & Thkr Factory, Nos. 1, 2, 3 & Stained	2.38		
Common:			
4/4 Sterling & Btr	24.84	37.83	+12.99
4/4 Std & Btr	33.12	36.63	+3.51
4/4 Utility	19.06	11.08	−7.98
4/4 & Thkr Industrial and Dunnage	1.77	0.50	−1.27
Thick Common (inc. 5/4 & Thkr Commons and Two Inch Dimension)	4.06	[1]	−4.06
5/4 & Thkr Std, Utility, Two inch Dimension Short Common (inc. Box Lumber, Short Shop, and Rejects)	1.13	1.17	+0.64
Total	100.00	100.00	0.00

[1] Spread to Grade.

Inland Sugar Pine Index Logs

Grade Components	Grade Component Percents		
	Old 1977–78	New 1985–86	New–Old Difference
C Select: 4/4 & Thkr C and C&Btr Select	3.73	3.30	−0.43
D Select:			
4/4 & Thkr Mldg & Btr, D and D&Btr Select	9.78	8.33	−1.45
Moulding Stock	6.02	3.39	−2.63
Stained Select: Short and Aust. Clears	0.56	0.81	+0.25
Shop:			
4/4 & Thkr Factory and Stained Factory	1.44	1.00	−0.44
4/4 Nos. 1 & 2 Shop	2.76	2.85	+0.09
5/4 & 6/4 No. 1 Shop	5.15	3.92	−1.23
8/4 No. 1 Shop	0.84	0.48	−0.36
5/4 & 6/4 No. 2 Shop	13.75	14.95	+1.20
8/4 No. 2 Shop	3.02	2.41	−0.61
5/4 & 6/4 No. 3 Shop	8.80	13.45	+4.65
8/4 No. 3 Shop	3.10	2.79	−0.31
Common: 4/4 & No. 2 & Btr Common	4.94	9.10	+4.16
(Percentages are applied to a combination of Sugar Pine and Ponderosa Pine for the following grades.)			
4/4 No. 3 & Btr Common	11.62	15.05	+3.43
4/4 No. 4 & Btr Common	7.32	5.61	−1.71
4/4 & Thkr No. 5 Common and Dunnage	1.51	0.92	−0.59
Short Common: Box Lumber, Shop, Short Dimension and Rejects	7.14	6.93	−0.21
Dimension and Studs:			
Std & Btr and No. 2 & Btr	5.60	2.79	−2.81
Uty & Btr and No. 3 & Btr	2.00	1.10	−0.90
Economy	0.92	0.82	−0.10
Total	100.00	100.00	0.00

Inland White Fir (Hem Fir) Index Logs

Grade Components	Grade Component Percents		
	Old 1971	New 1985–86	New–Old Difference
D & Btr Select: 4/4 & Thkr D, D&Btr, C, and C&Btr mldg & Btr and Moulding Stock	2.71	1.96	−0.75
4/4 & Thkr Shop Factory, Nos. 1, 2 & 3 Shop:	4.72	4.52	−0.20
Common:			
4/4 & Thkr No. 3 & Btr Common	1.98	1.27	−0.71
4/4 & Thkr No. 4 & Btr Common	3.72	0.87	−2.85
4/4 & Thkr No. 5 Common and Dunnage	1.50	[1]	
Short Common (inc. Box Lumber, Shop, Short and Rejects)	0.77	1.80	+1.03
Dimension, Studs, Timbers:			
Std & Btr and No. 2 & Btr	42.38	64.60	+22.22
Uty & Btr and No. 3 & Btr	9.93	10.43	−10.62
Uty and No. 3	11.12		
Economy All	8.56	7.35	−2.71
Studs All (Except Economy)	12.61	7.20	−5.41
Total	100.00	100.00	0.00

[1] To Econ.

Dry Douglas Fir—Larch Inland Index Logs

Grade Components	Grade Component Percents		
	Old 1971	New 1985–86	New–Old Difference
D & Btr Select: 4/4 & Thkr D, D&Btr, C, and C&Btr Mldg & Btr and Moulding Stock	4.23	2.00	− 2.23
Shop: 4/4 & Thkr Shop (inc. Factory Nos. 1, 2 and 3 Shop)	3.36	2.42	− 0.94
Common:			
4/4 & Thkr No. 3 & Btr Common	2.22	1.62	− 0.60
4/4 & Thkr No. 4 & Btr Common	2.31	1.31	− 1.00
4/4 &Thkr No. 5 & Btr Common and Dunnage	0.41	[1]	
Short Common	0.26	2.93	+ 2.67
Dimension, Studs, Timbers:			
Std & Btr and No. 2 & Btr	44.37	54.94	+ 10.58
Uty & Btr and No. 3 & Btr (inc. Utility)	11.60	7.72	− 3.88
Studs All (except Economy)	20.30	18.58	− 1.72
Timbers	4.56	4.07	− 0.49
Economy All	6.38	4.40	− 2.39
Total	100.00	100.00	0.00

[1] To Econ.

WHITE WOODS INDEX LOGS

Grade Components	Grade Component Percents		
	Old 1974–75	New 1985–86	New–Old Difference
D&Btr Select: 4/4 & Thkr D, Mldg, D&Btr, C and C&Btr	0.57	1.09	+ 0.52
Common:			
3 & Btr Common (inc. 4/4 & Thkr No. 1, 2, 2&Btr, 3 and 3&Btr)	10.76	21.56	+ 10.80
4 & Btr Common (inc. 4/4 & Thkr No. 4 and 4&Btr)	4.44	3.15	− 1.29
Short Common (inc. Box Lumber, Shop, Short and Rejects, Short Dim, Shop Common)	2.04	7.45	+ 5.41
4/4 & Thkr No. 5 Common and Dunnage	(1)	(1)	(1)
Dimension and Timbers:			
Std & Btr and No. 2 & Btr	24.14	17.04	− 7.10
Utility & Btr and No. 3 & Btr	7.60	4.92	− 7.11
Utility and No. 3 (inc. Studs)	4.43		
Studs (Except Utility and Economy)	39.46	38.28	− 1.18
Economy All	6.56	6.51	−0.05
Total	100.00	100.00	0.00

[1] Both in Economy.

Table II—Index Log Comparisons

[Prepared by Western Wood Products Association]

PACIFIC NORTHWEST COAST DOUGLAS FIR

Monthly Indexes	Old 1978–79	New 1985–86	New–Old Differences
January 1985	220.07	210.50	9.57
February	222.36	212.09	10.27
March	224.82	213.49	11.33
(Quarter)	(222.42)	(212.03)	(10.39)
April 1985	222.27	209.97	12.30
May	228.64	217.96	10.68
June	243.31	234.10	9.21
(Quarter)	(231.41)	(220.68)	(10.73)
July 1985	247.99	238.41	9.58
August	233.78	223.51	10.27
September	224.15	211.88	12.27
(Quarter)	(235.31)	(224.60)	(10.71)
October 1985	219.66	207.88	11.78
November	210.46	199.65	10.81
December	213.17	202.09	11.08
(Quarter)	(214.43)	(203.21)	(11.22)
January 1986	217.36	207.09	10.27
February	216.76	205.03	11.73
March	223.26	211.15	12.11
(Quarter)	(219.13)	(207.76)	(11.37)
April 1986	239.00	227.58	11.42
May	237.45	225.31	12.14
June	228.26	215.70	12.56
(Quarter)	(234.90)	(222.86)	(12.04)
July 1986	224.84	211.97	12.87
August	227.56	214.93	12.63
September	233.79	222.78	11.01
(Quarter)	(228.73)	(216.56)	(12.17)
October 1986	232.36	219.78	12.58
November	236.77	223.05	13.72
December	231.30	217.12	14.18
(Quarter)	(233.48)	(219.98)	(13.49)
January 1987	233.31	218.29	15.02
February	240.86	226.08	14.78
March	247.18	231.95	15.23
(Quarter)	(240.45)	(225.44)	(15.01)
April 1987	247.86	232.63	15.23
May	248.37	231.90	16.47
June	246.02	232.38	13.64
(Quarter)	(247.42)	(232.30)	(15.11)

PACIFIC NORTHWEST COAST HEM-FIR

Monthly Indexes	Old 1978–79	New 1985–86	New–Old Differences
January 1985	184.75	187.75	+3.00
February	189.26	191.81	+2.55
March	186.25	189.08	+2.83
(Quarter)	(186.75)	(189.55)	(+2.79)
April	185.34	186.88	+1.54
May	193.26	196.37	+3.11
June	203.01	206.61	+3.60
(Quarter)	(193.87)	(196.62)	(+2.75)
July	207.50	209.75	+2.25
August	199.11	200.35	+1.24
September	192.21	193.19	+0.98
(Quarter)	(199.61)	(201.10)	(+1.49)
October	188.05	188.63	+0.58
November	182.47	183.49	+1.02
December	180.65	181.61	+0.96
(Quarter)	(183.72)	(184.58)	(+0.85)
January 1986	183.68	184.61	+0.93
February	182.20	183.18	+0.98
March	191.37	192.41	+1.04
(Quarter)	(185.75)	(186.73)	(+0.98)
April	207.72	210.49	+2.77
May	207.99	212.46	+4.47
June	203.05	206.00	+2.95
(Quarter)	(206.25)	(209.65)	(+3.40)
July	196.91	198.97	+2.06
August	195.15	197.53	+2.38
September	197.18	199.59	+2.41
(Quarter)	(196.41)	(198.70)	(+2.28)
October	197.50	198.95	+1.45
November	200.64	202.39	+1.75
December	207.33	209.89	+2.56
(Quarter)	(201.82)	(203.74)	(+1.92)
January 1987	201.31	203.26	+1.95
February	211.12	213.60	+2.48
March	217.06	219.91	+2.85
(Quarter)	(209.83)	(212.26)	(+2.43)
April	217.34	220.28	+2.94
May	213.49	215.57	+2.08
June	214.64	216.69	+2.05
(Quarter)	(215.16)	(217.51)	(+2.35)

COAST INLAND NORTH PONDEROSA PINE

Monthly Indexes	Old 1975–76	New 1985–86	New–Old Difference
January 1985	371.59	385.58	+13.99
February	369.00	383.64	+14.64
March	368.46	381.75	+13.29
(Quarter)	(369.68)	(383.66)	(+13.97)
April	358.76	373.15	+14.39
May	353.85	367.86	+14.01
June	360.84	373.34	+12.50
(Quarter)	(357.82)	(371.45)	(+13.63)
July	366.54	380.11	+13.57
August	374.40	385.33	+10.93
September	372.09	384.80	+12.71
(Quarter)	(371.01)	(383.41)	(+12.40)
October	380.14	392.21	+12.07
November	375.89	388.20	+12.31
December	371.08	381.90	+10.82
(Quarter)	(375.70)	(387.44)	(+11.73)
January 1986	371.35	381.70	+10.35
February	376.39	384.56	+8.17
March	378.03	387.38	+9.35
(Quarter)	(375.26)	(384.55)	(+9.29)
April	390.30	397.00	+6.70
May	398.86	407.63	+8.77

COAST INLAND NORTH PONDEROSA PINE—Continued

Monthly Indexes	Old 1975–76	New 1985–86	New–Old Difference
June	404.92	416.85	+11.93
(Quarter)	(398.03)	(407.16)	(+9.13)
July	416.61	434.53	+17.92
August	412.34	434.62	+22.28
September	409.50	432.41	+22.91
(Quarter)	(412.82)	(433.85)	(+21.04)
October	414.30	436.25	+21.95
November	418.11	436.32	+18.21
December	415.84	434.34	+18.50
(Quarter)	(416.08)	(435.64)	(+19.55)
January 1987	417.70	434.20	+16.50
February	418.53	434.04	+15.51
March	434.74	446.86	+12.12
(Quarter)	(423.66)	(438.37)	(+14.71)
April	444.11	456.61	+12.50
May	451.14	467.27	+16.13
June	446.82	463.02	+16.20
(Quarter)	(447.36)	(462.30)	(+14.94)

ROCKY MOUNTAIN PONDEROSA PINE

Monthly Indexes	Old 1975–76	New 1985–86	New–Old Difference
January 1985	283.72	272.35	−11.37
February	286.84	278.23	−8.61
March	281.20	275.55	−5.65
(Quarter)	(283.92)	(275.38)	(−8.54)
April	275.94	272.16	−3.78
May	268.99	262.44	−6.55
June	281.68	273.28	−8.40
(Quarter)	(275.54)	(269.29)	(−6.24)
July	289.05	278.92	−10.13
August	291.66	276.48	−15.18
September	287.26	269.86	−17.40
(Quarter)	(289.32)	(275.09)	(−14.24)
October	283.61	264.88	−18.73
November	289.50	273.13	−16.37
December	279.12	263.01	−16.11
(Quarter)	(284.08)	(267.01)	(−17.07)
January 1986	287.90	270.29	−17.61
February	282.91	263.58	−19.33
March	293.16	274.79	−18.37
(Quarter)	(287.99)	(269.55)	(−18.44)
April	306.09	284.47	−21.62
May	311.53	291.29	−20.24
June	315.32	296.55	−18.77
(Quarter)	(310.98)	(290.77)	(−20.21)
July	316.43	296.89	−19.54
August	316.81	297.18	−19.63
September	314.31	295.60	−18.71
(Quarter)	(315.85)	(296.56)	(−19.29)
October	320.47	305.64	−14.83
November	314.53	295.11	−19.42
December	321.18	302.96	−18.22
(Quarter)	(318.73)	(301.24)	(−17.49)
January 1987	320.80	300.43	−20.37
February	323.19	299.81	−23.38
March	333.75	311.52	−22.23
(Quarter)	(325.91)	(303.92)	(−21.99)
April	342.82	318.49	−24.33
May	340.49	318.16	−22.33
June	344.45	321.61	−22.84
(Quarter)	(342.59)	(319.42)	(−23.17)

IDAHO WHITE PINE

Monthly Indexes	Old 1971	New 1985–86	New–Old Difference
January 1985	376.32	418.71	+42.39
February	374.64	424.23	+49.59
March	378.17	421.31	+43.14
(Quarter)	(376.38)	(421.42)	(+45.04)
April	363.76	410.67	+46.91

IDAHO WHITE PINE—Continued

Monthly Indexes	Old 1971	New 1985–86	New–Old Difference
May	364.84	413.39	+48.55
June	378.28	428.56	+50.28
(Quarter)	(368.96)	(417.54)	(+48.58)
July	399.47	449.49	+50.02
August	396.95	447.22	+50.27
September	385.88	433.06	+47.18
(Quarter)	(394.10)	(443.26)	(+49.16)
October	383.19	432.09	+48.90
November	374.07	424.33	+50.26
December	370.01	409.94	+39.73
(Quarter)	(375.82)	(422.12)	(+46.30)
January 1986	369.70	411.32	+41.62
February	373.86	416.89	+43.03
March	377.51	426.97	+49.46
(Quarter)	(373.69)	(418.39)	(+44.70)
April	400.38	446.83	+46.45
May	402.73	447.29	+44.56
June	403.50	445.56	+42.06
(Quarter)	(402.20)	(446.56)	(+44.36)
July	399.35	444.54	+45.19
August	398.64	445.97	+47.33
September	407.64	450.00	+42.36
(Quarter)	(401.88)	(446.84)	(+44.96)
October	415.37	458.80	+43.43
November	410.47	458.05	+47.58
December	410.14	456.88	+46.74
(Quarter)	(411.99)	(457.91)	(+45.92)
January 1987	397.58	441.83	+44.25
February	396.61	445.94	+49.34
March	404.15	453.12	+48.97
(Quarter)	(399.45)	(446.97)	(+47.52)
April	409.56	456.00	+46.44
May	418.33	467.66	+49.33
June	426.69	469.50	+42.81
(Quarter)	(418.19)	(464.39)	(+46.19)

SUGAR PINE

Monthly Indexes	Old 1977–78	New 1985–86	New–Old Differences
January 1985	486.56	461.92	−24.64
February	474.82	456.83	−17.99
March	474.82	456.31	−18.51
(Quarter)	(478.73)	(458.35)	(−20.38)
April 1985	472.88	455.94	−16.94
May	465.84	447.37	−18.47
June	467.38	447.42	−19.96
(Quarter)	(468.70)	(450.24)	(−18.46)
July 1985	481.27	459.77	−21.50
August	490.36	466.42	−23.94
September	493.39	468.79	−24.60
(Quarter)	(488.34)	(464.99)	(−23.35)
October 1985	491.52	468.40	−23.12
November	491.12	468.12	−23.00
December	476.02	455.62	−20.40
(Quarter)	(486.22)	(464.05)	(−22.17)
January 1986	482.11	460.25	−21.86
February	484.75	463.31	−21.44
March	486.43	462.71	−23.72
(Quarter)	(484.43)	(462.09)	(−22.34)
April 1986	497.00	472.65	−24.35
May	519.41	493.81	−25.60
June	532.76	506.45	−26.31
(Quarter)	(516.39)	(490.97)	(−25.42)
July 1986	555.81	530.44	−25.37
August	553.79	529.66	−24.13
September	545.11	521.41	−23.70
(Quarter)	(551.57)	(527.17)	(−24.40)
October 1986	552.62	527.45	−25.17
November	555.79	528.41	−27.38
December	557.55	528.31	−29.24
(Quarter)	(555.32)	(528.06)	(−27.26)
January 1987	555.97	526.78	−29.19
February	557.84	527.94	−29.90
March	565.98	537.51	−28.47
(Quarter)	(559.93)	(530.74)	(−29.19)

SUGAR PINE—Continued

Monthly Indexes	Old 1977–78	New 1985–86	New–Old Differences
April 1987	580.73	552.56	−28.17
May	594.04	565.19	−28.85
June	601.86	568.83	−33.03
(Quarter	(592.21)	(562.19)	(−30.02)

INLAND WHITE FIR (HEM-FIR)

Monthly Indexes	Old 1971	New 1985–86	New–Old Differences
January 1985	188.20	191.60	+3.40
February	190.45	192.48	+2.03
March	187.90	190.68	+2.78
(Quarter)	(188.85)	(191.59)	(+2.74)
April	184.31	187.07	+2.76
May	190.93	194.25	+3.32
June	205.00	207.71	+2.71
(Quarter)	(193.41)	(196.34)	(+2.93)
July	204.80	208.25	+3.45
August	198.95	201.71	+2.76
September	190.12	192.96	+2.84
(Quarter)	(197.96)	(200.97)	(+3.01)
October	186.31	188.80	+2.49
November	177.40	179.88	+2.48
December	179.26	178.36	−0.90
(Quarter)	(180.99)	(182.35)	(+1.36)
January 1986	180.26	183.14	+2.88
February	182.57	184.85	+2.28
March	186.13	189.16	+3.03
(Quarter)	(182.99)	(185.72)	(+2.73)
April	211.09	211.04	−0.05
May	218.24	216.61	−1.63
June	208.21	209.81	+1.60
(Quarter)	(212.51)	(212.49)	(−0.02)
July	206.73	206.55	−0.18
August	203.52	207.66	+4.14
September	210.13	213.91	+3.78
(Quarter)	(206.79)	(209.37)	(+2.58)
October	208.19	210.89	+2.70
November	207.72	207.57	−0.15
December	207.46	211.32	+3.86
(Quarter)	(207.79)	(209.93)	(+2.14)
January 1987	203.14	206.55	+3.41
February	211.11	212.34	+1.23
March	223.70	225.82	+2.12
(Quarter)	(212.65)	(214.90)	(+2.25)
April	227.38	226.91	−0.47
May	223.96	226.51	+2.55
June	229.08	233.06	+3.98
(Quarter)	(226.81)	(228.83)	(+2.02)

INLAND DOUGLAS FIR—LARCH

Monthly Indexes	Old 1971	New 1985–86	New–Old Differences
January 1985	201.89	198.38	−3.51
February	200.07	197.69	−2.38
March	200.44	196.71	−3.73
(Quarter)	(200.80)	(197.59)	(−3.21)
April	195.08	190.93	−4.15
May	201.56	197.87	−3.69
June	216.59	212.61	−3.98
(Quarter)	(204.41)	(200.47)	(−3.94)
July	221.23	218.37	−2.86
August	214.69	211.82	−2.87
September	205.22	202.15	−3.07
(Quarter)	(213.71)	(210.78)	(−2.93)
October	196.92	193.87	−3.05
November	192.64	187.97	−4.67
December	192.06	187.31	−4.75
(Quarter)	(193.87)	(189.72)	(−4.15)
January 1986	196.38	191.20	−5.18
February	198.18	192.54	−5.64
March	203.96	197.79	−6.17

INLAND DOUGLAS FIR—LARCH—Continued

Monthly Indexes	Old 1971	New 1985–86	New-Old Differences
(Quarter)	(199.51)	(193.84)	(−5.67)
April	225.85	220.02	−5.83
May	228.75	221.19	−7.56
June	218.68	211.01	−7.67
(Quarter)	(224.43)	(217.41)	(−7.02)
July	211.80	204.78	−7.02
August	211.03	205.65	−5.38
September	220.30	216.75	−3.55
(Quarter)	(214.38)	(209.06)	(−5.32)
October	220.25	215.21	−5.04
November	219.48	213.20	−6.28
December	213.79	209.95	−3.84
(Quarter)	(217.84)	(212.79)	(−5.05)
January 1987	211.20	205.75	−5.45
February	217.32	212.68	−4.64
March	227.16	221.70	−5.46
(Quarter)	(218.56)	(213.38)	(−5.18)
April	227.34	221.28	−6.06
May	223.90	218.06	−5.84
June	225.66	220.49	−5.17
(Quarter)	(225.63)	(219.94)	(−5.69)

WHITE WOODS

Monthly Indexes	Old 1974–74	New 1985–86	New-Old Differences
January 1985	185.71	193.71	+8.00
February	189.69	200.34	10.65
March	185.84	195.58	+9.74
(Quarter)	(187.08)	(196.54)	(+9.46)
April	181.09	188.59	+7.50
May	186.74	193.17	+4.43
June	196.09	202.51	+6.42
(Quarter)	(188.64)	(194.76)	(+6.12)
July	194.35	201.45	+7.10
August	191.57	200.79	+9.22
September	188.44	198.43	+9.99
(Quarter)	(191.45)	(200.22)	(+8.77)
October	186.37	198.44	+12.07
November	182.95	193.94	+10.99
December	179.26	188.74	+9.48
(Quarter)	(182.86)	(193.71)	(+10.85)
January 1986	182.27	191.76	+9.49
February	185.72	196.30	+10.58
March	192.15	202.72	+10.57
(Quarter)	(186.71)	(196.93)	(+10.22)
April	211.48	220.75	+9.27
May	211.36	220.91	+9.55
June	202.19	211.84	+9.65
(Quarter)	(208.34)	(217.83)	(+9.49)
July	198.71	208.89	+10.18
August	199.27	208.83	+9.56
September	207.91	218.35	+10.44
(Quarter)	(201.96)	(212.02)	(+10.06)
October	210.14	220.94	+10.80
November	206.64	216.84	+10.20
December	206.44	215.74	+9.28
(Quarter)	(207.74)	(217.83)	(+10.09)
January 1987	203.04	213.11	+10.07
February	209.24	220.48	+11.24
March	216.50	227.53	+11.03
(Quarter)	(209.59)	(220.37)	(+10.78)
April	217.13	229.19	+12.06
May	210.90	222.40	+11.50
June	209.43	218.68	+9.25
(Quarter)	(212.49)	(223.42)	(+10.93)

TABLE III—24-MONTH INDEX ADJUSTMENT FACTORS

[Proposed by USDA, Forest Service]

Species/index log basis/adjustment factor	Thousands of board feet	Value in dollars	Dollars per thousand board feet
Pacific Northwest Douglas Fir:			
1985–86 basis	8,439,360	1,923,278,304	227.89
1978–79 basis	8,439,360	2,034,658,905	−241.09
Adjustment Factor			−13.20
Pacific Northwest Hem-Fir:			
1985–86 basis	2,343,260	493,801,958	210.73
1978–79 basis	2,343,260	489,193,683	−208.77
Adjustment Factor			+1.96
Coast Inland North Ponderosa Pine:			
1985–86 basis	5,122,197	2,236,991,347	436.73
1975–76 basis	4,684,303	1,978,254,402	−422.32
Adjustment Factor			+14.41
Rocky Mountain Ponderosa Pine:			
1985–86 basis	1,302,474	394,948,330	303.23
1975–76 basis	1,142,160	370,043,225	−323.99
Adjustment Factor			−20.76
Idaho White Pine:			
1985–86 basis	209,421	95,176,536	454.48
1971 basis	194,732	79,630,799	−408.93
Adjustment Factor			+45.55
Sugar Pine:			
1985–86 basis	2,580,651	1,370,920,000	531.23
1977–78 basis	2,414,162	1,353,564,987	−560.68
Adjustment Factor			−29.45
White Fir:			
1985–86 basis	3,215,983	698,788,867	217.29
1971 basis	2,532,547	544,643,429	−215.06
Adjustment Factor			+2.23
Indland North Dry Douglas Fir—Larch:			
1985–86 basis	3,421,402	743,708,440	217.37
1971 basis	3,349,241	743,921,517	−222.12
Adjustment Factor			−4.75
White Woods:			
1985–86 basis	2,324,474	508,158,934	218.61
1974–75 basis	2,198,589	458,013,525	−208.32
Adjustment Factor			+10.29

[FR Doc. 88–7507 Filed 4–6–88; 8:45 am]
BILLING CODE 3410–11–M

Soil Conservation Service

Ross County Wildlife Area RC&D Measure, OH; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Ross County Wildlife Area RC&D Measure, Ross County, Ohio.

FOR FURTHER INFORMATION CONTACT: Roger A. Hansen, Acting State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614)–469–6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impact on the environment. As a result of these findings, Roger A. Hansen, Acting State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for water-based fish and wildlife development in an area managed for wildlife habitat. Planned works of improvement include the construction of a shallow water pond with a water control structure and two acres of critical area seeding.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above

address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Roger A. Hansen.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development Program—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Roger A. Hansen,

Acting State Conservationist.

March 28, 1988.

[FR Doc. 88-7625 Filed 4-6-88; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration

Title: Involuntary Child and Spousal Support Allotments of NOAA Corps Officers

Form Number: Agency—N/A; OMB—N/A

Type of Request: New collection

Burden: 1 respondent; 1 reporting hour

Needs and Uses: Active NOAA Corps. officers' spouses, ex-spouses or children seeking financial support may provide notification that an officer has failed to make periodic support payments under a support order. The information is used to provide support through involuntary deductions from the officer's pay.

Affected Public: Individuals

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: John Griffen, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: March 31, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-7586 Filed 4-6-88; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of the Census

Census Advisory Committee (CAC) on the American Indian and Alaska Native Populations for the 1990 Census, the CAC on the Asian and Pacific Islander Populations for the 1990 Census, the CAC on the Black Population for the 1990 Census, and the CAC on the Hispanic Population for the 1990 Census; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463 as amended by Pub L. 94-409), we are giving notice of a joint meeting followed by separate and jointly held meetings (described below) of the CAC of the American Indian and Alaska Native Populations for the 1990 Census, the CAC on the Asian and Pacific Islander Populations for the 1990 Census, the CAC on the Black Population for the 1990 Census, and the CAC on the Hispanic Population for the 1990 Census. The joint meeting will convene on April 21 and 22, 1988 at the Ramada Hotel, 6400 Oxon Hill Road, Oxon Hill, Maryland 20745.

Each of these Committees is composed of 12 members appointed by the Secretary of Commerce. They provide an organized and continuing channel of communication between the communities they represent and the Bureau of the Census on the problems and opportunities of the 1990 decennial census.

The Committees will draw on the knowledge and insight of their members to provide advice during the planning of the 1990 Census of Population and Housing on such elements as improving the accuracy of the population count, suggesting areas of research, recommending subject content and tabulations of particular use to the populations they represent, expanding the dissemination of census results among present and potential users of census data in their communities, and generally improving the usefulness of the census product.

The agenda for the April 21 combined meeting that will begin at 8:45 a.m. and end at 2:45 p.m. is: (1) Introductory remarks by the Director, Bureau of the Census; (2) 1990 planning update, which includes dress rehearsal and 1990 census status report, sample size, sample design, and content issue, and disclosure avoidance; (3) undercount behavioral research; (4) processing office sites; (5) recommended 1990 questions on race and Spanish origin; and (6) 1990 promotion update.

The agendas for the four committees in their separate meetings that will begin at 2:45 p.m. and end at 5 p.m. on April 21 are as follows:

The CAC on the American Indian and Alaska Native Populations for the 1990 Census: (1) Activity report—American Indian Liaison; (2) affimative action update and hiring of American Indian and Alaska Native staff in regional offices; and (3) election of chairperson.

The CAC on the Asian and Pacific Islander Populations for the 1990 Census: (1) Race question for the 1990 census, coding of race; (2) status of early alert mailout; and (3) election of chairperson.

The CAC on the Black Population for the 1990 Census: (1) Dress rehearsal public service announcements; (2) consideration of Census Bureau responses to Committee recommendations; and (3) election of chairperson.

The CAC on the Hispanic Population for the 1990 Census: (1) Spanish origin question for the 1990 census; and (2) report on outreach activities with mayors and Roman Catholic Bishops and other Hispanic outreach projects.

On April 21, from 5 p.m. to 7 p.m. the combined meeting agenda will be on focus group study.

The agenda for the April 22 combined meeting that will begin at 8:45 a.m. and end at 11:15 a.m. is regional recruiting plan for the 1990 decennial census.

The agenda for the four committees in their separate meetings that will begin at 11:15 and end at 2:15 on April 22 are as follows:

The CAC on the American Indian and Alaska Native Populations for the 1990 Census: (1) Tribal Liaison Program update, including 1987 census experience; (2) promotion plans for American Indians and Alaska Natives; (3) focus group observation update; (4) consideration of Census Bureau responses to Committee recommendations; (5) focus group study; and (6) development and discussion of recommendations.

The CAC on the Asian and Pacific Islander Populations for the 1990 Census: (1) Affirmative action update and hiring of Asian and Pacific Islander staff in regional offices; (2) status of Committee vacancies; (3) consideration of Census Bureau responses to Committee recommendations; (4) focus

group study; and (5) development and discussion of recommendations.

The CAC on the Black Population for the 1990 Census: (1) Residential Finance Survey update; (2) undercoverage of the Black population; (3) focus group study; and (4) development and discussion of recommendations.

The CAC on the Hispanic Population for the 1990 Census: (1) Affirmative action plan (Hispanics for permanent work force and temporary 1990 work force); (2) active participation and attendance of Committee members; (3) consideration of Census Bureau Responses to Committee recommendations; (4) focus group study; and (5) development and discussion of recommendations.

The agenda for the April 22 combined meeting that will begin at 2:15 p.m. and adjourn at 3 p.m. is (1) Public comments; (2) presentation of recommendations; and (3) plans for the next meeting.

All meetings are open to the public and a brief period is set aside on April 22 for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau official named below at least 3 days before the meeting.

Persons wishing additional information concerning these meetings or who wish to submit written statements may contact Mr. Allan A. Stephenson, Assistant Division Chief for Outreach and Program Information, Decennial Planning Division, Bureau of the Census, Room 3574, Federal Building 3, Suitland, Maryland. (Mailing address: Washington, DC 20233) Telephone: (301) 763-5926.

Date: April 1, 1988.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 88-7616 Filed 4-6-88; 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Order No. 379]

Resolution and Order Approving the Application of the South Louisiana Port Commission For a Subzone at the TransAmerican Natural Gas Corporation Refinery in Destrehan, LA

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the South Louisiana Port Commission, grantee of FTZ 124, filed with the Foreign-Trade Zones Board (the Board) on February 21, 1986, requesting special-purpose subzone status for the crude oil refinery of TransAmerican Natural Gas Corporation located in Destrehan, Louisiana, adjacent to the Gramercy Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest, if approval is subject to certain conditions, approves the application subject to the following conditions:

1. Foreign crude oil used as fuel for the refinery shall be dutiable.

2. TNG shall elect privileged foreign status on foreign crude oil and other foreign merchandise admitted to the subzone.

3. The U.S. Customs Service shall inform the Foreign-Trade Zones Board on or before July 1, 1991, that a satisfactory control system has been implemented so that the revenue can be fully protected; otherwise, the authority under this grant shall expire on that date.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone at the TransAmerican Natural Gas Corporation Refinery in Destrehan, Louisiana

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the South Louisiana Port Commission, grantee of Foreign-Trade Zone No. 124, has made application (filed February 21, 1986, Docket 7–86, 51 FR 7971) in due and proper form to the Board for authority to establish a special-purpose subzone at the crude oil refinery of TransAmerican Natural Gas Corporation (TNG) located in Destrehan, Lousiana;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied and that the proposal would be in the public interest if approval is given, subject to the conditions in the resolution accompanying this action;

Now, Therefore, in accordance with the application filed February 21, 1986, the Board hereby authorizes the establishment of a subzone at the TNG refinery, designated on the records of the Board as Foreign-Trade Subzone No. 124A, at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the regulations, and those stated in the resolution accompanying this action, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this

31st day of March, 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Gilbert B. Kaplan,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-7686 Filed 4-6-88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of opportunity to request administrative reveiw of antidumping or countervailing duty order, finding, or suspended investigation.

Background: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.53a or 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than April 30, 1988, interested parties may request administrative review of the following ordes, findings, or suspended investigations, with anniversary dates in April for the following periods:

Antidumping Duty Proceeding	*Period*
Calcium Hypochlorite from Japan	04/01/87—03/31/88
Certain Fresh Cut Flowers from Kenya	11/03/86—03/31/88
Certain Fresh Cut Flowers from Mexico	11/03/86—03/31/88
Color Television Receivers from the Republic of Korea	04/01/87—03/31/88
Color Television Receivers, except for Video Monitors from Taiwan	04/01/87—03/31/88
Cyanuric Acid from Japan	04/01/67—03/31/88
Diamond Tips from the United Kingdom	04/01/87—03/31/88
Dichloroisocyanurates from Japan	04/01/87—03/31/88
Roller Chain, other than Bicycle from Japan	04/01/87—03/31/88
Sorbitol from France	04/01/87—03/31/88
Spun Acrylic Yarn from Italy	04/01/87—03/31/88
Spun Acrylic Yarn from Japan	04/01/87—03/31/88
Steel Reinforcing Bars from Canada	04/01/87—03/31/88
Sugar and Syrups from Canada	04/01/87—03/31/88
Trichloro Isocyanuric Acid from Japan	04/01/87—03/31/88
Countervailing Duty Proceeding	
Cold Rolled Steel Sheet from Argentina	01/01/87—12/31/87
Leather Wearing Apparel from Mexico	01/01/87—12/31/87
Pig Iron from Brazil	01/01/87—12/31/87
Pompom Chrysanthemums from Peru	10/27/86—12/31/87
Rice from Thailand	01/01/87—12/31/87
Wool from Argentina	01/01/87—12/31/87
Suspended Investigation	
Leather Wearing Apparel From Colombia	01/01/87—12/31/87

Seven copies of the request should be submitted to the Acting Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by April 30, 1988.

If the Department does not receive by April 30, 1988 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Date: March 30, 1988.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-7685 Filed 4-6-88; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

Announcing Workshop on Applications Portability Profile

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice.

SUMMARY: The Institute for Computer Sciences and Technology (ICST) at the National Bureau of Standards (NBS) is sponsoring an open workshop to discuss a proposed Applications Portability Profile. The Applications Portability Profile will provide a common interface to computer systems based on the architecture of the Portable Operating System Interface for Computer Environments (POSIX) standard. The workshop is intended for middle and upper management of government agencies and companies which build systems for the government.

DATE: It will be held on April 25, 1988 at NBS, Gaithersburg, MD.

ADDRESS: To register or to receive a brochure on the workshop contact: APP Workshop, ATTN: Debbie Jackson, National Bureau of Standards, Building 225, Room B266, Gaithersburg, MD 20899, Telephone: (301) 975-3295.

FOR FURTHER INFORMATION CONTACT: James A. Hall, (301) 975-3273.

SUPPLEMENTARY INFORMATION: Attendance at the workshop is limited due to space requirements and the size of the conference facility; therefore, registration is on a first come, first served basis with recommended limitation of two participants per company. A $35 registration fee to help defray the costs of conducting the workshop will be charged. Participants are expected to make their own travel arrangements and accommodations. NBS reserves the right to cancel any part of the workshop.

Date: April 4, 1988.

Ernest Ambler,

Director.

[FR Doc. 88-7647 Filed 4-6-88; 8:45 am]

BILLING CODE 3510-13-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.

Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-673,299 (4,720,574)
Antimicrobial Compound Bis(carbomethoxymethyl) Adipate
SN 6-855,857 (4,713,391)
Azabicyloalkane Phenyl Substituted Alkane Carboxylates, their Preparation and Use as Anticholinergic Agents
SN 6-858,809 (4,718,134)
End Plug for Bee Shipping Tubes
SN 7-104,899
Polysaccharide Graft Copolymer-Enzyme Products and Preparation Thereof
SN 7-127,021
Isopotential Available Ion Extractor
SN 7-140,470
Device For Differential Ginning

Department of Army

SN 7-104,464
Remote Angle Measurement—Especially Missile Yaw Measurement
SN 7-138,790
High Accuracy Frequency Standard and Clock System

Department of Commerce

SN 6-834,728 (4,714,339)
Three and Five Axis Laser Tracking Systems

Department of Health and Human Services

SN E-494-87
Polysaccharide-Protein Conjugates
SN 6-421,344 (4,717,548)
Analytically Controlled Blood Perfusion System
SN 6-654,213 (4,722,895)
Synthetic Peptides for the Production of Specific Keratin Protein Antibodies
SN 6-680,992 (4,716,105)
Mini Mu Containing Plasmid and a Method for Rapid DNA Sequencing
SN 6-717,613 (4,722,888)
Cell Line Producing Human Monoclonal Antibody Which Bends to HTLV-I Producing Cells
SN 6-737,458 (4,661,445)
Competitive Elisa For the Detection of HTLV-III Antibodies
SN 6-769,684 (4,722,890)
Quantitative Assay for Human Terminal Complement Cascade Activation
SN 6-867,013 (4,719,349)
Electrochemical Sample Probe for Use in Fast-Atom Bombardment Mass Spectrometry
SN 6-915,797 (4,714,554)
Cross-Axis Synchronous Flow-Through Coil Planet Centrifuge Free of Rotary Seals; Apparatus and Method for Performing Countercurrent Chromatograpy
SN 7-141,090
Cytotoxic T Lymphocyte Activation Assay
SN 7-142,978
Polyacrylamide Gels for Improved Detection of Proteins
SN 7-144,744
Prazosin Analog with Increased Selectivity and Duration of Action
SN 7-148,134
Lassa Fever Vaccine and Diagnostic Reagents
SN 7-159,017
Inhibitors for Replication of Retroviruses and for the Expression of Oncogene Products
SN 7-160,856
Resin-Modified Glass Ionomer Dental Cements
SN 7-160,993
Use of 23Na NMR in the Analysis of Renal Function

[FR Doc. 88-7605 Filed 4-6-88; 8:45 am]
BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Reduction of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in the Socialist Republic of Romania

April 4, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending a restraint limit.

EFFECTIVE DATE: April 12, 1988.

Authority: Effective Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

SUPPLEMENTARY INFORMATION: Under the terms of the Bilateral Textile Agreement, effected by exchange of notes dated November 7 and 16, 1984, as amended, the Governments of the United States and the Socialist Republic of Romania, agreed during consultations to revise the previously established growth rate for Category 604 for the duration of the man-made fiber and wool agreement.

A copy of the current Bilateral Textile Agreement between the Governments of the United States and the Socialist Republic of Romania is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647-1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 53 FR 7783, published in the **Federal Register** on March 10, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

April 4, 1988

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr Commissioner: This directive amends, but does not cancel, the directive issued to you on March 7, 1988, concerning imports into the United States of certain wool and man/made fiber textile products, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

Effective on April 12, 1988, the directive of March 7, 1988 is amended to revise the previously established limit for man-made fiber textile products in Category 604 to 3,250,000 pounds.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-7651 Filed 4-6-88; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Socialist Republic of Romania

April 4, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: April 12, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

SUPPLEMENTARY INFORMATION: During consultations held between the Governments of the United States and the Socialist Republic of Romania, agreement was reached to amend and extend their Bilateral Cotton Textile Agreement of January 28 and March 31, 1983 from January 1, 1988 through December 31, 1989.

A copy of the current bilateral agreement is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647-1998.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

April 4, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as futher extended on July 31, 1986; pursuant to the Bilateral Cotton Textile Agreement of January 28 and March 31, 1983, as amended and extended, between the Governments of the United States and the Socialist Republic of Romania; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 12, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Romania and exported during the twelve-month period beginning on January 1, 1988 and extending through December 31, 1988, in excess of the following restraint limits:

Category	12-month restraint limit [1]
200, 201, 218-220, 222-227, 229, 239, 300, 301, 313-315, 317, 326, 330-342, 345, 347-354, 359-363, 369, 600, 810, 831-836, 838-840, 842-847, 850-852, 858, 859, 863, 870, 871 and 899, as a group.	43,000,000 square yards equivalent.
Sublevels within the group	
313	2,000,000 square yards.
314	1,500,000 square yards.
315	1,500,000 square yards.
333/833	75,000 dozen.
334	257,153 dozen of which not more than 36,320 dozen shall be in Category 334pt. (other than knit athletic jackets) in all TSUSA numbers in Category 334 except 381.0211 and 381.3905.
335/835	95,000 dozen.
338/339	410,000 dozen.
340	178,961 dozen.
341/840	75,000 dozen.
347/348	320,000 dozen.
352	181,818 dozen.
359	652,174 pounds.
361	515,000 numbers.
369	652,174 pounds.
810	5,000,000 square yards.
847	75,000 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

To the extent that trade which now falls in the foregoing categories is within a category limit for the period January 1, 1987 through December 31, 1987, such trade, to the extent of any unfilled balances, shall be charged against the levels of restraint established for that period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The levels set forth above are subject to adjustment in the future according to the provisions of the Bilateral Cotton Textile Agreement of January 28 and March 31, 1983, as amended and extended, between the Governments of the Unted States and Romania.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to included entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-7652 Filed 4-6-88; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1988 commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: May 9, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: .

On December 15, 1987 the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (52 FR 47624) of proposed addition to Procurement List 1988, December 10, 1987 (52 FR 46926).

Comments were received from the current contractor for the two steel credenzas. The major issues raised in the comments concerned the workshop's capability to produce the credenzas, the costs of the credenzas, adverse impact on the current contractor, the workshop's compliance with the law and regulations regarding the employment of severely handicapped and the evidentiary basis for the proposal.

Capability of the Workshop to Produce the Credenzas

The commenter questioned the workshop's capability to produce the credenzas. The General Services

Administration (GSA), as the result of an on-site inspection, has determined that the workshop is capable of producing the credenzas in the quantities required by the Government. The workshop has also submitted a bid sample to GSA which has been accepted. Based on the preceding, the Committee has determined that the workshop can produce the credenzas in compliance with the Government's requirements. The commenter also questioned whether the tasks required in manufacturing the credenzas can be performed by severely handicapped persons and whether the handicapped persons proposed to manufacture the credenzas meet the definition of "severely handicapped individuals". The workshop is currently manufacturing two steel bookcases for the Government under the Committee's program requiring most of the same operations as those which would be used in manufacturing the credenzas. In fiscal year 1987, about 90% of the direct labor hours used in the manufacture of the steel bookcases was performed by severely handicapped persons. A member of the Committee staff has conducted an on-site inspection of the workshop and has determined that the workshop maintains records on those persons who were listed as "other severely handicapped" in accordance with 41 CFR 51–4.3(b) and that the persons so listed meet the definition of "other severely handicapped" in 41 U.S.C. 48b(2) and 41 CFR 51–1.2(g).

The commenter quoted from a letter to the Tennessee Department of Mental Health and Mental Retardation from the President of the workshop, dated April 1, 1985 which indicated that the workshop did not have the production capacity to produce the steel credenzas. In April 1985, the workshop was in the start-up phase of producing the steel bookcases, which had been added to the Procurement List in August 1984, just eight months earlier, and its capacity for additional work at that time was undoubtedly limited. However, that is not the situation in March 1988 nearly three years later.

Both the procuring activity (GSA) and the central nonprofit agency, the National Industries for the Severely Handicapped, have verified that the workshop has the capacity to produce the steel credenzas in addition to the steel bookcases.

Costs of the Credenzas

The commenter stated that the costs to the Government have been miscalculated and that the workshop is incapable of producing the credenzas at a fair market price, which the commenter defines as the most recent award price. The Committee has defined the "fair market price" for a commodity on the Procurement List, which has been recently procured by the Government, to be the median of the bids submitted on the most recent solicitation for the commodity which are not more than 35% above the award price, or five percent above the award price, whichever is higher. In this case, four firms submitted bids. After deleting one bid from consideration since it was more than 35% above the award price, the fair market price was determined using the bids of the next-to-the-low bidder.

When the request for fair market price determination was submitted to the Committee, it contained an estimated shipping weight of 65 pounds per credenza. After the workshop had prepared its bid samples, it weighed one of the finished credenzas packed for shipment and determined that the actual shipping weight was 76.13 pounds. The fair market prices were revised to reflect the higher freight costs. The National Industries for the Severely Handicapped has assured the Committee that the workshop has agreed to produce the credenzas at the new fair market price and it is capable of doing so.

The commenter has alleged that the increased costs to the Government over the lowest price bid would exceed the benefits to the handicapped workers. The proposed addition action will create full-time jobs for nearly 16 severely handicapped persons. The fair market price for deliveries in 1988 was determined in accordance with the Committee's pricing policy based on the bids submitted on the most recent solicitation and it 14.7% above the average price awarded in June 1987.

The legislative history of the Act establishing the Committee (Pub. L. 92–28, 41 U.S.C. 46–48c) recognizes that the primary purpose of the Act is to create job opportunities for blind and other severely handicapped individuals and to assist in the rehabilitation of those individuals through work (House Report No. 92–228, May 25, 1971). The Act also assigns to the Committee the responsibility for establishing the fair market price for commodities and services on its Procurement List. If a proposed addition to the Procurement List will create work for blind or other severely handicapped individuals and the proposed price meets the Committee's criteria as a fair market price, there is no requirement for the Committee to try to balance the trade-off between any added cost to the Government against the opportunities for the employment of blind or other severely handicapped persons.

Workshop's Compliance with Law and Regulations

The commenter has cited a number of instances of deficiencies in the workshop's compliance with the laws and regulations regarding the employment of severely handicapped and has charged that it has failed to pay commensurate wages to its severely handicapped employees. The commenter cited the requirement in the Committee's regulations (41 CFR 51–4.3(a)(5)) that the workshop must comply with the applicable compensation, employment and occupational health and safety standards prescribed by the Secretary of Labor. The verification of compliance and the enforcement of those standards are the responsibility of the Secretary of Labor.

When the Committee's regulations were amended in 1983 to include the requirement for compliance with the compensation and employment standards prescribed by the Secretary of Labor, the supplemental information in the notice for the final rule (48 FR 21328, May 12, 1983) contained the following statement in responding to a comment questioning the Committee's authority to require compliance with employment and compensation standards:

> Under the proposed rule, when the Department of Labor notifies the Committee that a workshop is not in compliance with the employment or compensation standards established by the Secretary of Labor, the Committee will have the authority to limit or withdraw that workshop's authorization to produce commodities or provide services under its Act.

In the same notice, in response to an inquiry regarding the Committee's role in enforcement, it was stated:

> The correspondent was informed that the Committee would not be involved in enforcing compensation and employment standards, since, by law, such enforcement is the responsibility of the Secretary of Labor.

The Department of Labor notified the Committee on March 9, 1988 that it had not determined that the workshop was not in compliance with the Fair Labor Standards Act or the Walsh-Healey Public Contracts and the applicable regulations. In view of the above, the Committee has no legal or regulatory basis for determining that the workshop is not in compliance with the applicable laws and regulations governing the pay and employment of its severely handicapped employees and, therefore, has no basis in this regard for

withholding approval of the credenzas for addition to the Procurement List.

Impact on the Current Contractor

The commenter, the current contractor for the steel credenzas, stated that the addition of the credenzas to the Procurement List would have a serious adverse impact on that firm. He stated that the loss of business represents about 5.4% of the firm's average gross sales over the past three years and that prior actions by the Committee in adding to the Procurement List the two steel bookcases and six steel tables for which his firm was the prior contractor, have resulted in cumulative impact of 20.24% on his firm.

A review of the Committee's records show that:

a. When the two steel bookcases were added to the Procurement List in August 1984, the commenter's firm was neither the current nor the prior year contrator for those bookcases.

b. When the six steel tables were added to the Procurement List in September 1977, the commenter's firm was neither the current nor the prior year contractor for those tables.

Thus, the only impact of those actions by the Committee was the loss of the firm's opportunity to bid on those furniture items. The wide variations in the firm's sales to GSA, which peaked in 1986 less than two years after the addition of the two steel bookcases to the Procurement List, do not substantiate the claim that that firm's business has been hurt by the loss of the opportunity to bid on those and other items on the Procurement List. The steel credenzas represent only two of 97 different contemporary and traditional steel office furniture items which were included on the last solicitation covering these items for procurement from commercial sources.

Based on an estimated award value of $547,260 for the current contractor and that firm's estimated annual sales of about $10,500,000, the impact of the loss of business would be 5.2%. This is not considered to be serious adverse impact.

The commenter also stated that the proposed action would result in the loss of an investment of $25,000 to $30,000 in specialized tooling. This is not considered to impact seriously on a firm with a net worth of over $6,000,000.

The commenter indicated that the loss of the business represented by the proposed action will require the lay off of 10 employees. The Committee recognizes that any loss of business may require the lay off or reassignment of the employees of the commercial firm who were formerly producing the commodity. However, in determining the suitability of a proposed addition to the Procurement List, the Committee does not engage in comparing the number of jobs lost with the number of jobs the proposed addition to the Procurement List would create for blind or other severely handicapped workers. The number of jobs lost and gained will be determined by the manufacturing operations and procedures each firm is using and usually would have no bearing on the criteria for suitability contained in the Committee's regulations (41 CFR 51–2.6).

Evidentiary Basis of Proposal

The commenter stated that the information available to the Committee is not sufficient for it to evaluate the current proposal, in that the Committee has not required the workshop to submit information on such matters as the productivity of its severely handicapped workers, their wages, and the workshop's labor, materials, and burden costs to produce the credenzas, and that the lack of this information has impaired the commenter's ability to argue in opposition to the proposed action. He pointed out, that in the past, this information was required to be submitted to the Committee.

The Committee is continuously reviewing the information which it requires from the workshops, or the central nonprofit agencies, on behalf of their workshops, to justify actions which they proposed to the Committee for a decision. As a part of that review it was determined that, when the price for a commodity being proposed for addition to the Procurement List was based on the bids on a recent solicitation for the item, information relating to the workshop's wages and costs was not necessary in the Committee's determination of the suitability of the addition of a commodity to the Procurement List (41 CFR 51–2.6). In those few cases where some additional information may be required, it is obtained on a case-by-case basis. With respect to the steel credenzas, additional information was not required in determining the suitability of these items, particularly in view of the workshop's success in producing the steel bookcases which require many of the same or similar operations. The Committee has made available to the commenter all of the information available to it on the proposed action which it can properly release under statute. The productivity of the workshop's severely handicapped employees, the number of handicapped workers it employs in producing steel bookcases, and the wages of those workers are not pertinent in the Committee's arriving at a decision on the suitability of the addition of the steel credenzas to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodities listed.

c. The action will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to Procurement List 1988:

Credenza, Steel

7110–00–128–0096

7110–00–128–0546

C.W. Fletcher,

Executive Director.

[FR Doc. 88–7653 Filed 4–6–88; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.SC. Chapter 35).

Title, Applicable Form, and Applicable Control Number:

DoD FAR Supplements Part 28, and Related Clauses in Part 52.228; No Forms; and OMB Control Number 0704–0216.

Type of Request: Extension.

Annual Burden Hours: 1,585.

Annual Responses: 1,450.

Needs and Uses: Information concerns certain data required to enable processing and/or monitoring of accident report/insurance claims relating to various insurance provisions including but not limited to war hazard losses, aircraft/missile accidents, and munitions accidents. Report is necessary to permit Government followup action and/or processing of claims.

Affected Public: Business or others for profit/small businesses or organizations.

Frequency: Recordkeeping—On Occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Roscoe-Harrison WHS/DIOR, 1215 Jefferson Davis-Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 1, 1988.

[FR Doc. 88–7634 Filed 4–6–88; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Cancellation of Closed Meeting

ACTION: Notice of cancellation of closed meeting.

SUMMARY: Notice is hereby given that the closed meeting of the DIA Scientific Advisory Committee's Tactical Intelligence Information Handling Systems Panel, scheduled for 19 April 1988, that was announced in the **Federal Register** on Wednesday, 24 February 1988 (53 FR, 5443) has been cancelled.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20340–1328 (202/373–4930).

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 1, 1988.

[FR Doc. 88–7635 Filed 4–6–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Strategic Arms Reduction Treaty (START) Verification Procedures; Meeting

ACTION: Change in date of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Strategic Arms Reduction Treaty (START) Verification Procedures scheduled for April 5–7, 1988 as published in the **Federal Register** (Vol. 53, No. 14, Page 1815, Friday, January 22, 1988, FR Doc. 88–1314) will be held on April 18 and April 25–26, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 1, 1988.

[FR Doc. 88–7633 Filed 4–6–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Logistics Agency

Privacy Act of 1974; New Continuing Computer Matching Program Between the Department of Defense and the United States Department of Agriculture

AGENCY: Defense Manpower Data Center (DMDC), Defense Logistics Agency (DLA), Department of Defense (DoD).

ACTION: This action constitutes notice for public information on a proposed new ongoing computer matching program between the Department of Defense (DoD) and various components of the United States Department of Agriculture (USDA) for debt collection purposes under the Debt Collection Act of 1982 (Pub. L. 97–365). The USDA components participating in this proposed action are the Farmers Home Administration (FmHA); the Federal Crop Insurance Corporation (FCIC); and the Agriculture Stabilization and Conservation Service/Commodity Credit Corporation (ASCS/CCC).

SUMMARY: The Department of Defense, under an interagency agreement with the Office of Management and Budget (OMB), Department of the Treasury and the Office of Personnel Management (OPM), announces a proposal to match by computer DoD employment records of active and retired military members, including the Reserve and Guard; the OPM government-wide Federal active and retired civilian records with the records of individuals who are delinquent debtors to the U.S. Government under certain programs administrated by the USDA.

The purpose of the computer match is to identify and locate USDA delinquent debtors who are receiving Federal salary or benefit payments so as to permit the particular component of USDA to pursue and collect the debt by voluntary repayment or by administrative or salary offset procedures against the debtor under the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365).

DATES: This proposed action will be effective immediately on April 7, 1988, unless comments are received which would result in a contrary determination.

ADDRESS: Send any written comments to Mr. Robert J. Brandewie, Deputy Director, Defense Manpower Data Center, Suite 200, 550 Camino El Estero, Monterey, CA 93940–3231. Telephone: (408) 646–4131; Autovon: 878–2951.

FOR FURTHER INFORMATION CONTACT: Mr. Aurelio Nepa, Jr., Staff Director, Defense Privacy Office, Room 205, 400 Army Navy Drive, Arlington, VA 22202–2803. Telephone: (202) 694–3027; Autovon: 224–3027.

SUPPLEMENTARY INFORMATION: This proposed computer matching program is being conducted in order to identify by name and locate by address those individuals Federally employed or retired that are indebted and delinquent in their repayment to the U.S. Government under certain programs administered by the USDA.

The Office of Management and Budget (OMB) has designated the Financial Management Service of the Department of Treasury, as the Lead Agency to coordinate and monitor the implementation of the U.S. Government's Federal Salary Offset Program. An interagency agreement, restricted exclusively to the implementation of the Debt Collection Act of 1982 (Pub. L. 97–365), established an Interagency Working Group to facilitate computer matching and subsequent salary offset procedures throughout the Federal government under the auspices and oversight of the OMB. This Interagency Working Group consists of the Department of the Treasury, Office of Personnel Management and the Department of Defense. As a result, a centralized computer data base for computer matching made up of Department of Defense and Office of Personnel Management records has been established for debt collection purpose in order to have a data bank record of active and retired military members, including the Reserve and Guard, and further including OPM government-wide active and retired civilian personnel that are receiving Federal salaries or other Federal benefit payments. This newly established data bank is being maintained by the Defense Manpower Data Center of the Department of Defense and is available for matching

purposes by any Federal creditor agency.

Set forth below is the information required by the paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget on May 11, 1982 (47 FR 21656, May 19, 1982). A copy of this proposed notice has been provided to the President of the Senate, the Speaker of the House of Representatives and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget on March 29, 1988 pursuant to the cited OMB matching guidelines.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 1, 1988.

Report of a Continuing Computer Matching Program Between the Department of Defense (DOD) and the United States Department of Agriculture (USDA)

a. *Authority*: The legal authority under which the computer matching will be conducted is 5 U.S.C. 552a, the Privacy Act of 1974; 5 U.S.C. 5514, Installment deduction of indebtedness; 10 U.S.C. 136, Asst. Secretaries of Defense, appointment, powers and duties; Federal Claims Collection Act of 1966 (Pub. L. 89–508) 31 U.S.C. 952(d); the Debt Collection Act of 1982 (Pub. L. 97–365) 5 U.S.C. 5514, 31 U.S.C. 3711 and 3716–3718; Section 206 of Executive Order 11222; 4 CFR Chapter II, Federal Claims Collection Standards (General Accounting Office—Department of Justice); 5 CFR 550.1101–550.1108, Collection by Offset from Indebted Government Employees—(OPM); 7 CFR Part 3, Debt Management—(Agriculture); Office of Management and Budget, "Revised Supplemental Guidance for Conducting Matching Programs," dated May 11, 1982 (47 FR 21656, May 19, 1982) and "Guidelines on Relationship Between the Privacy Act of 1974 and the Debt Collection Act of 1982," March 30, 1983 (48 FR 15556, April 11, 1983); the Interagency Agreement for Federal Salary Offset Initiative (Office of Management and Budget, Department of the Treasury, Office of Personnel Management and the Department of Defense) signed April 1987, published at 52 FR 37492, October 7, 1987.

b. *Program Description*: The purpose of this computer matching program is to identify and locate those individuals who are receiving Federal salaries or benefit payments that are indebted and delinquent in the their repayment of debts to the U.S. Government under certain programs administered by the USDA in order to collect the debts by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

The particular USDA component, as the source agency, will provide the Defense Manpower Data Center (DMDC) of the DoD, the matching agency, a computer tape of all the individual delinquent debt records of those indebted to the U.S. Government under certain USDA programs.

Upon receipt of the computer tape file of debtor accounts, the DMDC will perform a computer match using all nine digits of social security numbers of delinquents against a DMDC computer data base. The DMDC computer data base, established under an interagency agreement, consists of records of active duty and retired military members, including the Reserve and Guard, and all the OPM Government-wide employed civilian and retired civilian records.

Matching records, "hits" based on the social security number, will be furnished to the particular USDA Component consisting of the member's name, service or agency, category of employee, salary or benefit, and current work or home address from DMDC's data base records. The "hit" information from DMDC will be referred by USDA for action to recover the outstanding debt(s) by salary or administrative offset when other collection actions have been pursued and have been unsatisfactory.

The USDA component will be responsible for reviewing the "hit" records to assure that each individual is positively identified in the match as the debtor; to assure that the debtor is afforded proper due process under GAO regulation (4 CFR Chapter II) "Federal Claims Collection Standards" and that a proper accounting of any further disclosure outside the USDA shall be maintained by in accordance with 5 U.S.C. 552a(c) of the Privacy Act. The USDA will ensure that the debt is valid and the information is accurate, complete, timely and relevant. Hard copy match records will be used by the USDA to determine any continued benefit entitlement level, if any, and to contact the debtor if necessary. The notification to the debtor shall include information concerning the amount to be collected, and may include the amount of the proposed monthly deductions. The debtor shall be given an opportunity to enter into voluntary agreement to repay the debt before any administrative or salary offset measures are initiated. The debtor shall further be given an opportunity to inspect and copy records related to the debt and for review of the decision related to the debt. If no collection action is needed, the DoD record will no be used by the USDA for any other purposes.

c. *Records to the Matched*: The following systems of records, subject to the Privacy Act of 1974 (5 U.S.C. 552a), each containing an appropriate routine use permitting records to be matched, are as follows:

United States Department of Agriculture (Source Agency)

(1) USDA component: Farmers Home Administration (FmHA)
System identification: USDA/FmHA–1
System name: Applicant/Borrower or Grantee File, USDA/FmHA
Federal Register citation: 50 FR 25727, June 21, 1985
Amended: 52 FR 2247, January 21, 1987
Amended: 52 FR 44458, November 19 1987
Amended: 53 FR 5206, February 22, 1988

(2) USDA component: Federal Crop Insurance Corporation (FCIC)
System identification: USDA/FCIC–1
System name: Accounts receivable, USDA/FCIC
Federal Register citation: 52 FR 42467, November 5, 1987

(3) USDA component: Agricultural Stabilization and Conservation Service/Commodity Credit Corporation (ASCS/CCC)
System identification: USDA/ASCS–28
System name: Claims Data Base (Automated) USDA/ASCS
Federal Register citation: 51 FR 46697, December 24, 1986
Amended: 53 FR 2517, January 28, 1988

Department of Defense (Matching Agency)

(1) DoD component: Defense Logistics Agency (DLA)
System identification: S322.10 DLA–LZ
System name: Defense Manpower Data Center Data Base
Federal Register citation: 53 FR 4442, February 16, 1988

(2) DoD component: Defense Logistics Agency (DLA)
Systemn identification: S322.11 DLA–LZ
System name: Federal Creditor Agency Debt Collection Data Base
Federal Register citation: 52 FR 37495, October 7, 1987

(3) Agency: Office of Personnel Management (OPM)
System identification: OPM/GOVT–1

System name: General Personnel Records

Federal Register citation: 49 FR 36954, September 20, 1984

(4) Agency: Office of Personnel Management (OPM)

System identification: OPM/CENTRAL–1

System name: Civil Service Retirement and Insurance Records

Federal Register citation: 49 FR 36950, September 20, 1984

d. *Period of the Match:* The initial match will begin as soon as possible after this public notice is published in the **Federal Register** and then conducted no more often than semiannually thereafter.

e. *Security Safeguards:* Automated records are stored in limited access computer facilities and accessible only by password. Access to the computer center is by key or picture identification. Hard copy records are maintained in Federal office buildings in lockable file cabinets and accessed only by authorized Federal employees on a need-to-know basis.

f. *Retention and Disposition of Records:* Under written Memorandum of Understanding (MOU) agreements between the DoD/DMDC and the USDA components, it is agreed that tapes provided by the USDA component for matches shall be destroyed or returned to the USDA component upon successful completion of each match and shall be used only for debt collection purposes. Non-hit records will not be used for any purposes. Hard copy matched records (hits) will be used by USDA to conduct individual reviews and may be used to contact the debtor for payment pursuant to the Debt Collection Act of 1982. Records relating to "hits" will be retained by USDA until the completion of any necessary administrative collection or legal action and will then be disposed of in accordance with approved records control schedules and/or approved disposition authority from the Archivist of the United States. The USDA will maintain a disclosure accounting record, as required by 5 U.S.C. 552a(c) of the Privacy Act, as a result of the match information received from DMDC when contacting other agencies pursuing individual debtors. If no collection action is needed, the DoD record will not be used for any other purpose. The USDA tape file will be used and accessed only to the match agreed to; it will not be used to extract information concerning "non-hit" individuals for any purpose and it will not be duplicated or disseminated within or outside the DoD matching agency.

[FR Doc. 88–7632 Filed 4–6–88; 8:45 am]

BILLING CODE 3810–01–M

Corps of Engineers, Department of the Army

Intent to Prepare a Draft Supplement to the Final Environmental Impact Statement (EIS) for a Proposed Flood Control Project, Bassett Creek, Hennepin County, MN

AGENCY: U.S. Army Corps of Engineers, St. Paul District, DOD.

ACTION: Notice of intent to prepare a draft supplement to the Final EIS.

SUMMARY: The St. Paul District has implemented a flood control project in the Bassett Creek watershed in Hennepin County, Minnesota. Basset Creek flows through several suburban communities to the edge of downtown Minneapolis where it enters a tunnel that discharges into the Mississippi River above St. Anthony Falls. The flood control plan would provide comprehensive flood control over a wide area. The plan consists of multiple features including: floodplain regulation, flood insurance, floodproofing, flood forecasting and warning, temporary flood storage areas, and a replacement tunnel. Some of these features have already been constructed.

The St. Paul District proposes to change the alignment and method of construciton of the replacement tunnel, eliminate a ponding area at the tunnel inlet, and design a disposal plan for material excavated from the tunnel inlet and channel banks which are in the vicinity of a designated hazardous waste site.

Subsequent to the publication of the Final Environmental Impact Statement, it was determined that the site of a proposed ponding area at the tunnel inlet was formerly used as a landfill and it was later designated by the State of Minnesota as a hazardous waste site. The ponding area was abandoned in favor of increased channel capacity, a larger capacity tunnel, and a disposal plan for the contaminated material that would be excavated.

A new tunnel was to be bored through glacial till from the vicinity of the existing tunnel inlet to a tunnel bored through the St. Peter sandstone bedrock. The bored tunnel would be a cooperative venture with the Minnesota Department of Transportation and would carry the storm water runoff from a portion of Interstate Highway 394, presently under construction, as well as water from Basset Creek. The bored tunnel would be connected to a previously installed "wye" in the existing Interstate Highway 94 storm water tunnel which discharges into the Mississippi River at the downstream end of the St. Anthony Falls lock.

In addition to the increase in the tunnel capacity, the method of construction and alignment of the most upstream reach of the tunnel would be altered for greater economy and efficiency.

A cost-benefit analysis demonstrated that a surface excavated alignment with pre-cast conduits would be more economical and efficient to construct than a tunnel bored through glacial till. The proposed supplement to the EIS would analyze the potential impacts of the channel excavation, installation of the proposed conduits, and disposal of excess excavated material.

The following issues and concerns with the design changes were identified through coordination with the Minnesota Pollution Control Agency and the local sponsor.

1. The history of the use of areas that will be excavated or used for disposal.

2. Sufficient chemical testing would be done so that the entire alignment would have been surveyed.

3. A plan would be developed that satisfactorily addresses excavation, handling, and disposal of material from the project.

4. A plan would be developed to deal with an unexpected discovery of contaminated material during excavation.

No formal scoping meeting is planned for this supplement. However, significant issues and resources to be analyzed in the draft supplement will be identified through coordination with responsible Federal, State; and local agencies, interested private organizations and parties, and affected Indian tribes. Anyone who has an interest in participating in the development of the draft supplement or who wishes to provide information is invited to contact the St. Paul District, Corps of Engineers.

The Final EIS on flood control for Basset Creek, Hennepin County, Minnesota, was made available to the public in July 1978.

The review of the project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), Corps of Engineers Regulations (33 CFR Part 230), and all other applicable regulations and guidance.

We estimate that the draft supplement will be available to the public during the third quarter of fiscal year 1988 (April–June 1988).

Questions concerning the proposed action and draft supplement to the EIS can be directed to: Colonel Joseph Briggs, District Engineer, St. Paul District, Corps of Engineers, 1421 U.S. Post Office and Custom House, St. Paul, Minnesota 55101–1479.

Date: March 28, 1988.

Joseph Briggs,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 88–7602 Filed 4–6–88; 8:45 am]

BILLING CODE 3710–CY–M

Intent To Prepare A Draft Environmental Impact Statement (SEIS) For Section II of the Sandy Hook to Barnegat Inlet Beach Erosion Control Project, Asbury Park to Manasquan, Monmouth County, NJ

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

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, New York District proposes to place sand along nine miles of Atlantic Ocean shoreline between Asbury Park and Manasquan in Monmouth County, New Jersey, and to periodically place additional sand to maintain project dimensions. The action is necessary because erosion has seriously reduced the width of most beaches in the study area, exposing shorefront structures to damage and limiting the amount of beach available to recreational users. The proposed work will protect shorefront structures in the area and provide sufficient recreational beach area for current and expected future users over the 50-year lifetime of the project.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by:

EIS Coordinator: Michele Farmer, ATTN: CENAN–PL–E, Phone: 212–264–4662

Project Manager: Michael Jurist, ATTN: CENAN–PL–FN, Phone: 212–264–9077

U.S. Army Engineering District, New York, 26 Federal Plaza, New York, NY 10278–0090

SUPPLEMENTARY INFORMATION:

1. *Proposed Action.* The proposed action provides for placement of sand to create a beach berm approximately 100 feet wide at 10 feet above mean low water for approximately nine miles of coastline extending from Asbury Park southward to Manasquan, New Jersey. Periodic beach nourishment is also authorized.

2. *Reasonable Alternatives.* In addition to the no-action alternative, reasonable alternatives include: sand berm widths between 50 and 150 feet; various numbers of new and extended groins; and combinations of different project elements.

3. *Scoping Process.* Preliminary coordination has been conducted with Federal and State interests to identify items of significant environmental concern. Views and concerns of public agencies and individuals will also be solicited through a public notice that will describe the project and invite affected Federal, state and local agencies and other interested private organizations and parties to participate in the scoping process. Significant issues to be analyzed in depth in the DEIS include aquatic resource impacts, water quality impacts, archaeological and cultural resource impacts, recreational impacts and impacts on longshore sand transport. Environmental review and consultation will be as outlined in Council on Environmental Quality regulations dated November 29, 1983 (40 CFR Parts 1500–1508) and Corps regulations 33 CFR Parts 230 and 325 dated February 3, 1988.

(Environmental Quality: Procedures for Implementing the National Environmental Policy Act, NEPA)

4. No scoping meeting will be held.

5. Estimated Date of Statement Availability: February 1990.

Date: March 24, 1988.

Samuel P. Tosi, P.E.,

Chief, Planning Division.

[FR Doc. 88–7601 Filed 4–6–88; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Stanco Petroleum, Inc.; Proposed Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed consent order and opportunity for comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order with Stanco Petroleum Inc. and provides an opportunity for public comment on the terms and conditions of the proposed Consent Order.

DATES: Comments by May 9, 1988.

ADDRESS: Send comments to: "Stanco Petroleum Consent Order Comments," Office of Enforcement Litigation, Economic Regulatory Administration, U.S. Department of Energy, Room 6H–034, RG–33, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Edward P. Levy, Office of Enforcement Litigation, Economic Regulatory Administration, U.S. Department of Energy, Room 6H–034, RG–33, 1000 Independence Avenue, SW., Washington, DC 20585. Copies of the proposed Consent Order may be obtained free of charge by writing or by calling this office at (202) 586–5417.

SUPPLEMENTARY INFORMATION: On March 24, 1988, the ERA executed a proposed Consent Order with Stanco Petroleum, Inc. Under 10 CFR 205.199J(b), a proposed Consent Order which involves the sum of $500,000 or more, excluding interest and penalties, becomes effective no sooner than thirty (30) days after publication of a notice in the **Federal Register**, requesting comments concerning the proposed Consent Order. Although ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate a modification of the Consent Order, or issue the Consent Order as signed.

I. Background

During the period when the Mandatory Petroleum Price Regulations were in effect, Stanco Petroleum, Inc. (Stanco) engaged in the production and sale of crude oil from the Enders Field Unit, the Spath Oil Field, the P.C. Hyson Property, and the L.V. Frederick Property, all of which were located in Kimball County, Nebraska. Accordingly, Stanco was a "producer" of crude oil, as defined in 10 CFR 212.31, and was subject to the regulations governing first sales of domestic crude oil in 10 CFR Part 212, Subpart D. ERA conducted an audit of Stanco's sales of crude oil from the above-mentioned properties during the period from September 1973 through July 1976. The audit concluded that these sales were made at prices in excess of the maximum ceiling prices permitted by Subpart D.

On April 4, 1979, DOE issued a Proposed Remedial Order (PRO) to Stanco. The PRO alleged that Satanco caused overcharges in the amount of $1,109,198 during the audit period in its sales from the four Kimball County properties. The firm filed a Statement of Objections to the PRO, ERA responded, and an evidentiary hearing and oral argument were held. Thereafter, on August 25, 1982, the Office of Hearings

and Appeals (OHA) issued a Remedial Order (RO) to Stanco, which, except for certain relatively minor amendments, adopted the PRO. *Stanco Petroleum, Inc.*, 10 DOE § 83,007 (1982). OHA ruled that, during the audit period, Stanco improperly sold crude oil produced from the Enders, Spath, Hyson and Frederick properties at stripper well prices. This determination was based on the conclusion that, except in one instance, Stanco had not met its burden to overcome the findings in the PRO that the average daily production of each of these properties exceeded 10 barrels per well during the applicable qualifying periods for stripper well eligibility.

Stanco then appealed the RO to the Federal Energy Regulatory Commission (FERC). Upon review, the FERC upheld the Remedial Order in all respects.

Throughout the proceedings before OHA and FERC, Stanco has maintained that the four properties mentioned above qualified for stripper well status during the entire audit period. However, the settlement discussions that resulted in the proposed consent Order with Stanco did not focus on the issue of whether Stanco overcharged in its sales of crude oil. Instead, Stanco asserted to the agency that it was financially unable to pay the amount of the RO, and sought to enter into a settlement under which it would pay an amount that reflected its ability to pay. As a result, the Department conducted a detailed examination of Stanco's financial situation.

Stanco is a small, independent crude oil producer. DOE's examination of the firm's records indicated that, during the period of price controls, the firm experienced gradual but steady growth and always had a net profit. However, its net worth was always substantially less than its overcharge liability, and, at best, it would have taken several years for the firm to pay its liability out of its annual income. In 1981, Stanco decided to purchase additional leases and to substantial "workover" on one of its existing properties, and financed these activities by borrowing funds. Consequently, the firm's assets and liabilities increased substantially, and its net worth became slightly negative. During the years that followed, Stanco experienced losses, which were initially substantial but then declined to relatively modest amounts. However, the firm did not again become profitable. Moreover, although the firm's net worth again became positive by 1985, its production revenues were below projected levels and it had been unable to reduce its bank loans sufficiently. Stanco therefore embarked on a program to sell off assets in order to reduce its debt. It should be noted that the firm's net worth remained far smaller than its overcharge obligation. Moreover, Stanco's officers and employees made significant loans to the firm in order to keep it solvent.

During the first half of 1986, Stanco experienced a severe decline in its cash flow. The significant drop in oil prices at that time required the firm to shut in some of its production units and substantially reduce the amount of its production. Consequently, Stanco was not able to meet its obligation to repay its bank loan, either through sales of crude oil or of its assets. In addition, its bank, which holds a security interest, required that all revenue be paid to it, thus effectively controlling Stanco's business. During the second half of 1986 and first part of 1987, the firm's financial problems continued. No salaries were paid to the chief officers of the firm, and Stanco made no further reductions in its debt.

Based on an analysis of Stanco's financial situation, ERA concluded that Stanco could pay only a small proportion of its liability until it again received at least $21 per barrel for its crude oil. The Consent Order provides, therefore, that Stanco will pay DOE $50,000 with interest, over a period of approximately three years. In addition, for every calendar quarter during which the posted price for crude oil sold by Stanco averages $21 or more per barrel during the term of the Consent Order, the firm shall make an additional payment to DOE. The amount of those payments will increase as the posted price increases. Finally, if for any reason Stanco does not meet its payment obligations, then its liability shall be $2,300,000. This represents the approximate amount the DOE believes would be an appropriate settlement of this mattter without regard to inability to pay.

In light of financial data that ERA has reviewed, the nature of the violations, the entire record in this proceeding, the low potential for collecting any amount from the firm absent significant oil price increases, and the expense to the government of any additional litigation, ERA believes that the the Consent Order with Stanco is a satisfactory compromise of the proceedings against the firm.

II. Consent Order

The proposed Consent Order has been entered into in order to resolve all civil and administrative disputes, claims, and causes of action by DOE relating to Stanco's compliance with the federal petroleum price and allocation regulations. Although Stanco contends in all respects that it correctly construed and applied the applicable regulations, it has entered into the proposed Consent Order to avoid the expense of litigation and the disruption of its business. DOE believes that the proposed Consent Order is in the public interest and provides a satifactory resolution of the issues raised by the audit.

III. Refunds

Under the terms of the proposed Consent Order, Stanco will pay to DOE $50,000 in four equal installments, plus interest. The first installment is due within 30 days of the effective date of the Consent Order and the remaining payments are due annually, beginning on September 30, 1988. In addition, for each calendar quarter in which the posted price applicable to Stanco's production averages $21 to $23.49, Stanco will pay an additional $10,000, and the additional amount to be paid increases with each increase of $2.50 in the posted price. The largest additional amount is $140,000, for any calendar quarter in which the posted price applicable to the firm's production is $41 more per barrel. The refund will be deposited in a suitable account for appropriate distribution by DOE.[1]

IV. Submission of Written Comments

Interested persons are invited to submit written comments concerning the terms and conditions of the proposed Consent Order to the address given above. The ERA will consider all comments it receives by 4:30 p.m., local time, on the 30th day after the date of publication of this notice. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures in 10 CFR 205.9(f).

Issued in Washington, DC on the 1st day of April, 1988.

Milton C. Lorenz,

Chief Counsel, Office of Enforcement Litigation, Economic Regulatory Administration.

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[1] Agreement in principle on the Consent Order was reached in August 1987. Therefore, interest on the $50,000 to be paid by Stanco began to accrue on September 1, 1987. In addition, the first "calendar quarter" for purposes of computing any additional payments began on that date, with the first two "quarters" actually consisting of consecutive two-month periods. The last calendar quarter under the agreement ends on December 31, 1990.

Consent Order with Stanco Petroleum, Inc.

[ERA Case No. 733C00096; FERC Case No. RO82-89-000]

I. Introduction

101. This Consent Order is entered into between Stanco Petroleum, Inc. ("Stanco") and the Department of Energy ("DOE"). Except as specifically excluded herein, this Consent Order settles and finally resolves all civil and administrative claims and disputes, whether or not heretofore asserted, between DOE and Stanco, concerning Stanco's compliance with the regulations governing the production and sale of crude oil, as contained in the federal petroleum price and allocation regulations (as defined herein) administered and enforced by DOE and its predecessor agencies during the period August 19, 1973 through January 27, 1981 ("the matters covered by this Consent Order").

II. Jurisdiction, Regulatory Authority and Definitions

201. This Consent Order is entered into by DOE pursuant to the authority conferred upon it by sections 301 and 503 of the Department of Energy Organization Act (DOE Act), 42 U.S.C. 7151 and 7193; Executive Order 12009, 42 FR 46267 (1977); and Executive Order No. 12038, 43 FR 4957 (1978). This Consent Order is also entered into in accordance with, and subject to, the provisions of 10 CFR 205.199J.

202. In Delegation No. 0204-4, the Secretary of Energy delegated the responsibility for the administration of the Federal petroelum price and allocation regulations, including authority to enter into Consent Orders on behalf of DOE, to the Administrator of the Economic Regulatory Administration ("ERA"), which Administration was created by Section 206 of the DOE Act, 42 U.S.C. 7136. Authority to enter into this Consent Order on behalf of DOE has been delegated by the Administrator of ERA to the Special Counsel, by Delegation Order No. 0204-4A dated December 14, 1981.

203. (a) Reference herein to "DOE" includes the ERA, the Cost of Living Council, the Federal Energy Office, and the Federal Energy Administration or any predecessor agencies. Reference herein to "Stanco" refer to Stanco Petroleum, Inc.

(b) For purposes of this Consent Order,

(1) The phrase "federal petroleum price and allocation regulations" means all pricing and allocation requirements imposed by or under the Economic Stabilization Act of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, Presidential Proclamation 3279, and all applicable DOE regulations, codified in 6 CFR Part 150, Subpart L, and 10 CFR, Parts 205, 210, 211, 212 and 213, including all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, forms subpoenas, and reporting and certification requirements regarding such regulations.

(2) "Calendar quarter" refers to the following periods: (A) during 1987 the periods from September 1, 1987, through October 31, 1987, and from November 1, 1987, through December 31, 1987, and (B) during 1988, 1989, and 1990, the periods during each year from January 1 through March 31, from April 1 through June 30, from July 1 through September 30, and from October 1, through December 31.

(3) "Average posted price" means the average daily price, during a calendar quarter, for crude oil of 35 degrees API gravity, specified in (A) the postings pursuant to which Stanco sells crude oil to Union Oil Company, or (B) if Stanco is not selling crude oil to Union, the postings pursuant to which Stanco sells crude oil to Texaco, Inc. or (C) if Stanco sells to neither Union nor Texaco, the postings pursuant to which Stanco sells crude oil to Permian Corporation, or (D) if Stanco sells neither to Union nor Texaco nor Permian, all postings for Western Nebraska sweet crude oil. The average daily price shall be derived by adding the specified price on each day of the calendar quarter, and dividing the total by the number of days during the quarter.

III. Facts and Determinations

301. Stanco engaged in the production and sale of crude oil during the period covered by this Consent Order. Accordingly, Stanco was subject to the price regulations codified in 10 CFR Part 212.

302. DOE conducted an audit to determine Stanco's compliance during the period from September 1973 through July 1976 ("the audit period") with the federal petroleum price and allocation statutes, regulations and requirements referred to in Section 301, *supra*. As a result of this audit, disputes arose between Stanco and DOE concerning Stanco's compliance with applicable federal petroleum price regulations in its sales of crude oil during the audit period. ERA issued a Proposed Remedial Order ("PRO") to Stanco on April 4, 1979, and the PRO was issued as a Remedial Order ("RO") by the Office of Hearings and Appeals on August 25, 1982. The RO was affirmed by the Federal Energy Regulatory Commission on August 23, 1985. Stanco and DOE each maintain that their respective positions on the issue underlying the RO are meritorious. Neither DOE nor Stanco disavows any position it has taken with respect to such issues.

303. Notwithstanding DOE's view as to the proper application of the federal petroleum price and allocation regulations to Stanco's activities, Stanco maintains that it operated in accordance with applicable federal petroleum price regulations. However, and without admitting any violation, in order to avoid any further litigation and disruption of its business functions, Stanco has agreed to enter into this Consent Order. DOE believes it is in the best interest of the government and the general public to resolve the matters covered by this Consent Order by means of this agreement.

IV. Remedial Provisions

401. (a) In settlement of all matters covered by this Consent Order, Stanco agrees to pay DOE $2,300,000, plus interest calculated as provided in paragraph 402.

(b) However, due to representations made to DOE as to the financial position of Stanco, if Stanco makes the payments called for in the following subparagraphs, DOE will accept such payments in full satisfaction of Stanco's obligation under subparagraph 401(a):

(1) Stanco shall pay to DOE $50,000, plus interest calculated as provided in paragraph 402 on any unpaid balance of this amount, in four installments. The first installment shall be paid no later than 30 days after this Consent Order becomes effective pursuant to paragraph 901 below, with subsequent installments to be paid on September 30, 1988, September 30, 1989, and September 30, 1990. Each installment shall be in the amount of $12,500 plus the accrued interest on the outstanding upaid balance of the $50,000. Stanco has the option to prepay all or any part of this outstanding unpaid balance at any time without penalty.

(2) In addition, for any "calendar quarter" during which Stanco's "average posted price" is within a range in Column A immediately following, Stanco shall pay to DOE the amount on that same line in Column B, as follows:

COLUMN A—Average Posted Price	COLUMN B—Payment
At a posted price of $21 to $23.49	Stanco shall pay $10,000.
At a posted price of $23.50 to $25.99	Stanco shall pay $12,500.
At a posted price of $26 to $28.49	Stanco shall pay $30,000.
At a posted price of $28.50 to $30.99	Stanco shall pay $45,000.
At a posted price of $31 to $33.49	Stanco shall pay $60,000.
At a posted price of $33.50 to $35.99	Stanco shall pay $77,500.
At a posted price of $36 to $38.49	Stanco shall pay $95,000.
At a posted price of $38.50 to $40.99	Stanco shall pay $117,500.
At a posted price of $41 or more	Stanco shall pay $140,000.

These payments shall be referred to below as the "variable payments." Each variable payment shall be made within 60 days of the end of the calendar quarter for which it is due, or within 30 days after the effective date of this Consent Order pursuant to paragraph 901, whichever is later. Interest, calculated in accordance with paragraph 402, shall accrue and be payable on any portion of a variable payment that becomes overdue.

402. (a) Interest shall be computed at the rate of 8.25% per annum, compounded quarterly, and shall begin to accrue as of September 1, 1987; provided, however, that interest will begin to accrue with respect to a variable payment only when all or part of the payment becomes overdue. Interest shall accrue on all unpaid amounts until the date of payment.

(b) Except to the extent that paragraph 403 provides otherwise, each payment made the Stanco, including any prepayment made pursuant to subsection 401(b)(1), shall be applied first to pay any interest that has accrued, and any remaining portion of the payment shall be applied to reduce any other amounts owing.

403. (a) If for any reason all or part of any payment required by subparagraph 401(b)(1) has become more than 60 days overdue, or if at any time all or part of two or more payments required by subparagraph 401(b) have become overdue, then, at DOE's option and upon not less than 30 days written notice by DOE to Stanco, the full amount set forth in subparagraph 401(a) shall immediately be due and payable by Stanco to DOE unless Stanco has paid the full amount due under subparagraph 401(b) before the expiration of the 30 day notice period; provided, however, that the amount in subparagraph 401(a) shall be reduced, to give Stanco credit for any payments it has made under this Consent Order, as follows:

(1) Any payment(s) by Stanco of interest due under subparagraph 401(b) shall be treated as having been payment(s) of the interest accruing under subparagraph 401(a), on the date(s) when actually paid.

(2) Any payment(s) of amounts owing under subparagraph 401(b) other than interest shall be treated as having been payments of the principal amount stated in subparagraph 401(a), on the dates when actually paid.

(b) "Written notice" as used in subparagraph 403(a), is defined as including a statement of the date that any overdue payment was due, the amount(s) overdue, and, if apparent to DOE, any computation or other error that caused an underpayment.

(c) If Stanco pays, within the 30 day period specified in subparagraph 403(a), the amount(s) that DOE informs it is (are) overdue, and advises the addressee specified in paragraph 405 that such payment is being made under protest, then the payment shall not be construed as an admission by Stanco that the amount is overdue and Stanco shall be free to pursue whatever rights it has to obtain a refund of such payment.

404. The payments made pursuant to paragraph 401 of this Consent Order shall be by certified or cashier's check, made payable to the Department of Energy, and delivered to the Office of the Controller, Office of Washington Financial Services, Cash Management Division, Post Office Box 500, Germantown, Maryland 20874–0500. The Administrator (or his designee) of ERA, shall direct that these monies be deposited in a suitable account and ERA will petition DOE's Office of Hearings and Appeals to implement special refund procedures pursuant to 10 CFR Part 205, Subpart V to distribute the monies.

405. Concurrent with each payment made pursuant to this Consent Order, Stanco shall send a verification of the payment to: Jay Thompson, Director, Office of Administration and Financial Management, Economic Regulatory Administration, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Along with the verification, Stanco shall provide a statement setting forth the provisions of this Consent Order pursuant to which the payment was made, and, with respect to any payments to which subparagraph 401(b)(2) applies, the information required by subparagraph 602(b) and any other information necessary to show how the payment amount was derived.

V. Issues Resolved

501. Stanco warrants that there is no litigation pending against the DOE initiated or participated in by the firm which in any way relates to or arises out of the matters covered by this Consent Order, or related claims arising under the Freedom of Information Act (5 U.S.C. 552). Stanco hereby agrees to release any and all claims, demands, liabilities, or causes of action that Stanco has asserted or might be able to assert against DOE, and any employee of DOE, in any matter related to the matters covered by this Consent Order.

502. (a) Compliance by Stanco with this Consent Order, including payment pursuant to paragraph 401(b), shall be deemed by DOE to constitute full compliance for civil purpose with regard to the matters covered by this Consent Order. In consideration for performance under this Consent Order by Stanco, DOE will not, except as explicitly provided herein, initiate or prosecute any civil matter against Stanco, or against any officer, employee, director, or shareholder of Stanco in his individual capacity, with respect to the matters covered by this Consent Order, or cause or refer any such matter to be initiated or prosecuted, or directly or indirectly aid in the initiation of any such civil matter.

(b) Nothing contained herein shall preclude DOE from defending the validity of the Federal Petroleum Price and Allocation Regulations. DOE also reserves the right to initiate and prosecute enforcement actions against any party other than Stanco for noncompliance with the Federal Petroleum Price and Allocation Regulations including, for example, suits against operators for overcharges for crude oil when Stanco is a working or royalty interest owner in such crude oil production. Stanco and DOE agree that the amount paid to DOE pursuant to this agreement is not attributable to Stanco's

activities as a working or royalty interest owner or properties on which it is not the operator. Furthermore, Stanco and DOE agree that the Consent Order and the payments hereunder do not resolve, reduce or release the liability of any other party for violations on properties at times during which Stanco is a working or royalty interest owner (and not the operator) or affect any rights or obligations between Stanco and such working or royalty interest owners.

(c) DOE expressly agrees that it will not seek or recommend any criminal fines or penalties based solely on the information and evidence presently in its possession for the matters covered by the Consent Order; provided that nothing in this Consent Order precludes DOE from exercising its obligations under law with regard to forwarding information of possible criminal violations of law to the appropriate authorities. Nothing contained herein any criminal action, or a defense against any criminal action, or against any civil action brought by any purchaser of covered products from Stanco, or against any civil action brought by an agency of the United States other than by DOE under (i) section 210 of the Economic Stabilization Act or (ii) any statue or regualtion other than the Federal Petroleum Price and Allocation Regulations.

503. (a) The parties expressly recognize and agree that the amounts for the variable payments provided for in subparagraph 401(b)(2) are based on the assumption that the exemption of Stanco's stripper well production from excise tax under the Windfall Profits Tax ("the excise tax") and Stanco's treatment as an independent producer subject to lower excise tax rates, will not be changed during the period (through calendar year 1990) when Stanco may be required to make variable payments.

(b) If, as a result of a change in the excise tax, Stanco's cash flow has been or will be altered by more than 10 per cent, then the following provisions shall apply:

(1) The parties, i.e. Stanco and DOE, shall meet upon request by either party to discuss revision of the variable payments specified under subparagraph 401(b)(2).

(2) If 45 days have passed after such a request has been made and the parties have not agreed as to revisions, either party may petition under 10 CFR Part 205, Subpart J, to modify prospectively the variable payment amounts provided for in subparagraph 401(b)(2) based on the changes in the excise tax. If the petition has been filed within 75 days of the most recent request for a meeting provided for in this paragraph, the petition may also seek to modify the amount of any variable payment made or payable for any calendar quarter that ended one year or less prior to that request to discuss revisions, and as to which Stanco's cash flow was affected by more than 10% by the specified changes in the applicable law; provided, however, that the one-year limit on retroactivity shall not apply to a request by DOE to modify payments if Stanco has not provided the notification required by subparagraph 602(a).

(3) If either party files a petition under Subpart J pursuant to this subparagraph, the other party is permitted to oppose the petition only on grounds that the criteria in this subparagraph for filing have not been satisfied, and/or that the amount of the change in Stanco's payment obligation that is sought by the petition is unwarranted by the amount of the change in Stanco's taxes.

(c) Except as specified herein, the provisions of this Consent Order shall not in any way affect the right of either party of file or oppose a petition under Subpart J with regard to this Consent Order.

504. Execution of this Consent Order constitutes neither an admission by Stanco nor a finding by DOE of any violation by Stanco of any statute or of any regulation. DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and expressly agrees that it will not seek any such civil penalties. None of the payments or expenditures by Stanco made pursuant to this Consent Order are to be considered for any purpose as penalties, fines, or forfeitures or settlements of any potential liability for penalties, fines or forfeitures.

505. Notwithstanding any other provision herein, DOE reserves the right to initiate an enforcement proceeding, including, without limitation, an action for penalties, for any newly discovered regulatory violations committed by Stanco with respect to resales of refined petroleum products during the period covered by this Consent Order, but only if Stanco concealed such violations. DOE also reserves the right to seek appropriate judicial remedies other than full rescission of this Consent Orfer, or to rescind this Consent Order, for any misrepresentation of a material fact made by Stanco during the course of the audit or during the course of the negotiations that preceded this Consent Order.

VI. Reporting, Recordkeeping Requirements

601. Stanco shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order. To assist DOE in the distribution of the monies paid pursuant to paragraph 401, Stanco shall also maintain sales volume data and customers' names and addresses regarding its sales of crude oil for the transactions covered by this Consent Order until thirty (30) days after final distribution by DOE of the funds paid pursuant to paragraph 401, *supra*. If requested, Stanco shall make such information available to DOE. Except as otherwise provided in this paragraph, upon completion of its payment obligation under this Consent Order, Stanco is relieved of its obligations to comply with the recordkeeping requirements of the federal petroleum price and allocation regulations relating to matters covered by this Consent Order. 602. Stanco shall provide to the addresses specified in paragraph 405 herein the following:

(a) Within 90 days of the enactment of any change in the excise tax that would appear to alter Stanco's cash flow by more than 10%, notification of the change and an explanation of its expected impact (including dollar amount) on Stanco; and

(b) Within sixty (60) days after the end of each calendar quarter, or, as to any calendar quarter ending more than 30 days before the effective date of this Consent Order, within 30 days after such effective date, a statement of Stanco's average posted price for that calendar quarter, its calculation of the average posted price, and a copy of the applicable posting(s).

603. This Consent Order is subject of disclosure by the DOE pursuant to the requirements of the Freedom of Information Act, as amended, 5 U.S.C. 552 (FOIA). Stanco waives all claims it may have that some or all of the information contained in this Consent Order is exempt from the mandatory public disclosure requirements of the FOIA, as amended, is information referred to in 18 U.S.C. 1905, or is otherwise exempt by law from public disclosure.

VII. Contractual Undertaking

701. It is the understanding and express intention of Stanco and DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provision

herein, Stanco and DOE each reserves the right to institute a civil action in United States District Court, if necessary, to secure enforcement of the terms of this Consent Order, and DOE also reserves the right to seek appropriate penalties for any failure to comply with the terms of this Consent Order. Consistent with Departmental policy, DOE will undertake the defense of the Consent Order as finalized, in response to any litigation challenging the Consent Order's validity in which the DOE is named as a party. Stanco agrees to cooperate with the DOE in the defense of such challenges.

VIII. Final Order

801. Upon becoming effective, this Consent Order shall be a final order of DOE having the same force and effect as a Remedial Order issued pursuant to section 503 of the DOE Act, 42 U.S.C. 7193, and 10 CFR 205.199B. Stanco hereby waives its right to administrative or judicial appeal from this Order, but Stanco reserves the right to participate in any such review initiated by a third party.

IX. Effective Date

901. This Consent Order shall become effective as a final order of the DOE upon notice to that effect published in the **Federal Register.** Prior to that date, DOE will publish notice of the proposed Consent Order in the **Federal Register** and, in that notice, public to submit comments to DOE. DOE will consider all written comments to determine whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order or to attempt to renegotiate the terms of the Consent Order.

902. Until the effective date, DOE reserves the right to withdraw consent to the Consent Order by written notice to Stanco, in which event this Consent Order shall be null and void.

I, the undersigned, a duly authorized representative of Stanco Petroleum Inc. hereby agree to and accept on behalf of Stanco Petroleum Inc. the foregoing Consent Order.

Name: Stanley R. Juelfs.
Title: President.
Dated: February 19, 1988.

I, the undersigned, a duly authorized representative of the Department of Energy, Economic Regulatory Administration, hereby agree to and accept on behalf of said Administration, the foregoing Consent Order.

Name: Milton C. Lorenz.
Title: Chief Counsel.
Dated: March 24, 1988.

[FR Doc. 88-7693 Filed 4-6-88; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER88-300-000, et al.]

Southern California Edison Co., et al., Electric rate, Small power production, and Interlocking Directorate filings

April 4, 1988.

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

1. Southern California Edison Company

[Docket No. ER88-300-000]

Take notice that on March 28, 1988, Southern California Edison Company (Edison) tendered for filing, as an initial rate schedule, the following agreement, along with a Supplemental Letter Agreement for Dismissal of Suppliers Litigation, both of which have been executed by Edison and the Department of Water and Power of the City of Los Angeles, California (Los Angeles):

Los Angeles-Edison Exchange Agreement Between The Department of Water and Power of the City of Los Angeles and Southern California Edison Company

The Los Angeles-Edison Exchange Agreement provides a long-term exchange of entitlements to utilize transmission capacity, generation service, and a settlement of various issues between the Parties. Operations under the Agreement are expected to provide the Parties with improved system reliability and increased power purchase opportunities.

Copies of this filing were served upon the Public Utilities Commission of the State of California and the Department of Water and Power of the City of Los Angeles.

Comment date: April 18, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Safe Harbor Water Power Corporation

[Docket No. EL88-2-000]

Take notice that on March 28, 1988, Safe Harbor Water Power Corporation tendered for filing pursuant to Commission Order dated February 25, 1988 a Compliance Report showing the refund data as required in the Commission's order.

Copies of this filing were served upon the Pennsylvania Power & Light Company, Baltimore Gas and Electric Company, the Maryland Public Service Commission and the Pennsylvania Public Utility Commission.

Comment date: April 18, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. L'Energia, Inc.

[Docket No. QF87-249-001]

On March 17, 1988, L'Energia, Inc. (Applicant), c/o Bio Development Corp., 3 Executive Park Drive, Bedford, New Hampshire 03102, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located on Andrew Street, Lowell, Massachusetts. The facility will consist of an extraction/condensing turbine generator, a combustion turbine generator, and a heat recovery steam generator. Thermal energy recovered from the facility will be used for food processing and for laundry hot water heating. Primary energy source will be natural gas. The net electric power production capacity of the facility will be 54.5 MW. Startup of the new facility is expected to begin in June 1990.

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

Standard Paragraphs:

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,

Acting Secretary.

[FR Doc. 88-7597 Filed 4-6-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. G-3894-031 et al.]

ARCO Oil and Gas Co., Division of Atlantic Richfield Co., et al.; Applications for Certificates, Abandonment of Service and to Amend Certificates [1]

April 4, 1988.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce, to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 18, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it is determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-3894-031, D, Mar. 21, 1988	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221.	Arkla Energy Resources, a division of Arkla, Inc., Butler Gas Unit, Ada Field, Webster Parish, Louisiana.	(1)
G-4282-005, D, Mar. 21, 1988	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, CA 94120-7309.	Natural Gas Pipeline Company of America, Boonesville Field, Jack County, Texas.	(2)
CI65-258-000, D, Mar. 18, 1988	Texaco Producing Inc., P.O. Box 52332, Houston, TX 77052.	Lone Star Gas Company, Sho-Vel-Tum Field, Stephens County, Oklahoma.	(3)
CI67-209-001, D, Mar. 21, 1988	ARCO Oil and Gas Company, a Division of Atlantic Richfield Company.	Arkla Energy Resources, a division of Arkla, Inc., Hartshorne Area, Pittsburg County, Oklahoma.	(4)
CI80-196-001, D, Mar. 21, 1988	do	Arkla Energy Resources, a division of Arkla, Inc., Greenwood Waskom Field, Caddo Parish, Louisiana.	(5)
CI88-330-000 (CI68-1170), D, Feb. 26, 1988.	Mobil Producing, Texas & New Mexico Inc., Nine Greenway Plaza, Suite 2700, Houston, TX 77046.	Transcontinental Gas Pipe Line Corporation, Dilworth, S.E.Field, McMullen County, Texas.	(6)
CI88-331-000, A, Feb. 26, 1988	Exxon Corporation, P.O. Box 2180, Houston, TX 77252-2180.	Columbia Gas Transmission Corporation, Grand Isle Block 18 Field, OCS-G-033, Well No. 4, from the C-6, Y Reservoir, Offshore Louisiana.	(7)
CI88-332-000, A, Feb. 26, 1988	do	Columbia Gas Transmission Corporation, West Delta Block 73 Field, OCS-G-1090, Well No. G-1D, from the I-35, H Reservoir, Offshore Louisiana.	(8)
CI88-333-000 (CI79-280), B, Feb. 26, 1988.	Felmont Oil Corporation, 350 Glenborough, Suite 300, Houston, TX 77067.	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., South March Island 257, Offshore Louisiana.	(9)
CI88-334-000 (G-11911), D, Feb. 29, 1988.	Mobil Producing, Texas & New Mexico Inc	El Paso Natural Gas Company, Amacker-Tippett Field, Upton County, Texas.	(10)
CI88-335-000 (G-3840, et al.), B, Feb. 29, 1988.	Union Oil Company of California, P.O. Box 7600, Los Angeles, CA 90051.	El Paso Natural Gas Company, Clara Couch Field, Crockett County, Texas.	(11)
CI88-351-000, F, Mar. 7, 1988	Amoco Production Company	Northwest Pipeline Corporation, Basin Dakota Field, Rio Arriba County, New Mexico.	(12)
CI88-355-000, F, Mar. 9, 1988	Tenneco Oil Company, P.O. Box 2511, Houston, TX 77001.	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., High Island A-269/A-270, Offshore Texas.	(13)
CI88-358-000 (G-2588), D, Mar. 11, 1988.	Sohio Petroleum Company, P.O. Box 4587, Houston, TX 77210.	Williston Basin Interstate Pipeline Company, Manderson Field, Big Horn County, Wyoming.	(14)
CI88-359-000 (CI62-596), D, Mar. 11, 1988.	do	Panhandle Eastern Pipeline Company, Mocane-Laverne Field, Beaver County, Oklahoma.	(15)
CI88-360-000 (G-17239), D, Mar. 14, 1988.	Mobil Producing, Texas & New Mexico Inc	Texas Eastern Transmission Corporation, May Field, Kleberg County, Texas.	(16)
CI88-361-000, F, Mar. 14, 1988	Tenneco Oil Company	Transcontinental Gas Pipe Line Corporation, West Cameron Block 40 Field, Offshore Louisiana.	(17)
CI88-365-000 (CI85-25-000), B, Mar. 17, 1988.	Case-Pomeroy Oil Corporation, 12600 Northborough, Suite 155, Houston, TX 77067.	Natural Gas Pipeline Company of America, West Cameron 81, Offshore Louisiana.	(18)
CI88-369-000 (CI81-272-000), B, Mar. 21, 1988.	Case-Pomeroy Oil Corporation	Transcontinental Gas Pipe Line Corporation, High Island Block 508, Offshore Texas.	(18)
CI88-370-000, B, Mar. 21, 1988	Odeco Oil & Gas Company, et al., P.O. Box 61780, New Orleans, LA 70161.	Transcontinental Gas Pipe Line Corporation, Vermilion Block 101, Offshore Louisiana.	(19)
CI88-372-000 (G-16146), D, Mar. 21, 1988.	CNG Producing Company, Canal Place One, Suite 3100, New Orleans, LA 70130.	Colorado Interstate Gas Company, Certain acreage in Morton County, Kansas.	(21)
CI88-373-000 (G-20148), D, Mar. 21, 1988.	do	do	(22)
CI88-374-000 (CI76-397), D, Mar. 21, 1988.	do	do	(22)
CI88-375-000 (G-19480), D, Mar. 21, 1988.	do	do	(22)
CI88-376-000 (CI-1290), D, Mar. 23, 1988.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Panhandle Eastern Pipe Line Company, Tangier Field, Woodward County, Oklahoma.	(23)
CI88-377-000 (CI81-430), D, Mar. 23, 1988.	Mobil Oil Exploration & Producing Southeast Inc	Natural Gas Pipeline Company of America, West Cameron Block 264, Offshore Louisiana.	(24)

Docket No. and date filed	Applicant	Purchaser and location	Description
CI88-378-000 (CI80-277), D, Mar. 23, 1988.	Mobil Exploration & Producing North America Inc.	do	([25])

[1] Effective 1-7-83, ARCO assigned certain interests to Exxon Corporation, Frank B. Treat Estate and Alice-Sidney Oil Company.
[2] Effective 1-16-88, Chevron partially assigned certain acreage to Wes-Mor Oil & Gas Inc.
[3] Effective 10-1-87, Texaco Producing Inc. assigned to John T. Hull its interest in and to a portion of the McFarland-Baker Lease in Sec. 31-1N-5W, Stephens County, Oklahoma.
[4] By Partial Assignment effective 6-1-85, ARCO assigned certain acreage to Samson Resources Company.
[5] By Partial Assignment effective 4-1-84, ARCO assigned certain acreage to Acadia Refining Company.
[6] Effective 9-1-87, MPTM assigned all of its right, title and interest in and to that certain productive acreage in McMullen County, Texas, identified as Lease No. T-40353, which lease is dated 6-12-47 and is described as the G.L. Hayes, *et al.* lease to Asher Resources.
[7] Applicant is filing under Gas Purchase Contract dated 2-12-88.
[8] Not used.
[9] Ceased production due to depletion.
[10] Effective 7-1-87, MPTM assigned to Southwest Royalties, Inc., all of its right, title and interest in and to that certain productive acreage in Upton County, Texas, identified as Lease Nos. T-27371-A&B, insofar as said leases cover the S/2 of Section 104, Block D, CCSD & RGNG Ry. Co. Survey, Upton County, Texas.
[11] The wells subject to Union's FERC G.R.S. No. 100 have been plugged and abandoned or sold. Last sales to El Paso under Rate Schedule No. 100 were in October 1982.
[12] By Assignment effective 3-1-86, Atlantic Richfield Company assigned to Amoco specified leasehold interests in certain acreage lying in Rio Arriba County, New Mexico.
[13] Effective 1-1-88, Shell Offshore Inc. assigned certain acreage to Tenneco Oil Company.
[14] Sohio Petroleum Company assigned its working interest in the Manderson Unit to Natural Gas Processing Company, effective 1-1-88.
[15] By Farmout Agreement dated 10-1-84, Sohio Petroleum Company assigned its working interest in the McGee Barby Unit, Sec. 2-T5N-R23ECM, to Donald C. Slawson.
[16] All MPTM interest has been assigned effective 9-1-87 to William E. Colson (non-productive acreage) and to Cities Service Oil and Gas Corporation (productive acreage).
[17] Effective 12-31-85, Tenneco Oil Company acquired certain acreage from Chevron U.S.A., Inc., Enstar Corporation, Lannie M. Moses, Lyco Acquisition 1983-I, Ltd., Petro-Lewis Funds, Inc., Texas-Ranger, Inc. and TXP Operating Company.
[18] Production ceased to depletion.
[19] Production ceased, lease expired under its own terms and reverted to the Minerals Management Service on 7-28-87.
[20] Not used.
[21] Effective 11-1-87, CNG Producing Company assigned certain acreage to Coastal Oil & Gas Corporation, Texaco Producing Inc., and Cities Service Oil and Gas Corporation.
[22] Effective 11-1-87, CNG Producing Company assigned certain acreage to Coastal Oil & Gas Corporation.
[23] Effective 1-1-87, ARCO assigned all its interest in Lease No. 16986 to Hondo Oil & Gas Company. The remaining lease, Lease No. 16987, was surrendered January 1971.
[24] Effective 9-28-87, MOEPSI assigned to Conn Energy Inc., certain productive acreage.
[25] Effective 9-28-87, MEPNA assigned to Conn Energy Inc., certain productive acreage.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 88-7596 Filed 4-6-88; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 9390-001]

American Hydro Power Co.; Surrender of Preliminary Permit

March 28, 1988.

Take notice that American Hydro Power Company, Permittee for the Pymatuning Dam Hydro Electric Project No. 9390, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9390 was issued on January 16, 1986, and would have expired on December 31, 1988. The project would have been located on the Shenango River in Crawford County, Pennsylvania.

The Permittee filed the request on February 19, 1988, and the preliminary permit 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

Acting Secretary.

[FR Doc. 88-7593 Filed 4-6-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. GP88-16-000]

Colorado Interstate Gas Co. et al; Complaint

April 1, 1988.

Take notice that on March 15, 1988, Colorado Interstate Gas Company (CIG) filed a complaint pursuant to Rule 206 of the Commission's rules of practice and procedure (18 CFR 385.206) against Chemco, Inc., Robin Investment Company, Inc., R.E. Neher, Dempsey Investment Company, G. Hamilton Neher, Kirchner Farm Associates, and Robert Jones (Respondents). CIG requests that the Commission find that Respondents are charging CIG rates for the sale of natural gas in excess of those set forth in Title I of the Natural Gas Policy Act of 1978 (NGPA).

CIG states that Respondents are seeking to collect from CIG in a Colorado state court action (*Colorado Interstate Gas Company* v. *Chemco, Inc. et al.*, District Court, County of Denver, Case No. 85CV012676) take-or-pay amounts provided in an April 27, 1979 gas purchase agreement between them, and that if CIG is required to pay these amounts, CIG will have paid Respondents for the gas in issue a price in excess of the maximum lawful price (MLP) permitted under the NGPA. CIG states that Respondents have made claims for take-or-pay amounts commencing in 1980 until April 1988, and that Respondents assert that CIG is not entitled to take the gas at a later time despite the existence of a contract provision which grants CIG a five-year make-up period in which to take gas which it has paid for but not yet taken. Moreover, CIG argues that Respondents' take-or-pay claims greatly exceed the value of production from the wells subject to the gas purchase agreement, making recoupment impossible. CIG argues that even if it were able to fully recoup these prepayments, Respondents will have already received additional value from the interest-free use of such monies.

CIG further states that Respondents claim a right to take-or-pay amounts for the period after CIG exercised its contractual right to cease making purchases under a "market-out" clause although Respondents contend that CIG should receive no gas for such payment. CIG asserts that if it is required to

prepay for natural gas which it has not taken and would not receive, such payments are additional compensation to the Respondents for those volumes of gas which were previously sold and delivered to CIG and would cause Respondents to receive an amount in excess of the MLP.

CIG requests the Commission to take jurisdiction of the complaint and find that Respondents' demand for take-or-pay prepayments under the gas purchase agreement at issue constitutes a demand for payments in excess of the MLP established under Title I of the NGPA.

Any person desiring to be heard or to protest CIG's complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure. All such motions or protests should be filed within 30 days after publication of this notice in the **Federal Register**. 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 in accordance with the Commission's rules of practice and procedure. Answers to the complaint shall be made under Rules 206 and 213 of the Commission's rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-7594 Filed 4-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-2-44-000]

Commercial Pipeline Co., Inc.; PGA Filing

April 4, 1988

Take notice that on March 31, 1988, Commercial Pipeline Co., Inc. ("Commercial") tendered for filing its Fifty-third Revised Sheet No. 3A, superseding Alternate Fifty-second Revised Sheet No. 3A reflecting Purchased Gas Adjustment and Total Rate as shown below:

	Current adjustment	Cumulative adjustment	Surcharge adjustment	Total rate
(Base)	.2630	.8717	1.6249	5.0990
(Excess)	.2810	.8832	1.2649	5.2219

Commercial states that this filing reflects adjustments in its purchased gas cost to provide for the tracking of a corresponding PGA adjustment by Commercial's supplier, Williams Natural Gas Company. The filing also reflects surcharge adjustments in accordance with Commercial's PGA.

Commercial also tendered for filing its Second Revised Sheet No. 7C, superseding Alternate First Revised Sheet No. 7C, and Third Revised Sheet No. 10, superseding Second Revised Sheet No. 10. Second Revised Sheet No. 7C removes the incremental pricing tariff language from Commercial's tariff consistent with Order No. 478 in Docket No. RM87-28-000. Third Revised Sheet No. 10 reflects Greeley Gas Company as successor to Commercial's three prior customers.

The effective date of Commercial's filing is May 1, 1988.

Copies of the filings were served on Commercial's FERC jurisdictional customer, the Kansas Corporation Commission and the Missouri Public Service 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 and 385.214). All such motions or protests should be filed on or before April 11, 1988. Protestants 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,

Acting Secretary.

[FR Doc. 88-7677 Filed 4-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP87-78-000]

Doran & Associates, Inc., FERC JD81-43125 et al.; Petition To Reopen and Vacate Final Well Category Determination

Issued April 4, 1988.

On September 17, 1987, Doran & Associates, Inc. (Doran) filed a petition to reopen and vacate final well category determinations made for the Engle-Fleming KA-052, R. Henry No. 4 KA-069, and Robert F. Henry No. 1 KA-065 wells (the wells) pursuant to § 275.205 of the Commission's regulations. 18 CFR § 275.205 (1987). Doran requests the Commission to reopen the well category determination proceedings and vacate the Natural Gas Policy Act (NGPA) section 102(c) determinations for the wells.

On May 4, 1981, June 10, 1981, and June 11, 1981, Doran filed well category determination applications with the Pennsylvania Department of Environmental Resources, Division of Oil and Gas Regulations (Pennsylvania) seeking determinations that the wells qualified as NGPA section 102(c) wells. Subsequently, Pennsylvania approved the applications. The well category determinations became final 45 days after the Commission received notice of Pennsylvania's action.

Doran states that all of the initial filings were made "to the best of Doran's knowledge, information and belief" that the subject wells were more than 2.5 miles from any marker well. However, a marker well was subsequently located within 2.5 miles of the subject wells, thereby disqualifying the wells from receiving an NGPA section 102(c) well category determination. Doran states that for the R. Henry No. 4 KA-069 and Robert F. Henry No. 1 KA-065 wells the marker wells were not mapped at the time of Doran's initial filing and that the wells were reclassified as NGPA section 107(c)(5) wells in 1984. Finally, Doran states that the Engle-Fleming KA-052 well should be reclassified under NGPA section 103 and that it intends to file for such a classification.

Any person desiring to be heard or protest the requested reopenings 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 (1987). All such motions or protests should be filed within 30 days of publication of this notice in the Federal Register. All protests filed will be considered, but will not serve to make the protestant a party to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with the Commission's rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-7595 Filed 4-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-88-000 and RP88-88-001]

Panhandle Eastern Pipe Line Co.; Tariff Filing

April 4, 1988.

Take notice that on March 28, 1988 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing in Docket No. RP88-88-000 the revised tariff sheets as listed on the attached Appendix A.

On March 30, 1988, Panhandle tendered for filing on Docket No. RP88-88-001 Original Sheet No. 32-BU.2 and First Revised Sheet No. 32-BW, which corrected errors in the March 28, 1988 filing. Panhandle requests these corrected sheets be substituted in place of the corresponding sheets in the March 28, 1988 filing.

Panhandle states that these tariff sheets which reflect certain revisions to Panhandle's Rate Schedule PT-Firm governing firm transportation service are requested to be effective April 1, 1988. These revised tariff sheets clarify procedures attendant to the CD conversion rights afforded to Panhandle's existing sales customers in accordance with § 284.10 of the Commission's Regulations.

Specifically, Panhandle is proposing a new provision in § 6.14(b) of its Rate Schedule PT-Firm. This new provision establishes that certain unfulfilled requests by existing sales customers for CD conversion will create a priority in the transportation queue for new firm transportation capacity on the Panhandle West End System. Panhandle requests that the Commission clarify that the establishment of such priority is a reasonable operating condition as provided for under § 284.8(c) of the Commission's Regulations and that Panhandle can implement the provisions of the proposed § 6.14(b) without being deemed to be in violation of non-discriminatory access as provided under § 284.8(b) of the Commission's Regulations.

Copies of this letter and enclosures are being served on all 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 NW., 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 April 11, 1988. 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 perosn 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,

Acting Secretary.

Appendix A—Panhandle Eastern Pipe Line Company

Proposed Tariff Sheets

First Revised Sheet No. 32-BE
First Revised Sheet No. 32-BH
First Revised Sheet No. 32-BS
Original Sheet No. 32-BU.1
Original Sheet No. 32-BU.2
First Revised Sheet No. 32-BW
First Revised Sheet No. 32-CB
First Revised Sheet No. 32-CC

[FR Doc. 88-7678 Filed 4-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-96-000]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 4, 1988.

Take notice that on March 31, 1988, Southern Natural Gas Company (Southern) tendered for filing certain tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, to be effective May 1, 1988.

Southern states that the proposed tariff sheets are being filed in order to implement recovery of a portion of $119.5 million in buy-out and buy-down costs incurred by Southern pursuant to the procedures established in the Commission's Order No. 500. Specifically, under those procedures Southern is proposing to absorb 35% of the $119.5 million in buy-out and buy-down costs, to recover through a fixed charge applicable to each of is firm jurisdictional sales customers another 35% of such costs, and recover the remaining 30% of such costs through a volumetric surcharge to be applicable to all of Southern's throughput.

Southern states that copies of the filing were mailed to all of Southern's jurisdictional purchasers, shippers, and interested state commissions, as well as the parties listed on the Commission's official service list complied in Docket Nos. RP86-63-000 and RP86-114-000.

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 Capital Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before April 11, 1988. 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,

Acting Secretary.

[FR Doc. 88-7679 Filed 4-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-2-18-001]

Texas Gas Transmission Corp.; Filing of Revised Tariff Sheets

April 1, 1988.

Take notice that on March 25, 1988, Texas Gas Transmission Corporation (Texas Gas) tendered for filing Substitute Eleventh Revised Sheet Nos. 10 and 10A to its FERC Gas Tariff, Original Volume No. 1, proposed to be effective February 1, 1988.

The revised tariff sheets are being filed to reflect rate revisions from Texas Eastern Transmission Corporation and Tennessee Gas Pipeline Company, pursuant to the Commission's Letter Order issued January 28, 1988, in Docket No. TA88-2-18.

Copies of the revised tariff sheets are being mailed to Texas Gas'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, NW., Washington, DC 20426, in accordance with Rules 211 and 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 or or before April 8, 1988. 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,

Acting Secretary.

[FR Doc. 88-7592 Filed 4-6-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-82-000 and RP88-82-001]

Transcontinental Gas Pipe Line Corp.; Filing

April 4, 1988.

Take notice on March 24, 1988, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing the following tariff sheets as part of its FERC Gas Tariff, Second Revised Volume No. 1, to be effective May 1, 1988:

Original Sheet Nos. 242A through 242D

Original Sheet Nos. 500 through 543

In its filing, Transco states that the purpose for its filing Original Sheet Nos. 242A–242D is to include two new sections to the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1, which sections are titled "Maximum Daily Delivery Point Entitlements" and "Maximum Daily Delivery Point Entitlement By Facility Group". In addition, Transco states that Original Sheet Nos. 500–543 include an Index of Delivery Point Entitlements which is incorporated into the General Terms and Conditions of its tariff through the proposed Original Sheet Nos. 242A–242D. Transco states that the proposed tariff sheets are applicable to each buyer for which Transco renders or delivers firm service, other than buyers under Transco's Rate Schedules G and OG.

In addition, Transco states that the proposed tariff sheets formalize operating quidelines which are applicable only to customer takes on a daily basis and establish a base upon which facilities may be designed for incremental service in the future. Under the proposed tariff sheets, in the event that the buyer, without prior authorization by Transco, takes on any day a quantity of gas which is greater than the applicable Delivery Point Entitlement or the daily delivery entitlement applicable to a Facility Group, then the unauthorized daily overrun penalty provisions of the proposed tariff sheets shall apply.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North 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 (1987)). All such motions or protests should be filed on or before April 11, 1988. 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,

Acting Secretary.

[FR Doc. 88–7680 Filed 4–6–88; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Submission of Bank Call Reports

AGENCY: Federal Financial Institutions Examination Council (FFIEC).

ACTION: Request for Comments.

SUMMARY: The usefulness of bank Call Report data to state and federal supervisory agencies, the banking industry, and to other public sector users depends upon the timeliness with which it is received and processed. The agencies have made and are continuing to make every effort to shorten the time required to process the reports and are now requesting comments on proposals relating to the prompt submission of the Call Report by FDIC-insured commercial banks and by FDIC-insured state-chartered savings banks.

Currently, banks must submit their completed Call Report not later than 30 calendar days after the report date. However, any bank with more than one foreign office (other than a "shell" branch or an International Banking Facility) may take an additional 15 calendar days to submit its Call Report. To date, the term "submit" has not been formally defined. Currently, some institutions interpret the submission date as the date by which completed reports must be mailed while others interpret it as the date by which the reports must be received.

The federal bank supervisory agencies are, therefore, proposing to define the term "submission date" in the Call Report instructions as the date by which a bank's completed Call Report must be received by the banking agencies (or their collection agent if the report is submitted electronically). In order to alleviate concerns about possible delays in mail delivery, the bank would not be considered to have filed its report late, if the report were not received until after the submission deadline, as long as the bank's report has been mailed first class and postmarked not later than the third calendar day before the submission deadline. Should the bank use an overnight delivery service, entry of the bank's Call Report into the delivery system on the day before the submission deadline in sufficient time to allow for next day delivery would constitute timely submission.

In addition, the agencies are proposing to require, in the Call Report instructions, those banks with more than one foreign office that use any of the additional 15 calendar days they are allowed for the completion of their reports to submit their Call Reports electronically via the electronic data transmission system being implemented as of the March 31, 1988 Call Report date.

The effect of these proposals, which would take effect as of September 30, 1988, would be to provide usable data to the agencies' surveillance and monitoring systems on a more timely basis. Their adoption may also allow the Federal Financial Institutions Examination Council (FFIEC) to return reported and edited data to banks in the form of Uniform Bank Performance Reports earlier than is currently possible.

DATE: Comments must be received by June 15, 1988.

ADDRESS: All comments should be sent to Robert J. Lawrence, Executive Secretary, Federal Financial Institutions Examination Council, 1776 G Street, NW., Suite 701, Washington, DC 20006, or delivered to the same address between the hours of 9:00 a.m. and 5:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

OCC: Gary H. Christensen, National Bank Examiner, Supervisory Information, (202/447–1181), Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

Board: Rhoger H Pugh, Manager, Division of Banking Supervision and Regulation, (202)/728–5883), Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Robert F. Storch, Planning and Program Development Specialist, Division of Bank Supervision, (202)/898–6905), Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Supplementary Information and Background

In recent years, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), and state banking authorities have

increased their use of data from the quarterly Reports of Condition and Income (Call Reports) for bank supervisory and surveillance purposes. The greater reliance on these reports as a means of identifying, at an early stage, those banks which are experiencing deterioration in their financial condition has prompted efforts to achieve more timely availability of these data. The usefulness of bank Call Report data to state and federal supervisory agencies, the banking industry, and to other public sector users depends upon the timeliness with which it is received and processed. The agencies have made and are continuing to make every effort to shorten the time required to process the reports and are now requesting comments on proposals relating to the prompt submission of the Call Report by FDIC-insured commercial banks and by FDIC-insured state-chartered savings banks.

As authorized by the Examination Council in August 1987, the banking agency members of the FFIEC's Reports Task Force met with representatives from several banking industry groups in October 1987 to discuss the Call Report submission process. At the meeting, a discussion paper on this subject was distributed to representatives of the American Bankers Association (ABA), Conference of State Bank Supervisors (CSBS), Independent Bankers Association of America (IBAA), and New York Clearing House (NYCH). It was requested that these groups consult with the appropriate committees within their organizations as to the practicability of shortening the Call Report submission period and other alternatives for achieving more timely availability of bank Call Report data. Based on the views expressed by the banking industry groups, the FFIEC decided not to shorten the submission period from its current length of 30 calendar days or 45 calendar days for banks with more than one foreign office.

The views of the industry groups were also solicited on the related issue of the definition of the term "submission date." As mentioned above, since this term is not specifically defined, some institutions have interpreted it to mean the date by which reports must be mailed while others believe it to mean the date by which the reports must be received by the regulators. Currently, many Call Reports are not received until three or more days after the submission date because they are not mailed until the submission date. The industry groups had differing opinions on which interpretation should be formally adopted to clarify the meaning of the term "submission date," in part due to concerns about the uncertainty of mail delivery and the amount of mailing time a bank might need to allow in order to ensure that its completed reports would be received on time.

The agencies are proposing to adopt in the Call Report instructions the date of receipt alternative as the definition of "submission date" as a means of improving the timeliness of the reported data. However, to alleviate concerns about possible delays in mail delivery, a bank's Call Report that is mailed first class will not be considered late, when received after the submission date, provided it has been postmarked no later than the third calendar day before the submission date deadline. In the absence of a postmark, a bank whose Call Report is received late may be called upon to provide proof of timely mailing. (The three-day mailing period was chosen base on the service standards established by the U.S. Postal Service which provide that all zip-coded first class mail being sent within the continental United States should be received by the addressee by the third day after mailing.)

Alternatively, if a bank chooses to incur the cost of overnight mail (or a similar delivery service) and its Call Report enters the delivery system the day before the submission deadline in accordance with the established requirements for next day delivery, the Call Report would be considered to have been received on time. Reports transmitted electronically will be received by the banking agencies' collection agent and, therefore, would be considered submitted on time if the report was transmitted to the collection agent on or prior to the submission date.

The agencies are also proposing to require, in the Call Report instructions, those banks with more than one foreign office that use any of the additional 15 calendar days they are allowed for the completion of their reports to submit their Call Report electronically via the transmission system being implemented as of the March 31, 1988 Call Report date. This proposed measure stemmed from suggestions from the NYCH and the ABA. This requirement would tend to make the Call Report data from these banks, which include the largest banks in the U.S., available for agency use up to six days earlier than is currently possible.

The agencies also propose to adopt both of these measures effective as of the September 30, 1988 report date. Comment is specifically requested on this proposed effective date.

The agencies believe that the propose measures would improve the timeliness of the Call Report and as a result improve its usefulness to the agencies and the banks themselves.

April 4, 1988.

Robert J. Lawrence,

Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 88-7676 Filed 4-6-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232-011184.

Title: Evergreen Marine Corporation (Taiwan) Ltd. and Costa Container Lines SpA. Space Charter and Sailing Agreement in the Mediterranean—U.S. Trades.

Parties:

Evergreen Marine Corporation (Taiwan) Ltd.

Costa Container Lines SpA.

Synopsis: The proposed agreement would permit the parties to charter space from one another and to rationalize their sailings in the trade between U.S. Atlantic ports in the Eastport, Maine/Jacksonville, Florida Range and Mediterranean ports in the Trieste, Italy/Algeciras, Spain Range. The parties will commit up to a total of 10 vessels having a combined capacity of up to 12,000 TEU's to the agreement service.

Agreement No.: 203-011185.

Title: Trinidad Discussion Agreement

Parties:

United States Atlantic and Gulf/Southeastern Caribbean Conference

Caribbean Shipowners Association

Synopsis: The proposed agreement would permit the parties to discuss and agree upon matters of mutual interest, including rates, in the trade between U.S. Atlantic and Gulf ports, and coastal and inland points via such ports and ports and points in Trinidad. Adherence to any agreement reached would be voluntary.

Agreement No.: 212–011186.
Title: SANTA/EMPREMAR Service Agreement
Parties:
Empresa Naviera Santa, S.A.
Empresa Maritima del Estado

Synopsis: The proposed agreement would permit the parties to pool their net freight revenues in the trade between U.S. Atlantic and Gulf ports and ports in Chile, Bolivia, Peru and Ecuador. The Service will begin operations with five vessels committed to the trade. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: April 4, 1988.

[FR Doc. 88–7636 Filed 4–6–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Colonial BancGroup, Inc., et al., Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 21, 1988.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *The Colonial BancGroup, Inc.*, Montgomery, Alabama; to engage *de novo* in performing appraisals of real estate and tangible and intangible personal property, including securities, pursuant to § 225.25(b)(13) of the Board's Regulation Y. These activities will be conducted in the State of Alabama.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Illini Community Bancorp, Inc.*, Springfield, Illinois; to engage *de novo* through its subsidiary, Illini Recovery Service, Springfield, Illinois, in operating a collection agency pursuant to § 225.25(b)(23) of the Board's Regulation Y.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Clayco Bancshares, Inc.*, Kansas City, Missouri; to engage *de novo* through its subsidiary Clayco State Bank, Claycomo, Missouri, in the sale of credit related life, accident and health insurance sold in connection with credit extensions made by its subsidiary bank pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 1, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–7577 Filed 4–6–88; 8:45 am]

BILLING CODE 6210–01–M

MCorp et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than April 29, 1988.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *MCorp*, Dallas, Texas, and *MCorp Financial, Inc.*, Wilmington, Delaware; to acquire Payment Services Group, Inc., Glastonbury, Connecticut, and thereby engage in providing to others financially related data processing and data transmission services, facilities, and data bases, or access to them, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 1, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-7578 Filed 4-6-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88D-0087]

Draft GMP Guidelines for the Manufacture of in Vitro Diagnostic Products; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for public comment of a draft document entitled "GMP Guidelines for the Manufacture of In Vitro Diagnostic Products" that has been prepared by FDA's Center for Devices and Radiological Health (CDRH). The draft guidelines contain quality assurance and production practices that are acceptable to FDA for ensuring the safety and effectiveness of in vitro diagnostic devices. Elsewhere in this issue of the **Federal Register**, FDA is announcing an open public meeting of FDA's Device Good Manufacturing Practice Advisory Committee. One of the subjects to be discussed at that open advisory committee meeting is the draft guideline document now being made available for comment.

DATE: Comments by June 6, 1988.

ADDRESSES: The draft guidelines are available for public examination at, and written comments may be submitted to, the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857. Copies of the draft guidelines are available from the Division of Small Manufacturers Assistance (HFZ-220), Center for Devices and Radiological Health, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6597, or 800-638-2041.

FOR FURTHER INFORMATION CONTACT: Z. Frank Twardochleb, Center for Devices and Radiological Health (HFZ-332), Food and Drug Administration, 8757 Georgia Ave. Silver Spring, MD 20910, 301-427-7984.

SUPPLEMENTARY INFORMATION: FDA often formulates and disseminates guidelines about products subject to regulation under the laws administered by the agency. Accordingly, under 21 CFR 10.90(b) FDA is making available CDRH's draft "GMP Guidelines for the Manufacture of In Vitro Diagnostic Products." The draft guidelines contain production practices which are acceptable to FDA for ensuring the safety and effectiveness of in vitro diagnostic devices but are not legal requirements. These guidelines are intended to advise the in vitro diagnostic industry on practices which, if followed, would be deemed acceptable to FDA. When different procedures are chosen, a person may, but is not required to, discuss the matter in advance with FDA to avoid the expenditure of money and effort on activities that may later be determined to be unacceptable.

These draft guidelines will be a topic of discussion during an open meeting of the Device Good Manufacturing Practice Advisory Committee on May 4 and 5, 1988. Elsewhere in this issue of the **Federal Register**, FDA is announcing the date, time, place, and other details of the meeting. Any comments and recommendations of the committee will be considered in determining whether revisions of the draft guidelines are warranted.

Comments on the draft guidelines received before June 6, 1988 will be considered by FDA during its preparation of a final guideline on this matter.

Interested persons may, on or before June 6, 1988 submit to the Dockets Management Branch (address above) written comments regarding these draft guidelines. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the document number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 1, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-7673 Filed 4-6-88; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in an open public hearing before one of FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Device Good Manufacturing Practice Advisory Committee

Date, time and place. May 4 and 5, 1988, 9 a.m., Conference Rm. G, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, May 4, 1988, 9 a.m. to 12 m.; open committee discussion, 1 p.m. to 3:30 p.m.; open committee discussion, May 5, 1988, 9 a.m. to 3:30 p.m.; Sharon M. Kalokerinos, Center for Devices and Radiological Health (HFZ-332), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7984.

General function of the committee. The committee reviews regulations for promulgation regarding current good manufacturing practices governing the methods used in, and the facilities and controls used for, the manufacture, packing, storage, and installation of devices, and makes recommendations regarding the feasibility and reasonableness of those proposed regulations. The committee may also provide advice with regard to any petition submitted by a manufacturer for an exemption of variance from the current good manufacturing practice regulations (21 CFR Part 820).

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the executive secretary before April 18, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open comment discussion. The committee will discuss the draft document entitled "Preproduction Quality Assurance Planning: Recommendation for Medical Device Manufacturers." The availability of this draft document was announced in the **Federal Register** of May 19, 1987 (52 FR 18747). A transcript of the discussion on this matter will become part of the administrative record (87B-0025).

The committee will also discuss a draft document entitled "GMP Guidelines for the Manufacture of In Vitro Diagnostic Products." Elsewhere in this issue of the **Federal Register**, FDA is annouancing the availability of this

draft document. Copies of this draft document have also been made available informally through the cooperation of professional organizations associated with the medical device industry and the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. A transcript of the discussion on this matter will become part of the administrative record (88C–0087). FDA will consider comments presented at this meeting along with the recommendations of the committee when preparing a final guideline.

Copies of both draft documents are available from the Division of Small Manufacturers Assistance (address above).

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meeting announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda, published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Room 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: March 31, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–7672 Filed 4–6–88; 8:45 am]

BILLING CODE 4160–01–M

Office of the Assistant Secretary for Health; Intent To Grant an Exclusive Patent License; Robert J. Henkin

Pursuant to § 6.3 of 45 CFR Part 6 and 37 CFR Part 404, notice is hereby given of intent to grant to Dr. Robert J. Henkin an exclusive license to make, use, and sell the invention by Dr. Henkin entitled "Method for Total Protein Fractionation and Analysis of Human Saliva," which is described and claimed in United States Patent No. 4,066,405, issued January 3, 1978. A copy of the patent may be obtained upon written request submitted to Chief, Patent Branch, Department of Health and Human Services, c/o National Institutes of Health, Room 5A–03, Westwood Building, Bethesda, Maryland 20892.

The proposed license will be royalty-free with a duration of five (5) years and will contain other terms and conditions to be negotiated by the parties in accordance with the Department of Health and Human Services Patent Regulations. The Department will grant the license unless, within sixty (60) days of this Notice, the Chief of the Patent Branch receives in writing any of the following, together with supporting documents:

1. A statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed license; or

2. An application for a nonexclusive license to manufacture and/or sell the invention in the United States is submitted in accordance with the provisions of 37 CFR 404.8 and the applicant provides evidence that he has already brought the invention to practical application or is likely to do so expeditiously.

The Assistant Secretary for Health of the Department of Health and Human Services will review all written responses to this Notice.

Authority: 45 CFR 6.3 and 37 404.7.

Dated: March 30, 1988.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 88–7587 Filed 4–6–88; 8:45 am]

BILLING CODE 4110–12–M

Public Health Service

Privacy Act of 1974; Report of Computer Matching Program

AGENCY: Public Health Service, HHS.

ACTION: Notice of computer matching program.

SUMMARY: The Health Resources and Services Administration (HRSA) is providing notice that the Office of the Administrator, Division of Fiscal Services, will conduct ongoing computer matches of records of individuals who have defaulted on student loans with the Internal Revenue Service (IRS) taxpayer records. The purpose of the computer matching program is to obtain current mailing addresses of loan defaulters from IRS taxpayer records. A matching report is set forth below.

DATES: The matching program will commence as early as April 4, 1988, and will be conducted regularly thereafter for information provided on new defaulters and intermittently as updating is required.

ADDRESS: Interested individuals may comment on the proposed matching program by writing to the HRSA Privacy Act Coordinator, Department of Health and Human Services, Room 14A–20, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Mr. Lloyd H. Fagg, Director, Division of Fiscal Services, Health Resources and Services Administration, Room 16–05, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2990. This is not a toll free number.

SUPPLEMENTARY INFORMATION: HRSA conducts loan programs under Subpart II of Part C of Title VII and under Subpart II of Part B of Title VIII of the Public Health Service Act for the purpose of establishing and operating a student loan fund with any public or any other nonprofit health professions or nursing school. The program requires that participating schools collect the loan(s) from the student. If the student fails to repay a borrowed loan, the school follows regulatory procedures to collect the funds.

Section 6103(m)(5)(A) of Title 26, USC authorizes the Secretary of the Treasury, upon written request of the Secretary of Health and Human Services, to disclose the mailing address of any taxpayer who has defaulted on a loan made under these programs. In accordance with 26 U.S.C. 6103(m)(5)(B), the Secretary of Health and Human Services is authorized to disclose the mailing address of any taxpayer who has defaulted on a loan made under the above authorities to schools and eligible lenders for the purpose of locating the student and collecting the loan. HRSA is conducting the computer matching program in accordance with the Office of Management and Budget's (47 FR 21656, May 19, 1982), revised Supplemental Guidance for Conducting Matching Program. A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Dated: March 30, 1988.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management, PHS.

Report of Matching Program: Individuals Who Have Defaulted on Student Loans Administered by the Department of Health and Human Services

A. *Authority.* Debt Collection Act of 1982, Pub. L. 97–365. Authority to disclose the mailing address of any taxpayer who has defaulted on a loan administered by HHS is section 6103(m)(5) of the Internal Revenue Code, as amended by Pub. L. 99–92.

B. *Program Description—Purpose.* This matching program is being conducted to obtain from the Internal Revenue Service (IRS) the current mailing addresses of individuals who received student loans under Subpart II, Part C of Title VII of the Public Health Service Act, or under Subpart II, Part B of Title VIII of such Act, and who have defaulted on repaying their loans under these programs.

Organizations Involved. The Department of the Treasury, Internal Revenue Service, and Health Resources and Services Administration (HRSA).

Procedures. Participating Health Professions/Nursing school will provide HRSA with computer tapes or hard copy lists containing personal data, such as name and last known address, of individuals who have defaulted on student loans. HRSA will submit the data to IRS for electronic comparison with IRS taxpayer records. Successful identification of an individual's address through the match is referred to as a "hit." IRS will generate a list of all "hits" and send it to HRSA together with HRSA's computer tapes.

Follow-up. HRSA will send a hard copy list of the "hits", i.e., current loan defaulters mailing addresses together with the original computer tapes to the schools. Each school will contact the individual(s) identified in the "hits" and apply due diligence in training to collect on the defaulted loan(s), in accordance with the Health Professions/Nursing Student Loans regulatory provisions.

C. *Records to be Matched—Record Source.* The records to be matched are maintained in HRSA 09–15–0045, "Health Resources and Services Administration Loan Repayment/Debt Management Records System, HHS/HRSA/OA," 51 Fr 52519, November 24, 1986, with IRS "Individual Master File: Returns and information Processing System", 24.030, FR 50 29826, July 22, 1985, which includes but is not limited to taxpayers names and addresses.

D. *Date of Matching Program.* The matching program will start as early as April 4, 1988, and will be conducted on an ongoing basis thereafter.

E. *Safeguards.* HRSA: HRSA will select and prepare data for use in the match in such a way as to minimize any risk of possible unauthorized disclosure. Access to the computer files and printed information is restricted to those persons associated with the matching program on a need-to-know basis. The records and tapes are physically secured. Computer tapes are protected by passwords to prohibit unauthorized access. Once the data has been returned to HRSA, it will be treated in the same manner as all information maintained in system of records 09–15–0045.

IRS: IRS will use and access data submitted by HRSA only to the extent necessary to conduct the electronic match. Only those IRS employees who are directly involved in conducting the match will be given access to HRSA records and those generated as a result of the match. These employees will be made explicitly aware of their obligations under the Privacy Act, the requirements of OMB guidelines concerning computer matching programs, and the security safeguards prescribed for records of this type. IRS safeguards require that records be maintained in a secured area and restricted access to information only to persons whose duties and responsibilities require access.

HRSA agrees to comply with all of the safeguard requirements imposed by section 6103(p)(4) of the Internal Revenue Code. HRSA acknowledges the criminal penalties for unauthorized disclosure contained in section 7213(a)(1)–(5) and the civil damage provisions for unauthorized disclosure contained in section 7431(a)–(c). In addition, information provided to participating schools will be controlled and used in compliance with the Privacy Act of 1974, and with HHS and IRS safeguard requirements.

F. *Disposition of Records.* Computer data will be deleted and identified "hits", with computer tapes, will be sent to the respective schools. No records of "hits" will be maintained by HRSA.

[FR Doc. 88–7671 Filed 4–6–88; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–060–4322–02]

Battle Mountain District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Grazing Advisory Board Meeting.

SUMMARY: In accordance with Pub. L. 94–579 and Section 3, Executive Order 12548 of February 14, 1986, a meeting of the Battle Mountain District Grazing Advisory Board will be held.

DATE: May 6, 1988, beginning at 9:00 a.m. in the Battle Mountain District Conference Room, N. Second and Scott Streets, Battle Mountain, Nevada.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

(1) Election of Chairperson and Vice Chairperson,

(2) Status of range improvement program,

(3) Allotment management planning and,

(4) The strategy for evaluation of rangeland monitoring data in the Tonopah EIS Planning Area.

The meeting is open to the public. Interested persons may make oral statements to the board between 1:30 and 2:00 p.m. on May 6, 1988, or file written statements for the Board's consideration. Those persons interested in making oral comments should contact Terry L. Plummer by April 29, 1988.

FOR FURTHER INFORMATION CONTACT: Terry L. Plummer, District Manager, P.O. Box 1420, Battle Mountain, Nevada 89820 or phone (702) 635–5181.

(Date: April 1, 1988.

Terry L. Plummer,

District Manager, Battle Mountain, Nevada.

[FR Doc. 88–7669 Filed 4–6–88; 8:45 am]

BILLING CODE 4310-HC-M

[OR-010-08-4322-10; GP8-111]

Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting June 1, 1988.

SUMMARY: The agenda will center on the Warner Wetlands project and general update on other programs and topics of interest to the Council. Members of the public who wish to address the Council should notify the Lakeview District by May 27, 1988 so that time can be allotted on the agenda.

FOR FURTHER INFORMATION CONTACT: Dick Harlow, Lakeview District Office, P.O. Box 151, Lakeview, Oregon 97630 (Telephone: 503–947–2177).

Dated: April 1, 1988.

Dick Harlow,

Associate District Manager.

[FR Doc. 88–7611 Filed 4–6–88; 8:45 am]

BILLING CODE 4310-33-M

[OR-010-08-4322-10; GP8-110]

Grazing Advisory Board Tour

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of tour May 24, 1988.

SUMMARY: The tour will center on the Beattys Butte area range improvements, grazing systems and rangeland monitoring. The tour will begin at the Lakeview District Office at 8:00 a.m. The public is invited to attend the tour. However, due to the terrain to be traversed, special transportation arrangements are needed. Members of the public who wish to attend the tour and/or make a statement to the Advisory Council should notify the District Office by May 20, 1988.

FOR FURTHER INFORMATION CONTACT: Dick Harlow, Lakeview District Office, P.O. Box 151 Lakeview, Oregon 97630 (Telephone: 503–947–2177).

Dated: April 1, 1988.

Dick Harlow,

Associate District Manager.

[FR Doc. 88–7612 Filed 4–6–88; 8:45 am]

BILLING CODE 4310-33-M

[ID-060-08-4212-13; I-25297]

Coeur d'Alene District, ID; Exchange of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; exchange of public lands in Shoshone County, Idaho.

SUMMARY: The Notice is to advise the public that the Emerald Empire Resource Area, Coeur d'Alene District, of the Bureau of Land Management and Bunker Limited Partnership are proposing a land exchange. The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Bose Meridian, Idaho

T. 48 N., R. 2 E.,
  Sec. 12: Lot 19.
T. 48 N., R. 3 E.,
  Sec. 7: Lot 4 (a portion), NE¼NE¼, S½NE¼ (a portion) E½SW¼ (a portion), SE½ (a portion);
  Sec. 8: S½ (a portion);
  Sec. 17: Lots 1–8 inclusive (portions thereof);
  Sec. 18: Lot 1 (a portion), Lots 21, 22.

The area described above aggregates approximately 634(±) acres in Shoshone County, Idaho. The specific legal descriptions will be subject to an approved resurvey.

In exchange for these lands, the United States will acquire the following described lands from Bunker Limited Partnership:

Boise Meridian, Idaho

T. 47 N., R. 1 E.,
  Sec. 2: S½SW¼, SW¼SE¼.
T. 48 N., R. 1 E.
  Sec. 24: that portion of patent 1102665 which falls within the section.
T. 48 N., R. 2 E.,
  Sec. 19: that portion of patent 1102665 which falls within the section;
  Sec. 29: E½NW¼, N½SW¼;
  Sec. 30: that portion of patent 1102665 which falls within the section.

The area described above aggregates approximately 315(±) acres in Shoshone County, Idaho.

The purpose of the land exchange is to facilitate the construction of the "Kellogg Gondola" project which was authorized by the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203. The public lands to be exchanged are isolated parcels. The private lands being offered have very important values for timber, watershed and wildlife habitat that merit acquisition and public ownership. The exchange is consistent with the Bureau of Land Management land use plans and the public interest will be well served by making this exchange.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted to equalize the value upon completion of the final appraisal of the lands.

Lands to be conveyed from the United States will be subject to the following reservations:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1980 (43 U.S.C. 945).

2. All other valid existing rights, including but not limited to any right-of-way, easement or lease of record.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant. The segregative effect of this Notice will terminate upon issuance of patent or in two years, whichever occurs first.

ADDRESSES: Detailed information concerning the exchange is available for

review at the Coeur d'Alene District Office, 1808 North Third Street, Coeur d'Alene, Idaho 83814.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager at the above address. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: April 1, 1988.

John B. O'Brien III,

Acting District Manager.

[FR Doc. 88-7620 Filed 4-6-88; 8:45 am]

BILLING CODE 4310-GG-M

[ID-030-08-4212-14]

Realty Action (I-24383); Noncompetitive Sale of Public Lands in Bannock County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Noncompetitive sale of public land in Bannock County, Idaho.

The following land has been found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at no less than the estimated fair market value of $12,000. The land will not be offered for sale until at least 60 days after the date of this notice.

Bosie Meridian

T.7S., R.35E.,
Section 28: W1/2SW1/4, SE1/4SW1/4.
Containing approximately 120 acres.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale of Bannock County. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

The patent, when issued, will contain reservations to the United States. Detailed information concerning these reservations, as well as specific conditions of the sale, are available for review at the Idaho Falls District, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Idaho Falls District, at the above address. In the absence of timely objection, this proposal shall be come the final determination of the Department of Interior.

Gary L. Bliss,

Acting District Manager.

[FR Doc. 88-7626 Filed 4-6-88; 8:45 am]

BILLING CODE 4310-GG-M

[ES 37978]

Recordable Disclaimer of Interest; Louisiana

Notice is hereby given that the United States of America, pursuant to the provisions of section 315 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1745, does hereby give notice of its intention to disclaim and release all interest to the owner of record for the following described property to-wit: E½SE¼, Section 8, T. 11 N., R. 11 W., Louisiana Meridian, Louisiana.

After review of the official records it is the position of the Bureau of Land Management that these lands so described have been patented by the United States and that a patent in which land is described using legal sub-divisions conveys all the land within the specified limits, regardless of whether or not acreage is correctly stated.

Any person wishing to submit a protest or comments on the above disclaimer should do so in writing before the expiration date of 90 days from the date of publication of this notice. If no protest(s) is received the disclaimer will be effective on the date set out below.

The purpose of this notice is to afford any person or persons having a valid protest to the above action an opportunity to submit such protest to the Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, telephone (703) 274-0180 on or before expiration of the 90-day period.

G. Curtis Jones, Jr.,

State Director.

[FR Doc. 88-7600 Filed 4-6-88; 8:45 am]

BILLING CODE 4310-GJ-M

[MT-070-04-4212-13; M-75431]

Realty Action; Exchange in Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Designation of public lands in Powell County, Montana, for possible transfer out of Federal ownership in exchange for lands owned by Cominco American, Inc.

SUMMARY: BLM proposed to exchange public land to achieve better management through consolidation.

The following public land is being considered for disposal in an equal value exchange pursuant to section 206 of the Federal Land Policy and Mangement Act of October 21, 1976, 43 U.S.C. 1716.

Principle Meridian, Montana

T. 10 N., R. 9 W.,
Section 4, Lots 3, 4, SW¼NW¼, S½, S½, NE¼SE¼;
Section 9, Lot 2;
Section 10, SW¼SW¼;
Section 20, Lot 1, NE¼NW¼.
T. 10 N., R. 10 W.,
Section 4, Lots 1, 2, SE¼NE¼;
Section 10, SW¼NW¼;
Section 24, SE¼.

The lands described above comprise 797 acres, more or less. These lands are segregated from entry under the mining laws, except the mineral leasing laws, effective upon publication of this notice in the **Federal Register**. The segregative effect will terminate upon issuance of patent, upon publication in the **Federal Register** of termination of the segregation, or 2 years from the date of this publication, whichever comes first.

Final determination on disposal will await completion of an environmental assessment. Upon completion of the environmental assessment and land use decision, a Notice of Realty Action shall be published specifying the lands to be exchanged and the lands to be acquired.

DATE: For a period of up to and including May 23, 1988, interested parties may submit comments to the Butte District Manager, P.O. Box 3388, Butte, Montana 59702.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange is available at the Butte District Office.

April 1, 1988.

James A. Moorhouse,

District Manager.

[FR Doc. 88-7599 Filed 4-6-88; 8:45 am]

BILLING CODE 4310-DN-M

[AZ-942-08-4520-12]

Arizona; Filing of Plats of Survey

March 30, 1988.

1. The plats of survey of the following described lands were officially filed in the Arizona State Office, Arizona, on the dates indicated:

A plat representing a dependent resurvey of a portion of the subdivisional lines, and a survey of

subdivisions and metes-and-bounds surveys in section 20, Township 2 North, Range 3 East, Gila and Salt River Meridian, Arizona, was accepted March 22, 1988, and was officially filed March 23, 1988.

This plat was prepared at the request of the Director, Bureau of Land Management.

A plat representing a dependent resurvey of a portion of Homestead Entry Survey 53, and the survey of lot 6, section 5, Township 10 North, Range 11 East, Gila and Salt River Meridian, Arizona, was accepted February 11, 1988, and was officially filed February 19, 1988.

This plat was prepared at the request of the U.S. Forest Service, Region Three.

A supplemental plat showing amended lottings in section 25 and 26, Township 6 North, Range 1 West, Gila and Salt River Meridian, Arizona, was accepted February 1, 1988, and was officially filed February 5, 1988.

A supplemental plat showing amended lottings in sections 27, 28, and 33, Township 6 North, Range 1 West, Gila and Salt River Meridian, Arizona, was accepted February 1, 1988, and was officially filed February 5, 1988.

A supplemental plat showing amended lottings in sections 30 and 31, Township 6 North, Range 1 West, Gila and Salt River Meridian, Arizona, was accepted February 1, 1988, and was officially filed February 5, 1988.

A supplemental plat showing amended lottings in sections 25 and 26, Township 6 North, Range 2 West, Gila and Salt River Meridian, Arizona, was accepted February 1, 1988, and was officially filed February 5, 1988.

These plats were prepared at the request of the Bureau of Land Management, Phoenix District Office.

A supplemental plat showing amended lottings created by the segregation of mineral surveys in section 17, Township 19 South, Range 25 East, Gila and Salt River Meridian, Arizona, was accepted February 1, 1988, and was officially filed February 5, 1988.

This plat was prepared at the request of the Bureau of Land Management, Lands and Minerals Operations.

2. These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

Jerrold E. Knight,

Acting Chief, Branch of Cadastral Survey.

[FR Doc. 88-7627 Filed 4-6-88; 8:45am]

BILLING CODE 4310-32-M

[CO-942-08-4520-12]

Colorado; Filing of Plats of Survey

March 30, 1988.

The plat of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood; Colorado, effective 10:00 a.m., March 30, 1988.

The plat representing the dependent resurvey of a portion of Tract 43, now designated as Tract 43A and the metes-and-bounds survey of Tracts 43B and 43C, T. 2 S., R. 86 W., Sixth Principal Meridian, Colorado, Group No. 864, was accepted March 16, 1988.

This survey was executed to meet certain administrative needs of the Forest Service, USDA.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 88-7604 Filed 4-6-88; 8:45 am]

BILLING CODE 4310-JB-M

[CO-010-08-4332-11]

Colorado: Amendment to the Final Intensive Wilderness Inventory; Decision and Commencement of Public Comment Period For Designation of the BLM Platte River Contiguous Wilderness Study Area CO-010-104

I hereby announce my decision to amend the Final Intensive Wilderness Inventory decision published in the **Federal Register**, Vol. 45, No. 222, Friday, November 14, 1980, page 75584 under authority of section 202 and section 603 of the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579) and in accordance with the guidelines in the September 27, 1978, BLM *Wilderness Inventory Handbook* and Organic Act Director No. 78-61, change 3. This notice also announces a public comment and protest period on my decision to amend the final wilderness inventory decision which begins on the date of this announcement and ends 45 days after that date.

The purpose of this amended decision is to designate approximately 30 acres of BLM-administered public land in the Craig District located in T. 12N., R. 80W., Section 27: SE¼NE¼ and NE¼SE¼, 6th Principle Meridian as the Platte River Contiguous Wilderness Study Area (Unit No. CO-010-104). These lands are contiguous with the 23,000 acre Platte River Wilderness in the Medicine Bow and Routt National Forests of Wyoming and Colorado.

Protection of Wilderness resources found to exist on these 30 acres of public lands would improve manageability and would enhance the outstanding opportunities for primitive and unconfined recreation and solitude of the contiguous USFS Platte River Wilderness.

All public comments that are received will be read, recorded, analyzed, evaluated and where appropriate, field checked. These comments will be reviewed before this decision becomes final, however if comments or protests do not support further consideration, this decision shall be final.

This decision established there Platte River Contiguous WSA. The WSA will be studied and considered for inclusion in the National Wilderness Preservation System in the BLM Craig District Wilderness EIS. Notice of availability and announcement of a 90 day public comment period of the Craig District Wilderness Draft EIS will be published in the **Federal Register.**

The final intensive wilderness inventory documentation for the Platte River Contiguous WSA (Unit No. CO-010-104) is contained in permanent documentation files located in the BLM, Colorado State Office, the BLM, Craig District Office, and in the BLM, Kremmling Resource Area Office. A summary report including a map on the final intensive wilderness inventory for the Platte River Contiguous Unit (CO-010-104) is available at no cost upon request from: Wilderness Craig District Office, Bureau of Land Management, 455 Emerson Street, Craig, CO 81625.

Contact person for more information: Eric Finstick, Colorado State Office, 2850 Youngfield, Lakewood, Colorado 80215. Phone: (303) 236-1756.

Dated: March 16, 1988.

Neil Morok,

State Director.

[FR Doc. 88-7688 Filed 4-6-88; 8:45 am]

BILLING CODE 4310-JB-M

Minerals Management Service

Development Operations Coordination; Apache Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Apache Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5001, Block 636, Matagorda Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Port O'Connor, Texas.

DATE: The subject DOCD was deemed submitted on March 30, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Joseph: Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: March 31, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–7621 Filed 4–6–88; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Chevron U.S.A., Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 1260, Block 177, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Leeville, Louisiana.

DATE: The subject DOCD was deemed submitted on March 28, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m. Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Micheal J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Land Act Amendments to 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised 250.34 of Title 30 of the CFR.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–7608 Filed 4–6–88; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination; Samedan Oil Corp.

AGENCY: Minerals Management Serivce, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Samedan Oil Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 6087, Block A–65, Brazos Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Ingleside, Texas.

DATE: The subject DOCD was deemed submitted on March 28, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: March 31, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–7622 Filed 4–6–88; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Tenneco Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4781, Block 213, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on March 29, 1988. Comments

must be received by April 22, 1988 or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Joseph; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 30, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88–7603 Filed 4–6–88; 8:45 am]

BILLING CODE 4310-MR-M

Bureau of Reclamation

Intention To Prepare a Draft Environmental Impact Statement/ Environmental Impact Report; Seawater Intrusion Project; California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the Seawater Intrusion Project, Monterey County Flood Control and Water Conservation District—Small Reclamation Projects Act (Pub.L. 84–984).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (as amended) and section 21002 of the California Environmental Quality Act, the Bureau of Reclamation and the Monterey County Flood Control and Water Conservation District intend to prepare a joint environmental impact statement/environmental impact report (EIS/EIR). The EIS/EIR will address the impacts from construction and operation of the Seawater Intrusion Project for which a Public Law 84–984 loan application is pending with the Bureau of Reclamation.

A meeting has been scheduled to solicit public input in order to determine alternatives to the proposed project, the scope of the EIS/EIR and to identify the significant issues related to the proposed action.

DATE: The meeting will be held on April 14, 1988, at 7:00 p.m. in Salinas, California.

ADDRESS: Monterey County Courthouse, County Board of Supervisors Chambers, Second Floor of the East Wing, 240 Church Street, Salinas, CA 93901.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Breitenbach, Environmental Specialist, Mid-Pacific Region (MP–750), 2800 Cottage Way, Sacramento, California 95825, telephone (916) 978–5134 and Mr. William Hurst, General Manager, Monterey County Flood Control and Water Conservation District, P.O. Box 930, Salinas, California 93902, telephone (408) 424–0866.

Note: For those disabled persons requiring special services, contact Bureau of Reclamation (Bureau) EEO Officer Curtis Smith at (916) 978–4911. Please notify Mr. Smith as far in advance of the meeting as possible and no later than April 6, 1988, to enable the Bureau to secure the needed services. If a request cannot be honored, the requester will be notified. A telephone device for the hearing impaired (TDD) is not available.

SUPPLEMENTARY INFORMATION: The purpose of the project is to reduce the seawater intrusion in the Castroville and Marina/Fort Ord areas. Supplemental water would be provided to these areas to reduce the current groundwater overdraft which is causing intrusion of seawater into the freshwater aquifers of the Salinas River Basin. This overdraft is caused by agricultural and municipal uses of water in the coastal area of Castroville and Marina/Fort Ord. The proposed project would consist of a 600 foot-long overflow type diversion structure. The diversion would be located in the Salinas River about 2 miles downstream of the Blanco Bridge. The project also includes the construction of a pump station and placement of about 50 miles of buried water transmission pipelines in the Castroville area. For Marina and Fort Ord, a dispersed field of 8–12 water wells would be located in the vicinity of Buena Vista Road between Chular and Spreckles. Water would be pumped from the well field to East Garrison on Fort Ord. The pumped water would be conveyed from the well field to Fort Ord via a 16-mile water transmission pipeline located parallel to Reservation and River Road.

Alternatives presently under consideration include wastewater reclamation, construction of a dam on the Arroyo Seco River for diversion of water, and the drilling of wells along the coast to extract seawater.

Primary impact, which will be evaluated in the EIS/EIR, include effects on water quality, fish and wildlife, floodplains and wetlands, cultural resources, hydraulics and hydrology, and social-economics.

Date: April 1, 1988.

C. Dale Duvall,

Commissioner.

[FR Doc. 88–7583 Filed 4–6–88; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the Eighty-Seventh Meeting of the Board for International Food and Agricultural Development (BIFAD) on April 15, 1988.

The purpose of the Meeting is to review the Africa Bureau's Program and this will be done in four or five

components as follows: (a) Overview of the overall program in Sub-Saharan Africa (b) Review of the overall agricultural program in Sub-Saharan Africa (c) Review of African Faculties of Agriculture programs and plans for the future (d) Review of Agricultural Research activities in Sub-Saharan Africa and if time permits, there may be some discussion of Africa Programs and Budget.

The April 15, 1988 Meeting will be held in Room 1105 in the State Department, 2201 C Street, Washington, DC 20523. Any interested person may attend, and may present oral statements in accordance with procedures established by the Board, and the extent the time available for the meeting permits.

Curtis Jackson, Bureau of Science and Technology, Office of University Relations, Agency for International Development is designated as A.I.D. Advisory Committee Representative at this Meeting. It is suggested that those desiring further information write to Dr. Jackson, in care of the Agency for International Development, Rm. 309, Washington, DC 20523, or telephone him on (703) 235–8929.

Date: March 30, 1988.

Lynn Pesson,

Executive Director, BIFAD.

[FR Doc. 88–7609 Filed 4–6–88; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31196]

John H. Marino, Eric D. Gerst, and Mariner Corp. of Saginaw Valley Railway Co., Inc.; Control Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from prior approval under 49 U.S.C. 11343, *et seq.*, the acquisition of control by John M. Marino, Eric D. Gerst, and Mariner Corporation of Saginaw Valley Railway Company, Inc. The exemption is subject to standard labor protection conditions.

DATES: The exemption is effective on May 7, 1988. Petitions for stay must be filed by April 18, 1988, and petitions for reconsideration must be filed by April 27, 1988.

ADDRESSES: Address pleadings referring to Docket No. 31196 to:

(1) Docket No. 31196, Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Eric D. Gerst, Esq., Gerst, Heffner, & Foldes, Suite 900, 21 South 5th Street, Philadelphia, PA 19106

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275–7245.

(TDD for hearing impaired (202) 275–1721)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: March 16, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88–7617 Filed 4–6–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Amended Consent Decree Pursuant to Clean Air Act; USX Corp.; Correction

In the Notice of Lodging of Amended Consent Decree Pursuant to the Clean Air Act; USX Corp., beginning at 53 FR 5476, the following typographical errors should be corrected:

1. On page 5476, line 51, the phrase "14-year period" should read "4-year period." Thus, the Notice should reflect that USX must "install over a 4-year period new, functional emission controls to replace defective controls for its coke oven pushing operations;"

2. On page 5477, line 16, the word "of" should read "or." Thus, the clause in question should read "with such stipulated penalties to be escrowed until mid-1993 *or* until USX completes installation of the replacement pushing controls, whichever comes first." (Emphasis supplied).

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–7606 Filed 4–6–88; 8:45 am]

BILLING CODE 4410–01–M

Consent Decree in Action To Enjoin Discharge of Water Pollutants

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States* v. *Sun Metal Finishing, Inc.*, Civil Action No. 85–5734, was lodged with the United States District Court for the District of New Jersey on March 1, 1988. The consent decree establishes a compliance program for the New Jersey plant owned and operated by Sun to bring the plant into compliance with the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the applicable pretreatment regulations relating to the discharge of pollutants and requires payment of a civil penalty of $30,135.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Sun Metal Finishing, Inc.*, D.J. Ref. No. 90–5–1–1–2467.

The consent decree may be examined at the office of the United States Attorney, District of New Jersey, U.S. Courthouse, 502 Federal Bldg., 970 Broad St., Newark, NJ. 07102; at the Region II office of the Environmental Protection Agency, 27 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Washington, DC 20530. In requesting a copy, please enclose a check in the amount of $1.70 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–7607 Filed 4–6–88; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88–34]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration

announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Flight Research and Technology.

DATE AND TIME: April 25, 1988, 8 a.m. to 4 p.m. (to be held at Langley Research Center); and April 26, 1988, 8 a.m. to 4 p.m. (to be held at Lewis Research Center).

ADDRESS: National Aeronautics and Space Administration, Langley Research Center, Room 225, Building 1219, Hampton, VA 23665; and National Aeronautics and Space Administration, Lewis Research Center, Room 215, Building 3, 21000 Brookpart Road, Cleveland, OH 44135.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Levine, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2835.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities.

Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Flight Research and Technology, chaired by Mr. Joseph T. Gallagher, is comprised of six members. The meeting will be open to the public up to the seating capacity of the room (approximately 20 persons including the team members and other participants).

Type of Meeting: Open.

Agenda

April 25, 1988

8 a.m.—Overview of Langley Flight Research Activities.
9 a.m.—Product of Langley Flight Research Programs.
10 a.m.—Capability of Langley Facilities.
1 p.m.—Tour of Facilities.
3 p.m.—Future Plans.
4 p.m.—Adjourn.

April 26, 1988

8 a.m.—Overview of Lewis Flight Research Programs.
9 a.m.—Product of Lewis Flight Research Programs.
10 a.m.—Capability and Tour of Flight Facilities.
11:45 a.m.—Future Plans.
1 p.m.—Study Team Summary Session.
4 p.m.—Adjourn.

Dated: April 1, 1988.

John F. Duggan,

Director, General Management Division.

[FR Doc. 88-7579 Filed 4-6-88; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Archaeology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Archaeology.

Date and Time: April 25, 26 and 27th, 1988, 9:00 a.m.–5:00 p.m. each day.

Place: Arizona State University, Tempe, Arizona.

Type of Meeting: Part Open—Open 4/27—9:00 a.m. to 11:00 a.m. Closed 4/25–26—9:00 a.m. to 5:00 p.m. Closed 4/27—11:00 a.m. to 5:00 p.m.

Contact Person: Dr. John E. Yellen, Program Director, Anthropology Program, Room 320, National Science Foundation, Washington, DC 20550 Telephone (202) 357–7804.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research in archaeology.

Agenda: OPEN—General discussion of the current status and future plans of the Anthropology program. CLOSED—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

April 4, 1988.

[FR Doc. 88-7661 Filed 4-6-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Chemistry; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Chemistry.

Date and Time: April 28–29, 1988; 9:00 a.m. to 5:00 p.m. each day.

Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Dr. Kenneth G. Hancock, Acting Director, Division of Chemistry, National Science Foundation, Washington, DC 20550. Telephone (202) 357–7947.

Summary Minutes: May be obtained from Dr. Kenneth G. Hancock.

Purpose of Committee: To provide advice and recommendations concerning NSF support for research in chemistry.

Agenda: Open discussion of the current status and future plans of the Chemistry Division's activities.

M. Rebecca Winkler,

Committee Management Officer.

April 4, 1988.

[FR Doc. 88-7662 Filed 4-6-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Decision, Risk, and Management Science Program; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Decision, Risk, and Management Science Program.

Date/Time: April 27/28, 1988—9:00 a.m. to 5:00 p.m. each day.

Place: National Science Foundation, Room 643, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Arie Y. Lewin (202) 357–7569 or Dr. Robin Gregory (202) 357–7417, Program Directors for Decision, Risk, and Management Science, Room 336, National Science Foundation, Washington, DC 20550.

Summary Minutes: May be obtained from the Contact Person at the above address.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in the Decision, Risk, and Management Science Program.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C.

552b(c), Government in the Sunshine Act.

April 4, 1988.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-7663 Filed 4-6-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Geography and Regional Science; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Geography and Regional Science.

Date/Time: April 25, 1988: 8:30 a.m. to 6:00 p.m. April 26, 1988: 8:30 a.m. to 6:00 p.m.

Place: Room 642, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Ronald F. Abler, Program Director, Geography and Regional Science, National Science Foundation, Washington, DC 20550, Room 336, Telephone (202) 357-7326.

Purpose of Panel: To provide advice and recommendations concerning research in Geography and Regional Science.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b, Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

April 4, 1988.

[FR Doc. 88-7664 Filed 4-6-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Molecular & Cellular Neurobiology Program; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Molecular & Cellular Neurobiology Program.

Date & Time: April 25, 26, & 27, 1988; 9:00 a.m.—5:00 p.m.

Place: National Science Foundation, 1800 G St. NW., Washington, DC, Room 540.

Type of Meeting: PART OPEN—Closed 04/25 9:00 a.m. / 5:00 p.m., Closed 04/26 9:00 a.m. / 5:00 p.m., Open 04/27 9:00 a.m. / 12:00 p.m., Closed 04/27 1:00 p.m. / 5:00 p.m.

Contact Person: Dr. Richard D. Broadwell, Program Director, Molecular & Cellular Neurobiology Program, National Science Foundation, Washington, DC, 20550, Room 320.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research in Molecular and Cellular Neurobiology.

Agenda: OPEN—General discussion of the current status and future plans of the Molecular and Cellular Neurobiology Program.

CLOSED—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

April 4, 1988.

[FR Doc. 88-7665 Filed 4-6-88; 8:45 am]

BILLING CODE 7555-01-M

Meeting; Advisory Panel for Political Science

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Political Science.

Date/Time: April 28, 1988, 9:00 a.m. to 5:00 p.m., April 29, 1988, 9:00 a.m. to 5:00 p.m.

Place: Room 1242, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Frank P. Scioli, Program Director for Political Science: Telephone (202) 357-9406.

Purpose of panel: To provide advice and recommendation concerning support for research in the Political Science Program.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

April 4, 1988.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-7666 Filed 4-6-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Sociology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Sociology.

Date/Time: April 25 1988, 9:00 a.m. to 5:30 p.m., April 26, 1988, 9:00 a.m. to 5:00 p.m.

Place: National Science Foundation, Room 1243, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Stanley Presser, Program Director or Dr. Phyllis Moen, Associate Program Director for Sociology, Room 336, National Science Foundation, Washinghton, DC 20550, Telephone (202) 357-7802.

Summary Minutes: May be obtained from the Contact Persons at the above address.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in the Sociology Program.

Agenda: Closed: to review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the 5 U.S.C. 522b(c), Government in the Sunshine Act.

April 4, 1988.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-7667 Filed 4-6-88; 8:45 a.m.]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences for Third Quarter CY 1987 Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events

which the Commission determines are significant from the standpoint of public health and safety). The following incidents at NRC licensees were determined to be abnormal occurrences (AOs) using the criteria published in the Federal Register on February 24, 1977 (42 FR 10950). These abnormal occurrences are described below, together with the remedial actions taken. These events are also being included in NUREG–0090, Vol. 10, No. 3 ("Report to Congress on Abnormal Occurrences: July–September 1987"). This report will be available in the NRC's Public Document Room, 1717 H Street, NW, Washington, DC about three weeks after the publication date of this Federal Register Notice.

Nuclear Power Plants

87–14 Significant Degradation of Plant Safety at Oyster Creek

One of the AO examples notes that personnel error or procedural deficiencies which result in loss of the plant's capability to perform an essential safety function can be considered an abnormal occurrence. In addition, another example notes that a major deficiency in management or procedural controls in major areas can be considered an abnormal occurrence.

Date and Place.—On April 24, 1987, while the reactor was being shut down, personnel errors resulted in a condition which could have resulted in containment failure had a loss of coolant accident (LOCA) occurred. Oyster Creek is a General Electric-designed boiling water reactor operated by General Public Utilities (the licensee) and located in Ocean County, New Jersey.

Nature and Probable Consequences.—The plant was being shut down for maintenance with the mode switch in the RUN position; reactor power was approximately 23% at the time of the event. The licensee planned to enter the drywell to repair an acoustic monitor. In order to enter the drywell safely, the containment atmosphere must first be purged to displace the nitrogen atmosphere to ensure proper oxygen levels are present to aid personnel entry. The deinerting commenced on April 23, 1987 at 10:00 p.m. At 3:30 a.m. on April 24, 1987, the group shift supervisor (GSS) authorized the blocking open of the torus-to-drywell vacuum breaker valves to assist the containment deinerting. The GSS believed the deinerting was not progressing as rapidly as it had in the past and elected to initiate a mechanical temporary variation. A safety review for the temporary variation was completed by the operations shift supervisor and reviewed by the shift technical advisor; however, the review did not identify the potential adverse effect on plant safety or the technical specification non-compliance that would exist. (Technical specifications require that all torus-to-drywell vacuum breakers be operable when primary containment integrity is required.)

At approximately 7:00 a.m. on April 24, 1987, operations management questioned plant conditions with the torus-to-drywell vacuum breakers open. The GSS investigated the concern, recognized the mistake, and closed the valves. The plant was at approximately 400 psig and still shutting down when the vacuum breaker valves were finally shut. Primary containment was still required by technical specifications under these plant conditions.

The allowable suppression pool bypass area for the Oyster Creek containment has been established at 10.5 square inches to maintain its capability to mitigate the full spectrum of LOCAs. A bypass area of 500 square inches (with the valves open) rendered the containment vulnerable to steam bypass of the suppression chamber, potentially resulting in containment over-pressurization for small, intermediate, and large LOCAs. Furthermore, blocking open of the suppression chamber-drywell vacuum breakers resulted in the plant being in an unanalyzed condition.

As a result of a special NRC team inspection on April 24–May 6, violations of NRC requirements were identified, and a $205,000 fine was proposed on August 24, 1987. $80,000 of this fine was for the violation described above, which was classified as Severity Level II (where Levels I and V are considered the most and least significant, respectively). In addition, the NRC inspection also determined that since some time in 1977, some of the vacuum breakers between the suppression pool and the reactor building located outside containment had been periodically tied open during certain plant shutdowns. A $75,000 fine was proposed for this violation. Finally, a $50,000 fine was proposed for the failure to properly implement the procedures for performing safety reviews and making temporary variations to the normal configuration of plant equipment. In the August 24, 1307 letter, the NRC noted that the April 24, 1987 event was not an isolated occurrence, demonstrating that management review and oversight of the program for making temporary variations were inadequate, resulting in numerous violations of procedural requirements.

Cause or Causes.—The cause of the April 24 event has been determined to be personnel error, due to deficiencies in management and procedural controls. The operations shift supervisor and the shift technical advisor who reviewed the temporary variation should have been cognizant of the technical specification requirement specifying that the torus to drywall vacuum breaker valves must be operable when primary containment is required. A written safety evaluation was not performed.

The cause of the previous blocking of vacuum breaker events and violations of procedural requirements governing safety reviews of temporary variations were caused by inadequate management review and oversight of the program.

Actions Taken to Prevent Recurrence

Licensee.—All outstanding temporary variations were reviewed to assure acceptability. Plant procedures have been changed as appropriate and all site individuals have completed a retraining program on safety reviews. All shift technical advisors and group shift supervisors have been reinstructed in proper organizational relationship and the need for independence in overview functions. An incident investigation task force has been established, and the utility's Nuclear Assurance Division will institute increased oversight of temporary variations and safety reviews.

On September 22, 1987, the licensee responded to the NRC enforcement action concurring with the violations and paying the civil penalty in full.

NRC.—As previously discussed, a special team inspection was conducted on April 24–May 6, 1987, which identified the violations of NRC requirements. An Enforcement Conference between licensee and NRC personnel was held at the NRC Region I office on June 10, 1987.

The NRC will continue surveillance of licensee operations to assure that the corrective actions have been properly implemented.

87–15 Steam Generator Tube Rupture at North Anna Unit 1

One of the AO examples notes that major degradation of the primary coolant pressure boundary can be considered an abnormal occurrence.

Date and Place.—At approximately 6:35 a.m. on July 15, 1987, North Anna Unit 1 was manually tripped from 100 percent power due to indications of a steam generator tube rupture. North Anna Units 1 and 2 are Westinghouse-designed pressurized water reactors and are located in Louisa County, Virginia.

The units are operated by Virginia Electric and Power Company.

Nature and Probable Consequences—Steam generator (S/G) tubes in a pressurized water reactor are an integral part of the reactor coolant pressure boundary. The loss of integrity of S/G tubes results in a breach of the primary-to-secondary system boundary. Steam generator tube rupture is one of the design basis accidents considered in the NRC safety review of nuclear power plants.

Safety-margins ae maintained through conservative design, inservice inspections, and administrative controls during operation such that if a steam generator tube leaks, the leakage can be detected rapidly and the reactor can be shut down safely. Nevertheless, the rupture of a S/G tube can happen, as it did at North Anna 1, and previously at Ginna, Point Beach Unit 1, Surry Unit 2 and Prairie Island Unit 1. Of these, the Ginna event which occurred on January 25, 1982 was the most severe and was consequently evaluated in depth. The Ginna event was reported as abnormal occurrence 82–4 in NUREG–090, Vol. 5, No. 1 ("Report to Congress on Abnormal Occurrences: January–March 1982").

Pressurized water reactor nuclear power plant licensees are required to have operational plans (including procedues, trained operation and support personnel, and other capabilities) to cope with a complete rupture of a S/G tube and mitigate any radiological consequences. The North Anna 1 operating and support staff mitigated the consequences of the July 15, 1987 event such that the radiological consequences were insignificant in terms of risk from any resultant on-site or off-site exposures.

The sequence of events for the S/G tube rupture incident and the associated response actions during the incident are described below.

North Anna 1 returned from a refueling outage on June 29, 1987 and reached 100% power on July 14. Reactor coolant leak rate measurements taken on July 13 indicated less than 0.25 gallons per minute unidentified leakage. Steam jet air ejector radiation monitor 1–RM–SV–121 was inoperable on July 13, became operable on July 14, but operated erratically and was declared inoperable again at 10:28 p.m. on July 14. No other safety-related equipment was out of service.

At approximately 6:30 a.m. on July 15, 1987, with Unit 1 at 100 percent power and Unit 2 at 81 percent power in an end of cycle power coastdown, a high radiation alarm was received on the Unit 1 "C" S/G main steam line radiation monitor. At the same time, pressurized level and pressure began to decrease rapidly.

At 6:35 a.m. with pressurizer level at approximately 45 percent (for 100% power, program level is 65%) and pressurizer pressure at 2100 psig (normal operating pressure is 2235 psig), Unit 1 was manually tripped. Approximately 20 seconds later, an automatic actuation of the safety injection system occcurred due to a low-low pressurizer pressure (less than 1765 psig on 2 out of 3 channels). By 6:48 a.m., the "C" S/G had been identified as having positive indication of a tube rupture and had been isolated.

A Notification of Unusual Event was declared at 6:39 a.m. and the initial notifications to State and local governments were completed by 6:51 a.m. The event was upgraded to an Alert at 6:54 a.m. and the notifications to all off-site agencies and NRC were completed by 7:02 a.m. An orderly cooldown and depressurization of the reactor coolant system to cold shutdown conditions was initiated at 7:18 a.m. and the emergency was terminated at 1:36 p.m.

Several radiological release paths to the environment were present during this event. The condenser air ejector discharged to atmosphere until it was manually diverted to the containment building at 7:56 a.m. The steam drive auxiliary feedwater pump started on the safety injection signal, and its steam supply from the "C" S/G was isolated to the turbine driven auxiliary pump at approximately 6:48 a.m. A minor relief path existed when two relief valves, the "B" main feedwater pump suction and the 2A feedwater heater tube side, lifted and did not reseat when pressure had returned to normal. An operator manually adjusted the relief valve setpoints to allow them to close, and this was completed approximately 30 minutes into the event.

Analysis of the radiological data indicated that a total of 1.56×10^{-1} curies was released, which consisted primarily of radiogases. There was no detectable increase in normal background levels of radioactivity at the site boundary in the affected sector(s). The release was less than 1% of Technical Specification limits.

The primary-to-Secondary leak in this event was estimated to be between 550 to 637 gallons per minute (gpm). The North Anna Updated Final Safety Analysis Report estimated that a double-ended rupture of a single tube at full power would result in a flow rate of 710 gpm. The highest flow rate in the 1982 S/G tube rupture at Ginna was estimated to be 760 gpm.

Cause of Causes—The licensee performed a remote visual examination of the ruptured tube using an endoscope electronic imaging probe and observed that the tube had failed over 360 degrees of the circumference, and the fractured ends were displaced in the axial direction approximately one-half inch. The cold leg side of the tube was removed, and based upon detailed evaluation of the failed tube fracture face, the cause of the failure has been firmly established to be fatigue. The fatigue was induced by fluid elastic excitation mechanism which provided sufficient loadings or alternating stresses to initiate and propagate the crack.

Actions Taken to Prevent Recurrence

Licensee—Corrective actions included modification of the S/Gs (i.e., performing eddy current inspection of all S/Gs; mechanically plugging all required tubes and preventively plugging susceptible tubes; and installing downcomer flow restrictors). In addition, surveillance of primary to secondary leakage was increased by installing new radiation monitors and increasing the surveillance frequency. Procedures were changed for actions to take if a leak rate exceeds certain criteria, for adjusting alarm setpoints, and for handling inoperable leakage monitoring equipment. The licensee is developing a Technical Specification change at the request of NRC.

NRC—An NRC Augmented Inspection Team (AIT) was sent to the site on July 15, 1987 to determine whether the licensee's action in response to the S/G tube failure was adequate to protect the health and safety of the public. In addition, the AIT evaluated the licensee's action associated with determining the cause of the event and their corrective actions to prevent recurrence.

The AIT concluded that the overall results achieved were outstanding in that the operator tripped the plant, isolated the leak and brought the plant to cold shutdown in seven hours without using the S/G power operated relief valves. This contributed to a negligible release to the environment. Therefore, there was no effect on public health and safety.

Four violations of NRC requirements were identified, all classified as Severity Level IV (on a scale in which Severity Levels I and V are considered the most significant and least significant, respectively). These were forwarded to the licensee on October 5, 1987. No civil penalty was imposed.

On October 9, 1987, NRC authorized startup of Unit 1 with operation limited to 50 percent power. On November 5, 1987, NRC authorized operation up to 100 percent power.

Other NRC Licensees

(Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

87–16 Therapeutic Medical Misadministration

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—On August 24, 1987, the NRC was notified that a 75-year-old patient at Parkview Memorial Hospital, Fort Wayne, Indiana, received two therapeutic radiation exposures to the wrong part of the body.

Nature and Probable Consequences—The patient was scheduled to receive radiation therapy exposures of 250 rads per exposure to the right hip. The treatments were to continue for 12 days for a total of 3000 rads.

During the pretreatment planning, a technologist placed treatment marks on the patient's left hip in error. The patient was then taken to the treatment room where another technologist noted the marking on the left hip and treated the left hip. A second 250 rad exposure was administered on the next day, but prior to the third exposure, the patient informed the technologist that the wrong hip was being treated. The treatments were halted when the error was discovered.

The patient has been examined by a physician and no medical side effects have been noted as a result of the misadministration.

Cause or Causes—The misadministration was caused by the technologist's error in mismarking the treatment area. The second technologist, who administered the radiation therapy, also failed to verify the treatment area by checking the patient's records.

Actions Taken to Prevent Recurrence

Licensee—The hospital agreed to institute a quality assurance program for cobalt-60 teletherapy procedures that included the independent determination of dose calculations by two qualified individuals and other aspects of treatment procedures and planning.

The hospital subsequently decided to terminate its radiation therapy program using a cobalt-60 teletherapy unit. It will continue to utilize a high energy linear accelerator which is not subject to NRC jurisdiction.

NRC—On August 25, 1987, the NRC issued a Confirmatory Action Letter to the hospital documenting its agreement to institute a quality assurance program for cobalt-60 teletherapy procedures. The NRC also retained a medical consultant to evaluate the circumstances and possible effects of the misadministration. The medical consultant concluded that the misadministration would not cause a significant long term biological effect on the patient and would not require modification of the patient's follow-up medical care.

87–17 Failure to report Diagnostic Medical Misadministrations

One of the AO examples notes that serious deficiency in management or procedural controls in major areas can be considered an abnormal occurrence.

Date and Place—On August 24, 1987, the NRC issued an Order to Show Cause Why the license Should Not Be Modified to the Edward Hines, Jr., Veterans Administration Hospital directing that a hospital staff member be removed from NRC-licensed activities, and that the hospital take certain steps to improve its control over its nuclear medicine program. The hospital is located in Hines, Illinois, near Chicago.

Nature and Probable Consequences—An NRC investigation between December 16, 1986, and June 30, 1987, determined that the Assistant Chief Physician of the Hospital's Nuclear Medicine Service failed to ensure that two diagnostic misadministrations of radioactive pharmaceuticals were reported to the NRC, as required. The investigation also determined that the physician made a false statement to a Veterans Administration Investigatory Board and to NRC investigators, destroyed evidence, and attempted to impeed the NRC investigation by influencing the testimony of a witness.

The investigation was made after an August 14, 1986 anonymous allegation was made to the NRC that three misadministrations had occurred at the facility during the week of August 4–8, 1986, and which had not been reported to the NRC.

The investigation showed that while all three misadministrations had taken place, as alleged, one of them was not required to be reported to the NRC since it involved a radioactive material not subject to NRC jurisdiction. The two which were not reported to the NRC, as required, were:

1. On August 4, 1986, a patient who was scheduled for a bone scan was injected with a different radioactive pharmaceutical, which is used for a brain scan.

2. On August 6, 1986, a patient scheduled for a gallium-67 scan, received a different NRC-licensed radiopharmaceutical that was scheduled for another patient.

Because of the small quantities of the radioactive pharmaceuticals involved, no adverse medical reactions would be expected in the patients, although they did receive some unnecessary radiation exposure.

Cause or Causes—The misadministrations were attributed to a lack of communication among the staff members of the Nuclear Medicine Service and the medical staff of the hospital.

The NRC investigation and previous inspections at the hospital determined that the licensee's management and staff had failed to adequately control its program for administration of radiopharmaceuticals to patients. These failures included not properly controlling dose administration records, inadequate training, and not verifying procedure orders.

Actions Taken to Prevent Recurrence

Licensee—The licensee has implemented the terms of the NRC Order and has selected, with NRC concurrence, the outside auditor for its nuclear medicine program. The Assistant Chief Physician has been reassigned to duties that do not involve the use or supervision of the use of NRC-licensed materials.

The Assistant Chief Physician has requested a hearing on the order as it affects him. The proceeding is pending.

NRC—The NRC Order, which was effective immediately, removed the authority of the Assistant Chief Physician in the Nuclear Medicine Service to use or supervise the use of NRC-licensed radioactive materials. In addition, the hosptial was directed to undertake further training for its Nuclear Medicine Service staff; to assure that all prescriptions for nuclear medicine procedures are in writing, reviewed by a nuclear medicine physician, and verified by the technologist; and to maintain a record of dosage measurement and administration. In addition, the hospital was directed to retain an independent organization to perform quarterly audits of the nuclear medicine department.

87–18 Suspension of a Well Logging Company's License

One of the AO examples notes that serious deficiency in management or procedural controls in major areas can be considered an abnormal occurrence.

Date and Place—On September 8, 1987, the NRC issued an immediately

effective order to Log-Tec of Cleveland, Oklahoma, that suspended the NRC license, ordered all byproduct material be placed in locked storage, and ordered the licensee to show cause why the license should not be revoked.

Nature and Probable Consequences—The license, which had been issued on June 14, 1984, authorized the use and possession of sealed radioactive sources to perform well logging. During a routine NRC inspection at Log-Tec facilities on August 19, 1987, eleven apparent violations of NRC requirements were identified. These apparent violations included failure to (a) store radioactive material at an authorized location, (b) survey storage facilities, (c) provide personnel monitoring, (d) maintain utilization records, (e) properly label radioactive shipping packages, (f) perform leak tests on sealed sources, (g) calibrate survey instruments (h) perform job site contamination surveys, (i) perform radiation surveys of vehicles transporting radioactive material, (j) use authorized method of storing radioactive material, and (k) maintain complete personnel monitoring records. When these violations were discussed with the company's sole proprietor, the NRC inspector was told that the sources had not been used since about June 1986.

However, on August 21, 1987, the President of Inland Oil Corporation (IOC) provided a sworn statement that the licensee had conducted well logging operations for IOC on July 9, 1987. According to the President, he and another person witnessed a Log-Tec representative conducting the logging process. IOC also provided NRC with written documentation (i.e., neutron log) received from the licensee that verified the results of the logging process.

On August 21, 1987, an NRC investigator and an NRC inspector interviewed Log-Tec's sole proprietor about his use of radioactive sources. Again, he reiterated that he had done no logging using radioactive sources since June 1986. However, when confronted with the copy of the neutron log received from IOC, the sole proprietor admitted that he had performed this work and had used a radioactive source to do so. Also, he stated that he had no records of his work at IOC. He further stated that he told the NRC inspector that he had not used radioactive sources because he knew his records were not up to date and he was afraid to admit this. He stated that he had none of the records required by NRC and never thought about keeping such records. He stated that his survey equipment was out of calibration because he did not have the money for such maintenance. He also admitted that he had not used film badges in a long time because he could not afford such associated expenses. Also, he admitted that he, doing business as Log-Tec, had conducted licensed well logging activities for other companies (i.e., Continental Oil; JGW Exploration, Inc.; and Covenant Oil) since June 1986 besides that done for IOC. NRC contacted and subsequently obtained from the Covenant Oil Company gamma ray logs that documented Log-Tec's use of radioactive sources for logging operations on September 9, 1986, December 10, 1986, and June 30, 1987.

The action of the sole proprietor of Log-Tec in deceiving the NRC inspector demonstrated that he was not trustworthy and not committed to complying with Commission requirements. Therefore, the NRC did not have the requisite reasonable assurance that the sole proprietor, doing business as Log-Tec, would comply with Commission requirements in the future. Consequently, the license was suspended.

Cause or Cause—The root cause can be attributed to a serious breakdown in the licensee's management controls.

Actions Taken to Prevent Recurrence

Licensee—The licensee has requested that the license be terminated. The licensee has transferred all sealed sources to an authorized recipient.

NRC—The NRC is terminating the license.

87-19 Suspension of an Industrial Radiography Company's License

One of the AO examples notes that a major deficiency in management or procedural controls in major areas can be considered an abnormal occurrence.

Date and Place—On September 21, 1987, the NRC issued an Order Suspending License (effective immediately) to Finlay Testing Laboratories, Inc., Aiea, Hawaii. The Order required the licensee to suspend all activities authorized by the license and to place all byproduct material in the licensee's possession in locked storage.

Nature and Probable Consequences—During inspections and investigations conducted in September 1987 in the state of Hawaii, it was determined that licensee employees had caused the shipment of radiographic exposure devices containing radioactive sources on passenger-carrying aircraft by concealing the nature of the material being offered for transport. NRC and Department of Transportation (DOT) regulations specifically prohibit industrial radiographic sources from being transported aboard passenger-carrying aircraft. It was further noted that licensee personnel failed to make surveys to assure the sources were in their shielded positions, and failed to prepare and use required shipping papers and labels for these shipments.

It was also ascertained by NRC inspectors and investigators that licensee representatives (including the Radiation Safety Officer) had failed to maintain required records of licensed activities.

Cause or Causes—The causes contributing to the violations appear to be a disregard for licensee operating procedures and the NRC license conditions and regulations. However, the case remains under investigation by the NRC Office of Investigations, and a complete understanding of all contributing causes awaits their report.

Actions Taken to Prevent Recurrence

Licensee—The licensee has complied with the Order and has forwarded a written request for an enforcement hearing.

NRC—The NRC Order continues in effect and a decision by the NRC on whether to allow the licensee to resume licensed activities has not been made. The NRC staff is reviewing the licensee's response to the Order at this time.

Dated in Washington, DC., this 4th day of April 1988.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88-7674 Filed 4-6-88; 8:45 am]

BILLING CODE 7590-01-M

Abnormal Occurrences for Fourth Quarter CY 1987; Dessemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incident at an NRC licensee was determined to be an abnormal occurrence (AO) using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). This abnormal occurrence is described below, together with the remedial actions taken. This event is also being included in NUREG-0090, Vol. 10, No. 4 ("Report to Congress on Abnormal Occurrences: October-December 1987"). This report will be available in the NRC's Public Document Room, 1717 H

Street, NW, Washington, DC about three weeks after the publication date of this **Federal Register** Notice.

Other NRC Licensees

(Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

87–21 Suspension of License of an Oil and Gas Well Tracer Company

On of the general AO criteria notes that major deficiencies in management controls for licensed facilities or material can be considered an abnormal occurrence.

Date and Place—On October 30, 1987, the NRC issued an Order Suspending License (Effective Immediately) and Order to Show Cause why the license should not be revoked to Tracer Profiles, Inc., of Oklahoma City, Oklahoma.

Nature and Probable Consequences—During an NRC inspection at the company of March 5–6, 1987, several violations on NRC requirements were identified.

Prior to and following an enforcement conference held on March 26, 1987 with the Vice President of the company, the licensee agreed to several specific corrective actions which were documented in Confirmatory Action Letters (CALs) dated March 13 and April 22, 1987. Among other actions, these included obtaining the services of a qualified consultant to audit operations, develop management controls to ensure compliance with license requirements, and prepare a report of findings which should be forwarded to the NRC.

On June 8, 1987, a Notice of Violation (NOV) was issued in which the violations were categorized in the aggregate as a Severity Level III (on a scale in which Severity Levels I and V represent the most and least severe, respectively) without the usual proposed imposition of a civil penalty in consideration of the licensee's past good enforcement history and agreement to implement the corrective actions documented in the CALs.

The licensee failed to respond to the CALs and the NOV. Subsequent attempts to contact licensee management were unsuccessful until and advised that he was unaware of the Vice President's whereabouts and the company's commitments to the NRC and the subsequent NOV. The President consequently committed to additional corrective actions, including securing licensed materials in locked storage until NRC approved resumption of licensed activities. (The licensee apparently possessed only short-lived radionuclides, which had decayed to insignificant levels.) The commitments were formalized in a CAL dated July 31, 1987.

However, the NRC did not received a response. In addition, it has been determined that the company vacated its offices and moved to a new and unknown location without notifying the NRC. Consequently, the NRC issued the previously mentioned Order on October 30, 1987.

Cause or Causes—The cause is the licensee's failue to fulfill its commitments to the NRC and its apparent inability and unwillingness to comply with NRC regulatory requirements.

Actions Taken to Prevent Recurrence

Licensee—None

NRC—The NRC is considering action to revoke the license.

Dated in Washington, DC, this 4th day of April 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88–7675 Filed 4–6–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–324]

Carolina Power & Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–62 issued to the Carolina Power & Light Company, (the licensee), for operation of Brunswick Steam Electric Plant, Unit 2, located in Brunswick County, North Carolina.

Environmental Assessment

Identification of Proposed Action:

The proposed action would permit the licensee to implement changes to the Brunswick facility and to Technical Specifications (TS), as described in their letter of September 29, 1987.

The Need for the Proposed Action:

A recirculation pump trip (RPT) system has been provided at Brunswick, Unit 2, to mitigate the consequences of postulated anticipated transients without scram (ATWS) events. The ATWS Rule (10 CFR 50.62) requires the implementation of the RPT, as well as an alternate rod injection (ARI) system, to reduce the likelihood of failure to shut down the reactor following anticipated transients. One of the conditions used to initiate RPT is high reactor vessel pressure. The current Unit 2 ATWS–RPT system uses digital pressure switches to sense reactor vessel pressure and to transmit the signal.

The licensee proposes to replace the digital pressure switches with analog pressure transmitter/master trip units during the current Unit 2 reload outage. The licensee has stated that the analog pressure transmitters and master trip units are more accurate and do not exhibit the calibration drift characteristics inherent in the existing pressure switches. The NRC has found the use of these units to be acceptable for other applications in the staff review of General Electric Licensing Topical Report NEDO–21617–A, "Analog Transmitter/Trip Unit System for Engineered Safeguard Sensor Trip Inputs," dated December 1978. The proposed TS change requires revisions to TS Tables 3.3.6.1–1, 3.3.6.1–2, and 4.3.6.1–1 to be consistent with the proposed trip unit instrument numbers. The proposed amendment would also change TS Section 3/4.3.6 to reflect the use of the new analog pressure transmitter/master trip units.

The proposed TS surveillance requirement frequencies are consistent with those required for other analog configurations. The analog trip units will be tested on the same schedule as the existing digital pressure switches, with the exception of a daily channel check, which is not performed on the existing equipment. A channel calibration will be performed on the analog pressure transmitters each refueling outage.

The licensee also proposes to modify the ATWS–RPT logic. The original BWR/4 design uses a 1 out of 2 logic, such that a single level or pressure instrument can initiate a single recirculation pump trip. Such a design leads to spurious recirculation pump trips upon the malfunction of a single instrument. In addition, the current logic does not initiate a control rod scram coincident with a recirculation pump trip. The proposed ATWS–RPT design uses a 2 out of 2 logic. Under this logic, the ATWS–RPT system consists of two trip systems. Each trip system is comprised of four channels; Two pressure transmitters and two level transmitters. The proposed design will trip both recirculation pumps and scram control rods upon signals from two pressure transmitters or two level transmitters. This RPT design meets the 10 CFR 50.62, paragraph (c)(5) requirement to automatically trip the reactor coolant recirculation pumps. The proposed design increases plant reliability by eliminating the possibility of spurious recirculation pump trips due to the malfunction of a single instrument. It also reduces the

possibility of a recirculation pump trip without a reactor scram. Technical Specification Table 3.3.6.1–1 has been revised to reflect the proposed system logic. This table is consistent with the guidance provided in the GE BWR/4 Standard TS.

The Action Statements for Specification 3.3.6.1 are also being revised to reflect the modified ATWS-RPT logic. Action "a" is unaffected by the ATWS-RPT logic modifications. Actions "b" through "e" have been included to detail the actions to be taken in the event of inoperable channels and/or trip systems of the ATWS-RPT system. These actions clarify what conditions constitute an inoperable trip system. The proposed actions are consistent with the guidance provided in the GE BWR/4 Standared TS.

Environmental Impacts of the Proposed Action:

The proposed improvements in system trip logic will result in fewer challenges to plant safety by decreasing the probability of spurious recirculation pump trips. The addition of an alternate scram signal is expected to reduce the likelihood of failure to scram, thereby decreasing the probability of occurrence of an ATWS event. The proposed changes do not affect other systems required to mitigate the consequences of postulated accidents, nor is there any effect on systems that control radiological plant effluents. Thus, no increase in post-accident or normal radiological effluents is expected. Because the proposed new equipment will permit the monthly channel functional tests to be conducted in the control room rather than at the instrument racks, there will be a decrease in occupational exposure to radiation for these surveillances. This decrease will be offset to some extent by the increased exposure during the 18-month channel calibration which will involve a greater number of instruments. On balance, the proposed change is not expected to involve a net increase in occupational exposure to radiation.

With regard to potential non-radiological impacts, the proposed changes involve systems located within the restricted area, as defined in 10 CFR Part 20. No non-radiological effluents are affected, and no other environmental impact would occur. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed changes.

Alternatives to the Proposed Action:

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed changes to the TS, any alternative to the amendments will either have no environmental impact or greater environmental impact. The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation.

Alternative Use of Resources:

This action does not involve the use of resources not previously considered in the Final Environmental Statement for Brunswick Steam Electic Plan, Unit 2, dated January 1974.

Agencies and Persons Consulted:

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based on the foregoing environmental assessment, the Commission concludes that the proposed action will not have significant effect on the quality of the human environment.

For further information with respect to this action, see the application for the amendment dated September 29, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Dated at Rockville, Maryland this 1st day of April 1988.

For the Nuclear Regulatory Commission

Bart C. Buckley,

Acting Director, Project Directorate II–I, Division of Reactor Projects—I/II.

[FR Doc. 88–7644 Filed 4–6–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–397]

Washington Public Power Supply System; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–21 issued to Washington Nuclear Project No. 2 (WNP–2), located in Benton County, Washington.

Environmental Assessment

Identification of Proposed Action:

The proposed amendment would revise the provisions in paragraph 4.7.4.e of the Technical Specifications (TS) relating to the snubber functional testing sample plans.

The proposed action is in accordance with the licensee's application for amendment dated December 1, 1987, as supplemented by a letter dated March 18, 1988.

The Need for the Proposed Action:

The proposed change to the TS will reduce the amount of snubber testing required and thus reduce occupational radiation exposure and safety concerns associated with unnecessary functional testing.

Environmental Impacts of the Proposed Action:

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed revisions affect the amount of additional sampling to be performed by the licensee for snubbers that fail functional testing. The net effect is a reduction in the number of additional samples which are expected to be taken. The revisions have been found to be acceptable because they will eliminate unnecessary testing of snubbers, resulting in reduced man-rem exposure, without undermining the effectiveness of the overall surveillance program. The proposed changes will also clarify certain functional testing and failure analysis requirements as presently stated in the Technical Specifications. Since the effectiveness of the snubber surveillance program is not affected significantly, the proposed changes do not increase the probability or consequences of an accident. No changes are proposed in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. In fact, the net reduction in sampling should reduce occupational exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed amendment to the TS involves surveillance procedures applied to systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the

Commission concludes that there is no significant non-radiological environmental impact associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 7, 1988 (53 FR 7269). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action:

Since the Commission concluded that there is no significant environmental effect that would result from the proposed action, alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and in fact would result in continuing snubber testing and associated occupational radiation exposure and safety concerns.

Alternative Use of Resources:

This action does not involve the use of any resources not previously considered in the Final Environmental Statement Related to the Operation of WPPSS Nuclear Project No. 2, dated December, 1981.

Agencies and Person Consulted:

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated December 1, 1987 and a supplement dated March 18, 1988 which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Dated at Rockville, Maryland, this 1st day of April, 1988.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-7645 Filed 4-6-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-336]

Northeast Nuclear Energy Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 128 to Facility Operating License No. DRP-65, to Northeast Nuclear Energy Company, The Connecticut Light and Power Company, and Western Massachusetts Electric Company, which revised the Technical Specifications for operation of the Millstone Nuclear Power Station, Unit 2, located in the Town of Waterford, Connecticut. The amendment was effective as of the date of its issuance.

The amendment changes Technical Specification 3.9.20, "Spent Fuel Pool", which deletes a footnote which had limited the storage of consolidated spent fuel to five consolidated spent fuel storage canisters.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on January 4, 1988 (53 FR 87). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to the action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributed to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility dated June 1973.

For further details with respect to the action, see (1) the application for amendment dated May 21, 1986, as supplemented by letter dated August 11, 1987, (2) Amendment No. 128 to Facility Operating License No. DPR-65, and (3) the Environmental Assessment and Finding of No Significant Impact (53 FR 7065). All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland this 31st day of March, 1988.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Project Manager, Project Directorate II-2, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-7646 Filed 4-6-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25544; File No. SR-NASD-88-5]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") submitted on February 8, 1988, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to raise the limit on the size of claims eligible for simplified arbitration procedures from $5,000 to $10,000, to establish a filing fee of $200 where the case and controversy is between $5,000 and $10,000, to eliminate the requirement for five member panels in claims exceeding $500,000 and to increase administrative fees retained for cases withdrawn or settled prior to their first hearing session.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 25382, February 23, 1988) and by publication in the **Federal Register** (53 FR 6046). All written statements filed with the Commission and all written communications between the Commission and any person relating to the proposed rule change were considered and (with the exception of those statements or communications

that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's public reference room. The Commission did not receive any written comments on the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and in particular the requirements of section 15A and the rules and regulation thereunder.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority 17 CFR 200.30-3(a)(12).

Dated: April 1, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-7687 Filed 4-6-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25541; File No. SR-NYSE-88-09]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc. Relating to the Extension of the Effectiveness of NYSE Rule 103A From March 31, 1988 Until Such Time as the Commission May Act To Approve New Rule 103A

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 28, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would extend the effectiveness of NYSE Rule 103A until such time as the Commission may act to approve new Rule 103A as submitted by the Exchange in SR-NYSE-87-25.[1]

[1] *See*, Securities Exchange Act Rel. No. 24919 (September 15, 1987) 52 FR 35821.

The intent of Rule 103A is to encourage a high level of market quality and performance in Exchange listed securities. Rule 103A authorizes the Market Performance Committee of the NYSE to withdraw NYSE approval of a member's registration as specialist in one or more stock(s) if the specialist has consistently received evaluations by Floor brokers on the quarterly Specialist Performance Evaluation Questionnaire which are below a level of acceptable performance as specified in the Rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to extend the effectiveness of NYSE Rule 103A until such time as the Commission may act to approve new Rule 103A as submitted by the Exchange in SR-NYSE-87-25 and as described below.

As described in more detail in File No. SR-NYSE-81-11, Rule 103A authorizes the Market Performance Committee of the NYSE to withdraw NYSE approval of a member's registration as specialist in one or more stocks if the specialist has consistently received evaluations by Floor brokers on the quarterly Specialist Performance Evaluation Questionnaire (the "SPEQ") which are below a level of acceptable performance as specified in the Rule.

As described in File No. SR-NYSE-85-14, and File No. SR-NYSE-86-19, the Exchange conducted a pilot program to test revisions to the current Specialist Performance Evaluation Questionnaire and its associated processes.

The Market Performance Committee's Subcommittee on Performance Measures and Procedures (the "Subcommittee") has concluded its analysis of data produced by the revised SPEQ, and has developed additional measures and standards of specialist performance, such as DOT turnaround performance, which were incorporated into revised Rule 103A. The Exchange filed for approval to implement a pilot program to test the revisions to Rule 103A developed by the Subcommittee in SR-NYSE-87-25 which is pending before the Commission.

The Exchange is requesting this extension of current Rule 103A so that the Rule may remain in effect while the Commission considers the proposed revisions to the Rule previously filed. The Exchange continues to view the current Rule as providing a basis for ongoing performance improvement initiatives, such as counseling of specialist units by the Markets Performance Committee, which has proven to be effective in improving both individual and overall specialist performance on the Exchange. The Exchange intends that the Market Performance Committee will continue its counseling procedures during the period of the Commission's consideration of the Exchange's filing requesting approval to implement a pilot program to test the proposed revisions to Rule 103A. Upon Commission approval to implement a pilot program to test revisions to the Rule, the Exchange intends to notify its members that revised Rule 103A is effective and supersedes current Rule 103A.

(2) Basis Under the Act for Proposed Rule Change

The statutory basis for the proposed rule change in section 6(b)(5) of the Act which, among other things, requires Exchange rules to be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

Since Rule 103A has proven to be an effective means of improving specialist performance, thereby adding to the overall quality of the NYSE market, the Exchange requests that the Commission find good cause to approve the proposed rule change on an accelerated basis, and in any event prior to March 31, 1988, the date on which Rule 103A is scheduled to expire.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE.

All submissions should refer to the file number in the caption above and should be submitted by April 28, 1988.

V. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6 and the rules and regulations thereunder, in that it will permit the current Rule 103A pilot program to remain in effect while the Commission considers for approval the NYSE's proposal to commence a two-year pilot program to test revisions to Rule 103A.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after date of publication of notice thereof in that it will enable Rule 103A to remain in effect on an uninterrupted basis.

It is Therefore Ordered, pursuant to section 19(b)(1) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 31, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-7688 Filed 4-6-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Interest Rates; Quarterly Determination

The interest rate on section 7(a) Small Business Administration direct loans (as amended by Pub. L. 97-35) and the SBA share of immediate participation loans is nine and one-quarter (9¼) percent for the fiscal quarter beginning April 1, 1988.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 122.8-4(d)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the April-June quarter of 1988, this rate wil be eight and-one-half (8½) percent.

Edwin T. Holloway,

Associate Administrator for Finance and Investment.

[FR Doc. 88-7576 Filed 4-6-88; 8:45 am]

BILLING CODE 8025-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Generalized System of Preferences (GSP); Deadline for Acceptance of Petitions Requesting Modification of List of Articles Eligible for Duty-Free Treatment Under the GSP and Requests to Review the GSP Status of Beneficiary Developing Countries

Notice is hereby given that, in order to be considered in the 1988 GSP annual review, all petitions to modify the list of articles eligible for duty-free treatment under the Generalized System of Preferences (GSP) and requests to review the GSP status of any beneficiary developing country must be received by the GSP Information Center no later than the close of business, Wednesday, June 1, 1988. The GSP provides for the duty-free importation of qualifying articles when imported from designated beneficiary developing countries. The GSP is authorized by Title V of the Trade Act of 1974, as amended, and has been implemented by Executive Order 11888 of November 24, 1975, and modified by subsequent Executive Orders and Presidential Proclamations.

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Interested parties or foreign governments may submit petitions (1) to designate additional articles as eligible for GSP; (2) to withdraw, suspend or limit GPS duty-free treatment accorded either to eligible articles under the GSP or to individual beneficiary developing countries with respect to specific GSP eligible articles; and (3) to otherwise modify GSP coverage. Also, any person may file a request to have the GSP status of any eligible beneficiary developing country reviewed with respect to any of the designation criteria listed in subsections 502(b) or 502(c) of the Act (19 U.S. 2662 (b) and (c)).

Identification of Product Requests With Respect to the Harmonized System Tariff Nomenclature

The Harmonized System tariff nomenclature (HS) is a new international product nomenclature developed under the auspices of the Customs Cooperation Council (CCC) for the purpose of classifying goods in international trade. The HS may be implemented by the United States and internationally on January 1, 1989, and will replace the current Tariff Schedules of the United States (TSUS) nomenclature. Product eligibility under the coverage of the GSP program is currently defined in terms of the five-digit TSUS classifications. However, upon implementation of the HS, the coverage of the GSP program will be defined in terms of the HS. Therefore, all product-related petitions must identify the product(s) of interest in terms of both the current TSUS nomenclature and the proposed HS tariff nomenclature. (See 51 FR 44163 for information on the conversion of the GSP program to the HS).

Submission of Petitions and Requests

Petitions and requests to modify GSP treatment should be addressed to: GSP Subcommittee, Office of the U.S. Trade Representative, 600 17th Street, NW.,

Room 517, Washington, DC 20506. All such submissions must conform with regulations codified in 15 CFR Chapter XX, especially Part 2007. Information submitted will be subject to public inspection by appointment only with the staff of the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and 15 CFR 2006.10. Petitions and requests must be submitted in twenty copies in English. If the petition or request contains business confidential information, twenty copies of a nonconfidential version of the submission along with twelve copies of the confidential version must be submitted. In addition, the submission containing confidential information should be clearly marked "confidential" at the top and bottom of each and every page of the submission. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each page (either "public version" or "nonconfidential").

Prospective petitioners and requestors are strongly advised to review the GSP regulations published in the **Federal Register** on Tuesday, February 11, 1986 (51 FR 5035). Prospective petitioners and requestors are reminded that submissions that do not provide all information required by § 2007.1 will be accepted for review except upon a detailed showing in the submission that the petitioner or requestor made a good faith effort to obtain the information required. This requirement will be strictly enforced. Petitions with respect to competitive need waivers must meet the informational requirements for product addition requests in § 2007.1(c). A model petition format is available from the GSP Information Center and is included in the publication "A Guide to the U.S. Generalized System of Preferences." Prospective petitioners are requested to use this model petition format so as to ensure that all informational requirements are met. Furthermore, interested parties submitting petitions that request modifications with respect to specific articles should list on the first page of the petition the following information: (1) The requested action; (2) the classification of the article(s) of interest in the TSUS and the HS; and (3), if applicable, the beneficiary country(s) of interest. Questions about the preparation of petitions and requests should be directed to the staff of the GSP Information Center. The phone number of the center is (202) 395-6971.

Notice of petitions and requests accepted for review will be published in the **Federal Register** on or about Friday, July 15, 1988. The notice will also provide information concerning the opportunity for interested parties to comment on requests accepted for review through public hearings and written submissions. Any modifications to the GSP resulting from the 1988 GSP annual review will be announced on or about April 1, 1989 and will take effect on July 1, 1989.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 88-7585 Filed 4-6-88; 8:45 am]

BILLING CODE 3190-01-M

Trade Policy Staff Committee; Generalized System of Preferences (GSP) Subcommittee; Notice of Results of Reviews of Petitions Requesting Changes in the List of Countries and Articles Eligible for Duty-Free Treatment Under the 1987 Annual Review of the GSP

This publication contains the dispositions of the petitions accepted for review in the 1987 annual review of the GSP program (52 FR 28896). These petitions requested changes in the list of articles and countries eligible for duty-free treatment under the U.S. Generalized System of Preferences (GSP). The GSP is provided for in the Trade Act of 1974, as amended (19 U.S.C. 2461-2465). The review was conducted pursuant to regulations codified as 15 CFR 2007. These changes will take effect on July 1, 1988. The President's decisions concerning the 1987 annual review have also been reflected in a proclamation and in a recent USTR press release (The press release is available by contacting the USTR Public Affairs Office at (202) 395-3230.). All communications with respect to this notice should be addressed to the Executive Director, Generalized System of Preferences, Room 517, 600 17th Street, NW., Washington, DC 20506.

Please note that the President has also approved a conversion of the changes resulting from petitions into the Harmonized System tariff nomenclature (HS). Parties may contact the GSP Information Center for a copy of the HS conversion concerning the petitions granted by the President.

Numerous petitions were also submitted requesting a review of the beneficiary status of six GSP beneficiary countries based on their practices in the area of internationally recognized worker rights. After reviewing those requests the President determined that Taiwan, the Republic of Korea, Indonesia, Thailand, and Turkey are taking steps to afford internationally recognized workers rights. Another beneficiary, the Central African Republic, will continue to be reviewed as part of the upcoming 1988 annual review.

With respect to a request from two petitioners to review the beneficiary status of Thailand based on that government's practices with respect to intellectual property rights, the President will continue to review this issue until December 15, 1988. Questions may be directed to any member of the GSP Information Center at (202) 395–6971.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

Case No.	TSUS or TSUSA*	Article	Petitioner	Action taken
A. Petitions To Add Products to the List of Eligible Articles for the Generalized System of Preferences				
87-1	112.01	Anchovies	Government of Morocco	Petition granted.
87-2	131.27	Flaked oats	Government of Colombia	Do.
87-3	141.15	Pickled beans	Government of Morocco	Do.
87-4	141.83	Corn in airtight containers	Government of Thailand	Do.
87-5	161.08	Capers	Government of Morocco	Petition denied.
87-6	169.13	Rum (in less than 1 gal. containers)	Government of Philippines	Do.
87-7	169.1415	Rum (in greater than 1 gal. containers)	do	Do.
87-8	206.67	Wood shutters	Ohline Corp; Eastman Bell	Do.
87-9	309.20	Strips of artificial straw or yarn (valued less than $1 per lb.).	Government of Mexico; Cordelrias Filamentos y Costales, S.A. de C.V. (COFISCA), Mexico.	Petition granted.
87-10	309.21	Strips of artificial straw or yarn (valued more than $1 per lb.).	do	Do.
87-11	370.8405	Hemmed silk handkerchiefs (more than 70% silk).	Government of Thailand	Do.
87-12	370.8450	Unhemmed silk handkerchiefs (more than 70% silk).	do	Do.
87-13	372.5005	Shawls (more than 70% silk)	do	Do.
87-14	372.5505	Scarves and shawls more than 70% silk)	do	Do.
87-15	389.40 (pt.)	Plastic pot scourers	Government of Mexico; Filtros y Mallas Industrias, S.A.	Do.
87-17	455.04	Pectin	Grinsted de Mexico	Petition denied.
87-18	533.79	Earthenware household items, other	Corning Glassware	Do.
87-19	534.97 (pt.)	Kitchenware with certain temperature resistant characteristics.	do	Petition granted (breakout with 504D waiver).
87-20	606.22	Ferrochromium (more than 3% carbon)	Government of Zimbabwe	Petition denied.
87-21	606.42	Ferrosilicon chromium	do	Do.
87-22	737.24 (pt.)	Dolls over 13" in height, capable of certain electromechanical movement, etc.	Playmates Toys, Inc	Petition granted (breakout with 504D waiver).
87-23	755.15	Fireworks	Government of Colombia	Petition granted
87-24	760.0520	Ball-point pens and pencils	Government of Thailand	Petition denied.

Case No.	TSUS or TSUSA*	Article	Petitioner	Action taken
B. Petitions To Remove Products From the List of Eligible Articles for the Generalized System of Preferences				
87-25	450.2015	Black pepper spice oleoresins	Kalsec, Inc	Petition denied.
87-28	610.74	Malleable cast iron pipe fittings	American Pipe Fittings Association	Petition ganted.
87-29	740.41	Jewelry, other (valued more than $.20 per dozen).	Manufacturing Jewelers and Silversmiths of America.	Petition denied.
87-30	740.50	Rosaries and chaplets	do	Do.
87-31	740.60	Crucifixes and medals, other	do	Do.
87-32	740.75	Other metal chain (valued less than $.30 per yard).	do	Do.
87-33	740.80	Other metal chain (valued more than $.30 per yard).	do	Do.
87-34	745.6740	Other, clasps, handbag, and snap fasteners	do	Do.
C. Petitions To Remove Duty-Free Status From a Beneficiary Developing Country [1] for a Product on the List of Eligible Articles Under the Generalized System of Preferences				
87-35	408.72 (Korea)	ABS Resins	Borg-Warner Chemicals, Inc.; Dow Chemicals, USA.	Graduate Korea.
87-36	423.00 (pt.) (Brazil)	Other oxides, hydroxides and peroxides	Teledyne Industries	Breadkout Colombium oxide and graduate Brazil.
87-37	618.15 (Argentina, Brazil, Mexico, Taiwan, Venezuela).	Wrought aluminum rods	Southwire Co	Graduate Venezuela.
87-38	618.20 (Brazil, Argentina, Venezuela).	Aluminum Wire, not plated or coated with metal	do	Petition denied.
87-39	642.2010 (Korea)	Ropes, cables or cordage fitted with fittings	Domestic Steel Wire Rope and Specialty Steel Manufacturers.	Graduate Korea.
87-40	652.80 (Korea, Mexico)	Expanded metal of base metal	Expanded Metal Fair Trade Coalition	Petition denied.
87-41	682.4130 (Korea, Taiwan)	Polyphase motors between 1 and 20 HP	National Electrical Manufacturers Association	Graduate Taiwan
87-42	682.5010 (Korea, Taiwan)	Electric motors, 200 Horsepower, AC	do	Petition denied.
87-43	682.5030 (Korea, Taiwan)	Electric motors, between 200 and 500 horsepower, AC.	do	Do.
87-44	685.28 (Korea, Taiwan, Hong Kong).	Cordless handset telephones and parts	Motorola, Inc	Graduate Hong Kong, Taiwan, Korea.
87-45	688.20 (Brazil, Korea, Taiwan, Venezuela).	Stranded aluminum cable	Southwire Co	Petition denied.
87-46	735.09 (Korea, Taiwan)	Inflatable balls	Hedstrom Corp	Do.
87-47	735.10 (Korea, Taiwan)	Noninflatable hollow rubber balls	do	Do.
87-48	735.11 (Korea, Taiwan)	Sponge rubber balls	do	Do.
87-49	735.12 (Korea, Taiwan)	Balls, other	do	Do.
87-50	745.32 (Taiwan)	Buttons, of acrylic or polyester resins	Cresthill Industries, Inc.	Graduate Taiwan.
87-51	772.06 (Hong Kong, Korea, Mexico).	Plastic dinnerware	Ullman Co	Petition withdrawn.
87-52	772.09 (Hong Kong, Korea, Mexico).	Plastic trays	do	Do.

Case No.	TSUS or TSUSA*	Article	Petitioner	Action taken
87-38	618.20 (Brazil, Argentina, Venezuela).	Aluminum Wire, not plated or coated with metal	do	Petition denied.
87-39	642.2010 (Korea)	Ropes, cables or cordage fitted with fittings	Domestic Steel Wire Rope and Specialty Steel Manufacturers.	Graduate Korea.
87-40	652.80 (Korea, Mexico)	Expanded metal of base metal	Expanded Metal Fair Trade Coalition	Petition denied.
87-41	682.4130 (Korea, Taiwan)	Polyphase motors between 1 and 20 HP	National Electrical Manufacturers Association	Graduate Taiwan
87-42	682.5010 (Korea, Taiwan)	Electric motors, 200 Horsepower, AC	do	Petition denied.
87-43	682.5030 (Korea, Taiwan)	Electric motors, between 200 and 500 horsepower, AC.	do	Do.
87-44	685.28 (Korea, Taiwan, Hong Kong).	Cordless handset telephones and parts	Motorola, Inc	Graduate Hong Kong, Taiwan, Korea.
87-45	688.20 (Brazil, Korea, Taiwan, Venezuela).	Stranded aluminum cable	Southwire Co	Petition denied.
87-46	735.09 (Korea, Taiwan)	Inflatable balls	Hedstrom Corp	Do.
87-47	735.10 (Korea, Taiwan)	Noninflatable hollow rubber balls	do	Do.
87-48	735.11 (Korea, Taiwan)	Sponge rubber balls	do	Do.
87-49	735.12 (Korea, Taiwan)	Balls, other	do	Do.
87-50	745.32 (Taiwan)	Buttons, of acrylic or polyester resins	Cresthill Industries, Inc.	Graduate Taiwan.
87-51	772.06 (Hong Kong, Korea, Mexico).	Plastic dinnerware	Ullman Co	Petition withdrawn.
87-52	772.09 (Hong Kong, Korea, Mexico).	Plastic trays	do	Do.
	D. Petitions To Waive Competitive Need Limits for a Country [2] for a Product on the List of Eligible Articles for the Generalized System of Preferences			
87-53	547.3720 (Taiwan)	Glass envelopes for cathode-ray tubes	Clinton Electronics Corp	Petition denied.
87-54	657.40 (pt.) (Taiwan)	Luggage frames	Skyway Luggage	Do.
87-55	685.25 (Korea)	Cordless handset telephones	Maxon Electronics, Inc	Do.
87-56	692.3262 (Mexico)	Brake drums and rotors	Cifunsa, S.A	Do.
87-57	692.3264 (Mexico)	Brake parts, other	do	Do.
87-58	735.09 (Mexico)	Inflatable balls	Kenner Parker Toys, Inc.; Mattel, Inc	Petition withdrawn.
87-59	735.10 (Mexico)	Noninflatable hollow balls	do	Do.
87-60	735.11 (Mexico)	Sponge rubber balls	do	Do.
87-61	735.12 (Mexico)	Balls, other	do	Do.
87-62	737.07 (Mexico)	Other models and construction kits or sets	do	Do.
87-63	737.14 (Mexico)	Other construction kits	do	Do.
87-64	737.16 (Mexico)	Other models and construction kits	do	Do.
87-65	737.80 (Mexico)	Toys having a spring mechanism	do	Do.
87-66	737.93 (Mexico)	Toys having an electric motor	do	Do.
87-67	737.96 (Mexico)	Toys wholly or almost wholly of rubber or plastic, noninflatable.	do	Do.
87-68	737.98 (Mexico)	Other toys	do	Do.
87-69	740.14 (Thailand)	Jewelry, other	Government of Thailand	Decision deferred until December 1988.

— *Tariff Schedules of the United States annotated (19 U.S.C. 1202).
[1] Countries subject to petition are identified under the TSUS number.
[2] Countries subject to petition are identified under TSUS number.

[FR Doc. 88-7584 Filed 4-6-88; 8:45 am]
BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD-88-020]

Proposed Construction of Bridge; New Rochelle, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of Public Hearing.

SUMMARY: Notice is hereby given that the Commandant has authorized a public hearing to be held by the Commander, First Coast Guard District at New Rochelle, New York. The purpose of the hearing is to consider an application by Xanadu Properties Associates for Coast Guard approval of the location and plans of a proposed two-lane private fixed vehicular bridge project across New Rochelle Harbor and a portion of Long Island Sound, mile 0.9, at New Rochelle, New York. This is the second series of Coast Guard public hearings on this proposed action. Previous hearings held February 18 and March 18 and 19, 1987, revealed the need for additional information to fully evaluate the proposed action. The forthcoming hearing will hear comments on the additional information developed since the 1987 hearings.

All interested persons may present data, views and comments, orally or in writing, concerning the impact of the proposed bridge on navigation and the human environment.

DATES: May 10, 1988 from 4:00 p.m. to 12:00 a.m., and May 11, 1988 from 4:00 p.m. until all speakers in attendance wishing to comment have provided comments. Written comments must be submitted by May 31, 1988.

ADDRESSES: The hearing will be held at the auditorium of the Albert Leonard Junior High School, 25 Gerada Lane, New Rochelle, New York, 10804. Written comments and other communications should be sent to the Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, New York, New York 10004-5073. The public docket may be examined at this address.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Kassof, Supervisory Bridge Management Specialist, First Coast Guard District, Bldg. 135A, Governors Island, New York, New York, 10004-5073, (212) 668-7994.

SUPPLEMENTARY INFORMATION: The proposed fixed bridge will be 3,465 feet in length extending from the Fort Slocum dock area on the mainland to a point 420 feet south of the most northerly point of Davids Island. The proposed bridge will cross two navigational channels; one in New Rochelle Harbor (Lower Harbor) between Neptune Island and Glen Island and the other in Long Island Sound between Glen Island and Davids Island. The Lower Harbor crossing will

be approximately 285 feet north of the existing Glen Island bascule drawbridge and will provide a minimum vertical clearance of 14 feet above Mean High Water and a horizontal clearance of 160 feet between fenders, measured normal to the axis of the channel. The Long Island Sound crossing will provide a minimum vertical clearance of 65 feet above Mean High Water and a horizontal clearance of 250 feet between fenders, measured normal to the axis of the proposed navigational channel.

The purpose of this project is to develop Davids Island, formerly a U.S. Army base called Fort Slocum. The City of New Rochelle, owner of Davids Island, seeks to develop Davids Island as a residential community consistent with New Rochelle's Urban Renewal Plan adopted January 1981. New Rochelle entered into a Land Disposition and Development Agreement on 12 March 1985 with Xanadu Properties Associates, a developer. The development plan proposed by Xanadu consists of creation of a 2,000 unit residential condominium community, construction of an 800 slip marina, breakwater, beach, private sewage treatment plant, and access bridge and approaches linking the New Rochelle mainland with Davids Island.

Because the development of Davids Island including marina, breakwater and treatment plant construction, and beach creation is dependent upon the bridge, the scope of the Coast Guard's review includes the Davids Island development as well as the bridge.

Since deactivation by the Army in 1966, Davids Island's infrastructure has deteriorated and vegetation has overgrown the island. The New Rochelle Urban Renewal Plan specifically includes the development of Davids Island and calls for the elimination of deteriorating and functionally obsolete structures and the creation of a housing community.

The hearing will be informal. A Coast Guard representative will preside at the hearing, make a brief opening statement and announce the procedures to be followed at the hearing. Each person who wishes to make an oral statement should notify the Commander (obr), First Coast Guard District, Governors Island, New York, New York 10004–5073, prior to the hearing date. Such notification should include the approximate time required to make the presentation. Comments previously submitted are a matter of record and need not be resubmitted at the hearing. Speakers are encouraged to provide written copies of their oral statements to the hearing officer at the time of the hearing.

A transcript of the hearing, will be available for public review in the offices of the First Coast Guard District approximately 30 days after the hearing date.

Interested persons who are unable to attend the hearing may also participate in the consideration of the project by submitting their comments at the hearing or by mail to the Commander (obr), First Coast Guard District, by May 31, 1988. Copies of all written communications will be available for examination by interested persons at the Office of the Commander (obr), First Coast Guard District, between 8:30 a.m. and 5:00 p.m., Monday through Friday, except holidays. Each written comment should identify the proposed project, clearly state the reason for any objections, comments or proposed changes to the plans, and include the name and address of the person or organization submitting the comment. All comments received, whether in writing or presented orally at the public hearing, will be fully considered before final agency action is taken on the proposed bridge permit application.

Sec. 502, 60 Stat. 847, as amended; 33 U.S.C. 525, 49 U.S.C. 1655(g)<c>; 49 CFR 1.46(c).

Date March 31, 1988.

A.B. Smith,

Captain, U. S. Coast Guard, Acting Chief, Office of Navigation.

[FR Doc. 88–7656 Filed 4–6–88; 8:45 am]

BILLING CODE 4910–14–M

[CGD 88-021]

Houston/Galveston Navigation Safety Advisory Committee; Inshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Inshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, May 12, 1988 at the Houston Yacht Club, 3620 Miramar Drive, LaPorte, Texas. The meeting is scheduled to begin at 9:00 a.m. and end at 10:30 a.m. The agenda for the meeting consists of the following items:

1. Call to Order
2. Discussion of previous recommendations made by the full Advisory Committee and the Inshore Waterway Management Subcommittee
3. Presentation of any additional new items for consideration to the Subcommittee
4. Adjournment

Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Prior to presentation of their oral statements, but no later than the day before the meeting, members of the public shall submit, in writing, to the Executive Secretary of the Houston/Galveston Navigation Safety Advisory Committee, the subject of their comments, a general outline signed by the presenter, and the estimated time required for presentation. Individuals making the presentation shall also provide their name, address, and, if applicable, the organization they are representing. Any member of the public may present a written statement to the Advisory Committee at any time.

Additional information may be obtained from Commander V. O. Eschenburg, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (m), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130–3396, telephone number (504) 589–6901.

Dated: March 29, 1988.

Peter J. Rots,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 88–7657 Filed 4–6–88; 8:45 am]

BILLING CODE 4910–14–M

[CGD1 88-014]

New York Harbor Traffic Management Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the New York Harbor Traffic Management Advisory Committee to be held on April 28, 1988, in the Conference Room, second floor, U.S. Coast Guard Marine Inspection Office, Battery Park, New York, New York, beginning at 10:00 a.m.

The agenda for this meeting of the New York Harbor Traffic Management Advisory Committee is as follows:

1. Introductions.
2. Vessel Traffic Service New York update.
3. Update Kill Van Kull/Newark Bay Dredging Project.
4. Status of the NY Harbor Traffic Management Advisory Committee.
5. Bridge Administration—Transfer of duties to USACE.
6. Topics from the floor.
7. Review of agenda topics and selection of date for next meeting.

The New York Harbor Traffic Management Advisory Committee has been established by Commander, First Coast Guard District to provide information, consultation, and advice with regard to port development, maritime trade, port traffic, and other maritime interests in the harbor. Members of the Committee serve voluntarily without compensation from the Federal Government.

Attendance is open to the interested public. With advance notice to the Chairperson, members of the public may make oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: Commander, W. YOUNG, USCG, Executive Secretary, NY Harbor Traffic Management Advisory Committee, New York Vessel Traffic Service, Governors Island, New York, NY 10004; or by calling (212) 668-7954.

Dated: March 25, 1988.

J.N. Faigle,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 88-7658 Filed 4-6-88; 8:45 am]

BILLING CODE 4910-14-M

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meetings.

SUMMARY: This notice is to advise interested persons that RSPA and the International Regulations Committee (INTEREC) of the Hazardous Materials Advisory Council will jointly conduct a public meeting to exchange views on proposals that were considered by the 37th session of the Group of Rapporteurs of the United Nations Committee of Experts on the Transport of Dangerous Goods relating to the development of international standards for the transport of dangerous goods.

DATE: April 20, 1988, 10:00 a.m.

ADDRESS: Room 6332, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Richard C. Barlow, Acting International Standards Coordinator, Office of Hazardous Materials Transportation, Department of Transportation, Washington, DC 20590 (202) 366-4545.

SUPPLEMENTARY INFORMATION: The principle topics to be reviewed at this meeting are the European counter-proposals to adopt the criteria for classification of gases such as those of the European conventions on the transport of dangerous goods by rail (RID) and road (ADR), the criteria and tests for the classification of division 5.1 substances, and the definition of liquids and solids. In addition, the meeting will review the status of the classification and grouping criteria for mixtures containing division 6.1 substances, as well as the reclassification of selected substances based on inhalation toxicity data. Other topics include a review of the Organization for Economic Cooperation and Development (DECD) and United Nations Environment Program (UNEP) programs for the transfrontier movement of hazardous wastes, and the future work schedule of the United Nations Committee of Experts on the transport of dangerous goods and its subsidiary bodies.

This meeting will be conducted jointly by RSPA and the International Regulations Committee (INTEREC) of the Hazardous Materials Advisory Council. Interested persons are invited to attend and participate in this meeting. Person planning to attend are cautioned that this meeting is intended to exchange views on a number of proposals involving international standards for the transport of dangerous goods. Therefore, it is recommended attendees be familiar with these organizations, their functions and the standards issued by them.

Issued in Washington, DC on April 1, 1988.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 88-7684 Filed 4-6-88; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: April 1, 1988.

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, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments 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.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0472
Form Number: ATF F 5630.5
Type of Review: Revision
Title: Special Tax Registration and Return
Description: 26 U.S.C. Chapters 51, 52 and 53 authorize the collection of an occupational tax from persons engaging in certain alcoholic, tobacco or firearms businesses. ATF F 5630.5 is used to both compute and report the tax, and as an application for registry as required by statute. Upon receipt of the tax, a special tax stamp is issued.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Burden: 345,600 hours

OMB Number: 1512-0483
Form Number: None
Type of Review: Reinstatement
Title: Use of the Word "Light" (Lite) in the Labeling and Advertising of Wine, Distilled Spirits, and Malt Beverages
Description: Use of the words "light" and "lite" have been used to connote products that are low or reduced in calories. Consumers who are

conscious of their caloric intake, in particular, will be able to purchase alcohol beverages in accordance with their needs, and will be able to compare the calories in the "light" (lite) product with that of the producer's or competitor's regular product.

Respondents: Businesses or other for-profit, Small businesses or organizations

Estimated Burden: 1 hour

Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88-7694 Filed 4-6-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: April 1, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments 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.

Departmental Offices

OMB Number: 1505-0100

Form Number: None

Type of Review: Extension

Title: Implementing Regulations: Government Securities Act of 1986

Description: The regulations require government securities brokers and dealers to make and keep records concerning their business activities and their holdings of securities, to submit financial reports, and to make certain disclosures to investors. The regulations require depository institutions to keep records concerning non-fiduciary holdings of government securities. The goal is investor protection.

Respondents: Businesses or other-for profit

Estimated Burden: 427,027 hours

Clearance Officer: Dale A. Morgan (202) 343-0263, Departmental Offices, Room 2224, Main Treasury Building, 15th & Pennsylvania Avenue NW., Washington, DC 20220.

OMB Reviewer: Robert Fishman (202) 395-7340, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88-7695 Filed 4-6-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: April 1, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments 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: 1545-0188.

Form Number: 4868.

Type of Review: Extension.

Title: Application for Automatic Extension of Time to File U.S. Individual Income Tax Return.

Description: Form 4868 is used by individuals to apply for an automatic four month extension of time to file Form 1040. This form contains data by the Service to determine if a taxpayer qualifies for an automatic four month extension of time to file 1040.

Respondents: Individuals or households.

Estimated Burden: 2,721,822 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 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

FR Doc. 88-7619 Filed 4-6-88; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

A Grants Program for Private Not-for-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between the people of the United States and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175. Entitled "A Grants Program for Private, Non-Profit Organization in Support of International Educational and Cultural Activities," announced in the **Federal Register** June 3, 1987.

Private Sector Organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

The Office of Private Sector Programs will assist in supporting an exchange that will focus on youth and the 1988 presidential election. USIA representatives abroad will select the participants from developing countries in the Middle East and North Africa. The project scheduled for late summer 1988 will be conceived and executed by a U.S. not-for-profit institution with expertise in the field of political or governmental affairs. The project will be bipartisan in nature in accordance with the Fulbright Hays Act. The project design will include discussion of the electoral process, campaign financing, and voter registration. It will also allow the delegation to observe political strategies designed to broaden youth's participation in the political process.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming; and with organizations that have potential for obtaining private-sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to successfully develop and conduct the above project and should also demonstrate a potential for designing programs which will have lasting impact on their participants.

Interested organizations should submit a request for complete application materials—postmarked no later than fifteen days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials, including proposal guidelines.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (ATTN: Initiative Programs), United States Information Agency, 301 4th Street S.W., Washington, DC 20547

Dated: March 31, 1988.

Robert Francis Smith,

Director, Office of Private Sector Programs.

[FR Doc. 88-7643 Filed 4-6-88; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 67
Thursday, April 7, 1988

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 ELECTION COMMISSION

"FEDERAL REGISTER" NO.: 88-7188.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, April 7, 1988, 10:00 a.m.

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA: Late Filing of Reports of Publicly Financed Candidates.

DATE AND TIME: Tuesday, April 12, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matter affecting a particular employee.

DATE AND TIME: Thursday, April 14, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Bank Loans to Candidates and Political Committees.
Status of Presidential Audits.
Draft Advisory Opinion 1988-3—John R. McKay on behalf of The Association and APA PAC.
Draft Advisory Opinion 1988-11—Richard M. Schmidt on behalf of the National Association of Trade and Technical Schools Political Action Committee.
Draft Advisory Opinion 1988-13—Richard Ray, Member of Congress.
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 88-7771 Filed 4-5-88; 3:46 pm]
BILLING CODE 6715-01-M

U.S. PAROLE COMMISSION

Record of Vote of Meeting Closure (Pub. L. 94-409) (5 U.S.C. Sec. 552b)

I, Cameron M. Batjer, Vice Chairman of the United States Parole Commission, presided at a meeting of said Commission which started at ten o'clock a.m. on Saturday, March 26, 1988 at the Commission's Central Office, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The meeting ended at or about 1:15 p.m. The purpose of the meeting was to decide approximately 13 appeals from National Commissioners' decisions pursuant to 28 CFR 2.27. Eight Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcements further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Saundra Brown Armstrong, Cameron M. Batjer, Jasper Clay, Jr., Vincent Fechtel, Jr., Carol Pavilack Getty, Daniel R. Lopez, G. MacKenzie Rast, and Victor M.F. Reyes. The Commissioners and a Parole Analyst attended.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Date: March 31, 1988.

Cameron M. Batjer,
Vice Chairman, U.S. Parole Commission.

[FR Doc. 88-7734 Filed 4-5-88; 1:13 pm]
BILLING CODE 4410-01-M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of April 11, 1988:

A closed meeting will be held on Tuesday, April 12, 1988, at 2:00 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed a meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, April 12, 1988, at 2:00 p.m., will be:

Institution of injunctive actions.
Formal order of investigation.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceeding of an enforcement nature.
Opinion.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Amy Kroll at (202) 272-2092.

Jonathan G. Katz,
Secretary.

April 4, 1988.

[FR Doc. 88-7738 Filed 4-5-88; 2:00 pm]
BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 53, No. 67
Thursday, April 7, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1064

Milk in the Greater Kansas City Marketing Area; Order Terminating Certain Provisions of the Order

Correction

In rule document 88-7110 appearing on page 10357 in the issue of Thursday, March 31, 1988, make the following correction:

PART 1064—[CORRECTED]

In the third column, in amendatory instruction 4, the second line should read "1064.110 through 1064.122 and the undesignated center heading preceding them are removed.".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Parts 516 and 530

Employment of Homeworkers in Certain Industries; Records To Be Kept By Employers

Correction

In proposed rule document 88-6926 beginning on page 10342 in the issue of Wednesday, March 30, 1988, make the following corrections:

1. On page 10342, in the first column, under "**AGENCY**", remove "Employment Standards Administration".

2. On the same page, in the same column, under "**ACTION**", the third line should read "comments on additional enforcement provisions, and other".

3. On the same page, in the second column, under "**Background**", in the third paragraph, in the second line, "increased 56.2%" should read "increased from 56.2%".

4. On the same page, in the third column, in the second complete paragraph, in the 15th line, "restricted" was misspelled.

5. On page 10343, in the second column, under "**Wage-Hour Investigation Procedures**", in the ninth line, "further" should read "future".

6. On page 10344, in the first column, under "**Denial or Revocation of a Homework Certificate**", in the second line, "authorized" should read "authority".

7. On page 10345, in the 1st, 2nd and 3rd columns, the italicized headings, "Civil Money Penalties", "Administrative Procedures" and "Bonding or Security Payments" should have been bold headings.

8. On the same page, in the second column, in the first complete paragraph, in the 19th line "*Bros.*" should read "*Bro.*"; and in the 20th line "(1944)" should read "(1944)).".

9. On the same page, in the same column, in the last paragraph, in the third line "followed" should read "following".

10. On page 10346, in the 1st and 2nd columns, the italicized headings, "Homework in the Jewelry Industry", "Homework in the Women's Apparel Industry" and "Model Garment Programs", should have been bold headings.

11. On the same page, in the first column, in the last paragraph, in the eighth line, "lift that" should read "lift the".

12. On the same page, in the third column, under "**Regulatory Flexibility Act**", in the third paragraph, in the first line, "Bureau" should read "Bureaus".

§ 530.101 [Corrected]

13. On page 10348, in the second column, in § 530.101, in the fifth line, "to" should read "of".

§ 530.402 [Corrected]

16. On the same page, in the third column, in § 530.402(e), in the fourth line, "Administration" should read "Administrator".

§ 530.411 [Corrected]

17. On page 10351, in the third column, in § 530.411(b), in the first line, "hearing to" should read "hearing pursuant to".

PART 516—[CORRECTED]

18. On page 10352, in the second column, under "**Authority**", in the second line, insert a period after "29 U.S.C. 211".

§ 516.31 [Corrected]

19. On the same page, in the third column, in § 516.31(c), in the 20th line, "wages be" should read "wages to be".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3274-7]

Standards of Performance for New Stationary Sources; Revision of Method 25 of Appendix A

Correction

In rule document 88-2804 beginning on page 4140 in the issue of Friday, February 12, 1988, make the following corrections:

§ 530.205 [Corrected]

14. On page 10349, in the third column, in § 530.205(h), in the ninth line, "homeworkers" should read "homeworker"; and in the 10th line, "certificates" should read "certificate".

§ 530.301 [Corrected]

15. On page 10350, in the second column, in § 530.301, in the third line, "violations" should read "violation".

PART 60—[CORRECTED]

Appendix A—[Corrected]

1. On page 4146, in the second column, the 24th line should read "ρ = Density of liquid injected, g/cc."

2. On the same page, the formulas, appearing after paragraphs 6.4, and 6.8 should appear as follows:

6.4 * * *

$$C_t = \left[\frac{\frac{P_{tf}}{T_{tf}}}{\frac{P_t}{T_t} - \frac{P_{ti}}{T_{ti}}}\right]\left[\frac{1}{r}\sum_{j=1}^{r} C_{tm_j}\right] \qquad \text{Eq. 25-3}$$

* * * * *

6.8 * * *

$$\text{Percent recovery} = 1.604\,\frac{M}{L}\,\frac{V_v}{\rho}\,\frac{P_f}{T_f}\,\frac{C_{cm}}{N} \qquad \text{Eq. 25-7}$$

* * * * *

BILLING CODE 1505-01-D

Federal Register

Thursday
April 7, 1988

Part II

Department of Labor

Office of Worker's Compensation Programs

20 CFR Part 10

Claims for Compensation Under the Federal Employees' Compensation Act; Notice of Interim Final Rulemaking and Notice of Proposed Rulemaking

DEPARTMENT OF LABOR

Office of Worker's Compensation Programs

20 CFR Part 10

Claims for Compensation Under the Federal Employees' Compensation Act

AGENCY: Employment Standards Administration, Office of Worker's Compensation Programs, Labor.

ACTION: Notice of interim final rulemaking.

SUMMARY: The Department of Labor has received challenges to certain provisions of the final rules governing the Federal Employees Compensation Act which were published on April 1, 1987. In response, it has chosen to publish these interim rules which both take the place of the challenged rules and ensure the continuing ability to recoup overpayments of compensation (including forfeited compensation) from on-going benefits. The Department has also (elsewhere in this edition of the Federal Register) proposed rules modifying §§ 10.125(b) and 10.321(a) concerning the recoupment of forfeited compensation from continuing benefits.

DATE: These rules are effective April 7, 1988.

FOR FURTHER INFORMATION CONTACT: Thomas M. Markey, Associate Director for Federal Employees' Compensation, Telephone (202) 523-7552.

SUPPLEMENTARY INFORMATION: The Department of Labor published final rules revising the regulations governing the Federal Employees Compensation Act (FECA) on April 1, 1987 (see Federal Register, Volume 52 at page 10486, *et seq.*). The promulgation of two subsections (10.125(b) and 10.321(a)) of those rules, which concerned the recoupment of forfeited compensation from 100% of continuing compensation benefits, has been challenged by petitions under the Administrative Procedure Act. To eliminate any question regarding the promulgation and ensure that every possible opportunity for comment has been given interested parties, the Department publishes these interim final rules to take the place of those April 1, 1987, rules. These interim final rules allow the Department to collect overpayments of compensation benefits, including forfeited compensation, using the various ability-to-pay criteria outlined in the publication.

The Department has also republished elsewhere in this edition of the Federal Register, proposed rules with a request for comments which in effect reinstate the challenged provisions allowing recoupment of forfeited compensation at the rate of 100% of continuing compensation benefits.

This interim final rule affects only that portion of the final rule published April 1, 1987, which the petitions have challenged. Thus, in § 10.125(b), the second sentence ("The amount deducted shall equal the total compensation payable until the full amount forfeited has been recovered.") has been removed; in § 10.321(a) all but the first part of the first sentence (the clause reading "Except for an overpayment * * *") is republished in these interim final rules.

Publication in Final

The Department of Labor has determined, pursuant to 5 U.S.C. 553(b)(B), that good cause exists for waiving public comment on this procedural amendment to the regulation because such comment has in effect already been provided in the proposed rules published on June 6, 1986.

Effective Date

The Department has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication. Therefore, this amendment shall be effective immediately. See 5 U.S.C. 553(d)(3). This finding is made because the existing rules have been challenged; by republishing this interim final rule without the challenged language, it is simply reinstating the status quo ante. Because the public interest requires that the Department have authority to recoup overpayments of benefits, including forfeited compensation, however, the rules so allowing must be effected immediately.

Classification—Executive Order 12291

The Department of Labor does not believe that this regulatory proposal constitutes a "major rule" under Executive Order 12291, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) A major increase in cost or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory analysis is required.

Paperwork Reduction Act

The information collection requirements entailed by the proposed regulations will not differ significantly from those currently in effect. No new forms are required.

Regulatory Flexibility Act

The Department believes that the rule will have "no significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act. Pub. L. 96-354, 91 Stat. 1164 (5 U.S.C. 605(c)). The proposed regulation applies primarily to Federal agencies and their employees. No additional burdens are being imposed on small entities. The Assistant Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory impact analysis is required.

For the reasons set out in the preamble, Title 20, Subchapter B of the Code of Federal Regulations is amended as follows:

PART 10—CLAIMS FOR COMPENSATION UNDER THE FEDERAL EMPLOYEES' COMPENSATION ACT, AS AMENDED

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

Authority: 5 U.S.C. 301; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; 5 U.S.C. 8145, 8149; Secretary's Order 7-87, 52 FR 48466; Employment Standards Order 78-1, 43 FR 51469.

2. In § 10.125, paragraph (b) is revised to read as follows:

§ 10.125 Affidavit or report by employee of employment and earnings.

* * * * *

(b) Where the right to compensation is forfeited, any compensation already paid for the period of forfeiture shall be recovered by deducting the amount from compensation payable in the future. If further compensation is not payable, the compensation already paid may be recovered pursuant to 5 U.S.C. 8129 and the Federal Claims Collection Act (31 U.S.C. 952).

* * * * *

3. § 10.321, paragraph (a) is revised to read as follows:

§ 10.321 Recovery of overpayments.

(a) Whenever an overpayment has been made to an individual who is entitled to further payments, proper adjustment shall be made by decreasing subsequent payments of compensation, having due regard to the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any

other relevant factors, so as to minimize any resulting hardship upon such individual. In the event such individual dies before such adjustment has been completed, a similar adjustment shall be made by decreasing subsequent payments, if any, payable under this Act with respect to such individual's death.

* * * * *

Signed at Washington, DC, this 31st day of March, 1988.

Fred W. Alvarez,

Assistant Secretary for Employment Standards.

[FR Doc. 88-7445 Filed 4-6-88; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF LABOR

Office of Worker's Compensation Programs

20 CFR Part 10

Claims for Compensation Under the Federal Employees' Compensation Act

AGENCY: Employment Standards Administration, Office of Worker's Compensation Program, Labor.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: The Department of Labor proposes to change those provisions of the Federal Employees' Compensation Act regulations which (1) concern the recoupment of forfeited compensation from continuing benefits (section 10.125(b)); and (2) describe the method of collection of overpayments of compensation (section 321(a)). The changes would provide for recoupment of forfeited compensation at the rate of 100% of continuing benefits. The reader may recognize these changes as part of final rules published April 1, 1987. In response to challenges made to the method of publication, however, they are being republished as proposed rules with a request for comments. Appearing elsewhere in this issue of the **Federal Register** are interim final rules dealing with recoupment of forfeited compensation; the provisions of the April 1, 1987 rules which provide for recoupment of forfeited compensation at the rate of 100% of continuing benefits are no longer in effect.

DATE: Written comments must be submitted on or before June 6, 1988.

ADDRESS: Send written comments to Thomas M. Markey, Associate Director for Federal Employees' Compensation, Employment Standards Administration, U.S. Department of Labor, Room S–3229, Francis Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210; Telephone (202) 523–7552.

FOR FURTHER INFORMATION CONTACT: Thomas M. Markey, Associate Director for Federal Employees' Compensation, Telephone (202) 523–7552.

SUPPLEMENTARY INFORMATION:

Background

The Department of Labor published final rules revising the regulations governing the administration of the Federal Employees' Compensation Act (FECA) on April 1, 1987, which were effective June 1, 1987 (see **Federal Register**, Volume 52 at page 10486, *et seq.)*. Among the many areas affected by the revisions were §§ 10.125(b) and 10.321(a) dealing with recoupment of compensation benefits forfeited under section 8106 of the FECA. Section 8106 provides that employees receiving compensation under the Act may be required to report earnings and that any employee who knowingly fails to report or misreports earnings shall forfeit the right to compensation for the reporting period. The April 1, 1987, rules, at § 10.125(b), clarified the position of the Department that forfeited compensation was subject to recoupment from continuing benefits in an amount equal to the total (100%) of any ongoing compensation. To § 10.321(a), which details the procedures used to determine recoupment of other overpayments, was added a sentence making clear that those procedures did not apply to recoupment of forfeited compensation.

Two unions representing Federal employees have petitioned the Department under section 553(e) of the Administrative Procedure Act (APA) to repeal the regulations dealing with the recoupment of forfeited compensation. The petitions raised questions about the opportunity provided for notice and comment on the sections calling for recoupment of forfeited compensation at the rate of 100% of continuing compensation. In order to resolve these questions and ensure every opportunity for comment by interested parties, the Department takes the following actions: (1) It has published as interim final rules, revised §§ 10.125(b) and 10.321(a) deleting the references to the 100% rule; and (2) publishes these proposed rules which contain provisions for recouping forfeited compensation at the rate of 100% of continuing benefits. Comments are invited on this proposal.

Other Rules in Effect

Because this republication would not void the challenged rules published April 1, 1987, interim final rules, which do not include the challenged provisions, are being published elsewhere in today's **Federal Register**. The reader should consult these rules, which are effective immediately and explain that the Department will recoup forfeited compensation the same as any other type of overpayment.

Recoupment of Forfeited Compensation

These proposed rules allow the Department to collect forfeited compensation at the rate of 100% of continuing benefits. The provision (§ 10.125(b)) detailing how forfeited compensation is collected is amended to clarify that recoupment will be at 100% of any continuing benefits. Section 10.321(a) which details how other types of overpayments are recouped is amended to distinguish forfeited compensation.

Overpayments can be created in severeal ways, including where compensation has been declared forfeit under section 8106 of the FECA. That section provides that any employee who fails to report income "forfeits his right to compensation" for the reporting period. Forfeited compensation "shall be recovered by a deduction from compensation" under section 8129, which provides that recovery of overpayments of compensation "shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled."

Forfeited compensation constitutes a penalty. Unlike other forms of overpayments, which may result from an inadvertent action by the claimant or even through an error by OWCP, forfeited compensation results from a willful and knowing action to deprive the Department of information about income which is necessary to determine the approrpirate amount of compensation. To use the same ability-to-pay criteria in determining how to recoup the forfeited comensation as is used in other overpayment situations, would in effect void that penalty provision, and severely lessen the administrative incentive to report income accurately and timely. For this reason the Department proposes the 100% rule.

Classification—Executive Order 12291

The Department of Labor does not believe that this regulatory proposal constitutes a "major rule"under Executive Order 12291, because it is not likely to result in: (1) An annual reffect on the economy of $100 million or more: (2) a major increase in cost or prices for consumers, individual industries, Federal, state or local goverment agencies, or geograpic regions; or (3) significant adverse effects on competition, employment, investment productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory analysis is required.

Paperwork Reduction Act

There are no information collection requirements in the proposed regulations. No new forms are required.

Regulatory Flexibility Act

The Department believes that the rule will have "no significant economic

impact upon a substantial number of small entities"within the meaning of section 3(a) of the Regulatory Flexibility Act. Pub. L. 96–354, 91 Stat. 1164(5 U.S.C. 605(b)). The proposed regulation applies primarily to Federal agencies and their employees. No additional burdens are being imposed on small entities. The Assistant Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory impact analysis is required.

For the reasons set out in the preamble, Title 20, Subchapter B of the Code of Federal Regulations is proposed to be amended as follows:

PART 10—CLAIMS FOR COMPENSATION UNDER THE FEDERAL EMPLOYEES' COMPENSATION ACT, AS AMENDED

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

Authority: 5 U.S.C. 301; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; 5 U.S.C. 8145, 8149; Secretary's Order 7–87, 52 FR 48466; Employment Standards Order 78–1, 43 FR 51469.

2. In § 10.125, paragraph (b) is revised to read as follows:

§ 10.125 Affidavit or report by employee of employment and earnings.

* * * * *

(b) Where the right to compensation is forfeited, any compensation already paid for the period of forfeiture shall be recovered by deducting the amount from compensation payable in the future. The amount deducted shall equal the total compensation payable until the full amount forfeited has been recovered. If further compensation is not payable, the compensation already paid may be recovered pursuant to 5 U.S.C. 8129 and the Federal Claims Collection Act (31 U.S.C. 952).

* * * * *

3. In § 10.321, paragraph (a) is revised to read as follows:

§ 10.321 Recovery of overpayments.

(a) Except for an overpayment resulting from forfeiture of previously paid compensation, such as provided in § 10.125, whenever an overpayment has been made to an individual who is entitled to further payments, proper adjustment shall be made by decreasing subsequent payments of compensation, having due regard to the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any resulting hardship upon such individual. In the event such individual dies before such adjustment has been completed, a similar adjustment shall be made by decreasing subsequent payments, if any, payable under this Act with respect to such individual's death.

* * * * *

Signed at Washington, DC, this 31st day of March, 1988.

Fred W. Alvarez,

Assistant Secretary for Employment Standards.

[FR Doc. 88–7446 Filed 4–6–88; 8:45 am]

BILLING CODE 4510–27–M

federal register

Thursday
April 7, 1988

Part III

Department of Transportation

Research and Special Programs Administration

Inconsistency Ruling No. IR-19; Nevada Public Service Commission Regulations Governing Transportation of Hazardous Materials; Decision on Appeal

DEPARTMENT OF TRANSPORTATION

[Docket No. IRA-39]

Inconsistency Ruling No. IR-19; Nevada Public Service Commission Regulations Governing Transportation of Hazardous Materials

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Decision on appeal.

SUMMARY: In response to the appeal of the Nevada Public Service Commission from the findings made in Inconsistency Ruling No. IR-19 (52 FR 24404; June 30, 1987), that Inconsistency Ruling is affirmed.

EFFECTIVE DATE: April 1, 1988.

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Senior Attorney, Office of Chief Counsel, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590. (Tel. 202/366-4400).

SUPPLEMENTARY INFORMATION:

I. Background

Section 112(a) of the Hazardous Materials Transportation Act (HMTA) (49 App. U.S.C. 1811(a)) expressly preempts any requirement of a state or political subdivision thereof, which is inconsistent with any requirement of the HMTA or the Hazardous Materials Regulations (HMR), issued thereunder (49 CFR Parts 171-179). Section 107.209(c) of Title 49, Code of Federal Regulations sets forth the following factors which are considered in determining whether a state or political subdivision requirement is inconsistent:

(1) Whether compliance with both the state or political subdivision requirement and the HMTA and the HMR is possible (the "dual compliance" test); and

(2) The extent to which the state or political subdivision requirement is an obstacle to the accomplishment and execution of the HMTA and the HMR (the "obstacle" test).

Inconsistency rulings and decisions on appeals of such rulings only address preemption issues under the HMTA and the HMR. They do not address issues of preemption arising under other statutes or under the Commerce Clause of the United States Constitution.

On October 21, 1986, Southern Pacific Transportation Company (SP) applied for an administrative ruling on the question of whether §§ 705.310 through 705.380 of the Nevada Administrative Code are inconsistent with, and thus preempted by, the Hazardous Materials Transportation Act (HMTA) (49 App. U.S.C. 1801-1811) and the Hazardous Materials Regulations (HMR) (49 CFR Parts 171-179). The procedural regulations governing issuance of inconsistency rulings are codified in 49 CFR 107.201-107.211.

Inconsistency Ruling 19 (IR-19) was issued in accordance with § 107.209 on June 30, 1987, by the Director of the Office of Hazardous Materials Transportation. That ruling determined that §§ 705.310 through 705.370 of the Nevada Administrative Code were inconsistent with the HMTA and the HMR. In that ruling, it was also determined that § 705.380 was consistent with the HMTA and the HMR and thus not preempted.

II. The Appeal

On July 24, 1987, pursuant to 49 CFR 107.211, an appeal of IR-19 was filed with the Administrator of the Research and Special Programs Administration by the Nevada Public Service Commission (Nevada). The arguments made by the appellant are discussed in the following sections.

Comments opposing the appeal were filed by Southern Pacific Transportation Company, the National Tank Truck Carriers, Inc., Union Pacific System, the Association of American Railroads, and the State of New Jersey. Without exception, those comments urge the affirmation of IR-19 and dispute the contentions of Nevada. On September 4, 1987, Nevada filed rebuttal comments addressing only Southern Pacific's comments opposing the appeal.

III. Decision on Appeal

A. Introduction

I am issuing this decision in my capacity as Administrator of the Research and Special Programs Administration (RSPA). I have thoroughly considered all of the issues raised in the appeal and the discussions of them in the comments and rebuttal comments. All of the issues being appealed were discussed exhaustively by the Director of OHMT in IR-19. I will respond only to the specific issues raised on appeal and generally will not reiterate the Ruling's discussions, with all of which I fully concur.

B. Definitions

Nevada appeals the finding in IR-19 that the definitions of "hazardous material" and "storage" as set forth in § 705.310 of the Nevada Administrative Code are inconsistent with the HMTA and the HMR. Nevada contends that it incorporated the definitions of hazardous materials found in the Code of Federal Regulations (CFR) into its definition of "hazardous material" and therefore does not understand where there is an inconsistency. This contention is incorrect. Nevada's § 705.310 defines "hazardous material" as follows:

> "Hazardous material" means low specific activity material as defined in 49 C.F.R. § 173.403(n) and radioactive material as defined in 49 CFR § 173.403(y) and:
>
> (a) Class A explosives as defined in 49 C.F.R. § 173.53;
>
> (b) Class B explosives and defined in 49 C.F.R. § 173.88;
>
> (c) Poison A as defined in 49 C.F.R. § 173.26; and
>
> (d) Flammable solids (DANGEROUS WHEN WET labels only) as defined in 49 C.F.R. § 173.150, which are subject to the requirements for placards in Table 1 of 49 C.F.R. § 172.504

While this definition of "hazardous material" found in Nevada's § 705.310 cross-references specific sections of the CFR, it contains ambiguities and selectively lists only certain hazardous materials. For those reasons, it undermines RSPA's definition of "hazardous material," the nationally uniform interpretation of which is critical to the effective regulation of hazardous materials transportation.

As stated in IR-19, it is unclear whether the phrase "which are subject to the requirements for placards in Table 1 of 49 CFR 172.504" applies to flammable solids only, to the four (a)-(d) materials, or to all six types of materials referred to in the regulation. The primary problem with the Nevada definition of "hazardous material", however, is that it fails to include many materials which are regulated as "hazardous materials" by the HMR. In essence, Nevada is selectively determining which of DOT's hazardous materials are subject to its regulations. Uniform definition of that term is critical to the efficacy of the entire system of regulating hazardous materials transportation, and thus the Federal role in defining them is exclusive. IR-18 (52 FR 200; Jan. 2, 1987); IR-20 (52 FR 24396; June 30, 1987); IR-21 (52 FR 37072; Oct. 2, 1987); *Missouri Pacific RR Co.* v. *Railroad Commission of Texas*, Civ. No. A-86-CA-569 (W.D. Tex. 1987).

Ambiguity and selectivity in defining hazardous materials create problems. State and local hazardous materials definitions, like Nevada's § 705.310, which result in regulation of either more or fewer materials than those in the HMR, create confusion among the regulated community, are obstacles to unformity in transportation regulation, and thus are inconsistent with the HMR.

Nevada also appeals the finding in IR–19 that its definition of "storage" is inconsistent with 49 CFR 174.14(a). Section 705.310 defines "storage" as "keeping any hazardous material for more than 48 hours." This definition relates to the prohibition in § 705.310 of storage of hazardous materials on railroad property without a permit. Nevada contends that its regulations allow a railroad to store hazardous materials at designated railroad property locations for as long as necessary, and therefore is consistent with Federal regulations allowing storage up to 120 hours.

That contention is not correct. 49 CFR 174.14(a) allows a carrier 48 hours, *excluding* Saturdays, Sundays and holidays, to forward shipments of hazardous materials. This definition permits retention up to 120 hours, whereas the Nevada definition results in a prohibition on retention beyond 48 hours without a permit. Moreover, as fully explained in IR–19, the Federal regulations allow retention for even longer periods where infrequent service is provided and allow indefinite storage at the destination shown on the shipping papers or the final agency station. The effect of Nevada's definition of "storage" is to require a permit for activities which already are deemed legal under Federal regulations in a manner which creates an obstacle to accomplishment and execution of those regulations. For example, when hazardous materials arrive at a storage location on Friday or Saturday, it would be extremely difficult to obtain the required State permit within 48 hours, particularly in light of the permit requirements discussed below.

Therefore, I affirm the findings in IR–19 that Nevada's definitions of "hazardous material" and "storage" are inconsistent with the HMR.

C. Requirements of Issuance of Permit

Nevada appeals the finding in IR–19 on the basis that the activities for which § 705.320 requires a permit are not activities covered by the HMTA and the HMR. Nevada argues that the federal regulations address *how* hazardous materials are to be loaded, unloaded, transferred and stored, whereas the Nevada regulations relate to *where* such activities will take place on the railroad's property.

Therefore, Nevada argues, its regulations do not fail the "dual compliance" test. In short, Nevada contends that DOT's regulations provide standards for the actual loading, unloading, transfer and storage of hazardous materials, and Nevada's regulations deal with the location of such activities. Nevada states that after a railroad receives a permit designating the appropriate locations, the railroad then can perform the activities according to the requirements of the HMR. Nevada further contends that its regulations do not fail the "obstacle" test because simultaneous compliance with the HMR is possible.

Nevada's contention that the Federal regulations address *how* hazardous materials are to be loaded, transferred and stored rather than *where* such activities take place is both erroneous and irrelevant. First, the following sections of the HMR regulate where such activities take place:

(1) Section 174.16 requires certain location-specific unloading from rail cars.

(2) Section 174.700 regulates the loading of radioactive materials onto rail cars and provides distance limitations.

(3) Section 177.841(a) prohibits loading or unloading of poisons from motor vehicles "near or adjacent to any place where there are likely to be * * * assemblages of persons * * * or upon any public highway or in any public place."

The above-listed examples demonstrate potential "dual compliance" difficulties which may arise under Nevada's regulations. In many instances they require or allow loading, unloading or transfers by carriers which the Nevada regulations prohibit without a permit. However, the State's regulations are so discretionary that they authorize Public Service Commission approval of storage prohibited by the HMR and prohibition of storage authorized or required by the HMR. The permit requirements, therefore, are inconsistent with the above-mentioned HMR provisions under the "dual compliance" test.

Second, Nevada's allegation of a "how"/"where" dichotomy fails to raise issues, relevant to the standards for determining consistency. RSPA has established a comprehensive series of regulations concerning the who, what, when, where and how of railroad-related storage of hazardous materials. Nevada also would require a permit, including additional substantive requirements at the discretion of the State, even where a railroad is meeting the plethora of applicable Federal regulations. Such additional requirements constitute an obstacle to accomplishment of the HMR and, therefore, are inconsistent with the HMR under the "obstacle" test. In essence, Nevada is questioning the adequacy of the Federal regulations; those issues are irrelevant in an inconsistency proceeding but may be raised either in a petition for rulemaking under 49 CFR 106.31 or in a request for waiver of preemption under 49 CFR 107.215.

Therefore, I affirm the finding in IR–19 that the permit requirements of § 705.320 are inconsistent with the HMR.

D. Transportation of Radioactive Materials

Nevada appeals the finding in IR–19 that Nevada's permitting system, as applied to the transportation of radioactive materials, is inconsistent with the HMTA and the HMR. Nevada states that this finding is based on IR–15 (49 FR 46660; Nov. 27, 1984; affirmed IR–15 (Appeal), 52 FR 13062; Apr. 20, 1987), which stands for the proposition that states are without authority to establish a permitting system for radioactive materials transportation since the HMTA and the HMR totally occupy that field. Nevada contends that the HMTA does not totally occupy the field of radioactive materials transportation and, further, that the Vermont regulations reviewed in IR–15 are not related to Nevada's regulations. Nevada claims that the HMTA and the HMR together do not constitute a pervasive regulatory scheme for the transportation of radioactive materials because they do not address the locations for the storage of radioactive materials, pending transfers to trucks for ultimate disposal.

As stated in IR–19, state and local regulations requiring approval for the transportation of radioactive materials constitute unauthorized prior restraints on shipments that are presumptively safe based on their compliance with Federal regulations. This is so because the HMTA and the HMR provide a comprehensive scheme of regulation for radioactive materials transportation and thus virtually completely occupy the field of radioactive materials transportation.

As indicated earlier in this decision, the HMR do extensively regulate storage-related activities of railroads. Again, the gist of Nevada's argument is that it believes the Federal regulations are inadequate. Adequacy of the HMR, however, is not a relevant issue in an inconsistency proceeding. That issue may be addressed by Nevada through a petition for rulemaking to amend the HMR or through a request for waiver of preemption.

IR–8 (49 FR 46637; Nov. 27, 1984); IR–15, *supra;* IR–20, *supra;* and IR–21, *supra,* among others, stand for the proposition that state and local governments may not impose their own permitting requirements on radioactive materials transportation. As Nevada has done

here, attempts were made to justify the permitting systems found inconsistent in those other rulings by contending that they were intended to compenstate for the inadequacies of the HMR. The mere fact that Nevada's permitting system is different than those at issue in the earlier rulings does not change the conclusion that it is inconsistent and thus preempted.

Therefore, I affirm the finding in IR–19 that Nevada's permitting system, as applied to the transportation of radioactive materials, is inconsistent with the HMTA and the HMR.

E. Transportation of Nonradioactive Materials

Nevada further contends that its regulations regarding nonradioactive hazadous materials are clear regarding which party is required to obtain a permit. As part of its discussion of the burdensome nature of Nevada's permit requirements, IR–19 stated that the State's § 705.320 literally required any trucking company loading, unloading, or transferring hazardous materials on railroad property to obtain a State permit. Nevada states that once a railroad receives an annual permit designating the locations for loading, unloading, transfer and storage of hazardous materials, *any person* may perform these activities at the authorized locations.

Despite this explanation provided by Nevada, § 705.320 itself does not, in fact, clearly state which party conducting a regulated activity in required to obtain a permit and thus imposes potential civil and criminal liability on anyone who conducts those activities in the absence of a permit—even if those activities are conducted in accordance with, or even mandated by, the HMR. Section 705.320 broadly states: "A person shall not * * * [l]oad or unload * * * [t]ransfer * * * or * * * [s]tore hazardous material * * * without a permit issued by the commission." The actual language of state and local requirements, rather than later statements of intent, are controlling, IR–8(Appeal) (52 FR 13000; Apr. 26, 1987), IR–16 (50 FR 20872; May 20, 1985), unless there is a demonstrated actual practice to the contrary. IR–17 (51 FR 20925; June 9, 1986; *affirmed* IR–17(A), 52 FR 36200; Sept. 25, 1987). In addition, the fact that the permits are issued annually does not eliminate the need for some permit to have been issued with respect to any shipment of hazardous materials.

As discussed in IR–19 and elsewhere in this decision, the burdensome, delay-inducing and discretionary Nevada permitting system constitutes an unauthorized prior restraint on shipments of nonradioactive hazardous materials that are presumptively safe based on their compliance with the HMR. Therefore, I affirm the finding in IR–19 that Nevada's permitting system as applied to the transportation of nonradioactive hazardous materials is an obstacle to accomplishment and execution of the HMTA and the HMR and thus is inconsistent with the HMTA and HMR.

F. Information and Documentation Requirements

Nevada appeals the finding that the HMTA and the HMR provide sufficient information and documentation requirements for the safe transportation of hazardous materials and that the information required by Nevada's regulations to be furnished on an application for a permit constitutes an obstacle to implementation of these Federal regulations and is therefore inconsistent with them. Nevada contends that since U.S District Judge Thompson, in denying a request to enjoin enforcement of the Nevada regulations, stated that an annual permit application could be completed in one day, the information required on a permit application does not constitute a burden on transportation.

Again, Nevada's contentions concerning the sufficiency of the HMR's information and documentation requirements are irrelevant in this proceeding; they may be raised in a petition for rulemaking or in a request for waiver of preemption. In addition, burdens on commerce are a factor specified in 49 App. U.S.C. 1811(b) and 49 CFR 107.215(b)(7) as relevant to waiver of preemption—*not* to inconsistency rulings.

Nevada's information and documentation requirements not only are quite extensive, but they also are open-ended. Section 705.330(l) provides a detailed list of information and documentation to be submitted with an application for a permit. In addition, § 705.340 contains an extensive list of facts which Nevada takes into consideration in evaluating a permit application. Section 705.350 requires the applicant to certify that the information initially provided is accurate. Under § 705.370, Nevada has the authority to dismiss a permit application if there is insufficient information or if the applicant fails to submit additional information required by Nevada. These extensive requirements would take more than one day for a railroad to meet—in fact, Nevada controls the time by being able, without limitation, to require submission of additional information.

As stated in IR–19, RSPA has determined which specific information and documentation requirements are needed for the safe transportation of hazardous materials and state and local requirements going beyond them are obstacles to the accomplishment of the objectives of the HMTA and the HMR and are inconsistent with them. This has been a long-held position of RSPA. IR–2 (44 FR 75566; Dec. 20, 1979); IR–6 (48 FR 760; Jan. 6, 1983); IR–8, *supra;* IR–8 (Appeal), *supra;* IR–15, *supra;* IR–15 (Appeal), *supra;* IR–18, *supra;* IR–21*supra.*

Therefore, I affirm the finding in IR–19 that Nevada's openended and extensive information and documentation requirements constitute such obstacles and are inconsistent with the HMTA and the HMR.

G. Potential for Delay

Nevada appeals the finding in IR–19 that its permitting process creates the potential for delay in the transportation of hazardous materials. Nevada contends that its failure to issue Union Pacific (UP) a permit to transport 7200 tons of radioactive dirt for disposal in Nevada is irrelevant because UP filed its application under Nevada's earlier Emergency Regulation. It also asserts that it failed to issue a permit based on reasons which were not germane to the permitting process. Nevada contends that it failed to issue a permit to UP for public safety reasons, and that UP wanted to transport radioactive soil from New Jersey to a location in Nevada which the State's Department of Human Resources had decided was a public nuisance. Nevada further contends that UP was not harmed by Nevada's failure to allow transportation, as evidenced by UP's failure to commence a legal action against Nevada.

Nevada's admitted earlier use of its permitting authority to deny transportation for reasons not related to the permit requirements set forth in its regulations demonstrates the risks inherent in the discretionary permitting system at issue here. As accurately pointed out by all the commenters opposing Nevada's appeal, under its permitting system, not only can the State delay transportation for any or no reason, but it also can deny or ban transportation-related activities for any or no reason.

Not only the State's past practice, but the provisions of the Nevada Administrative Code at issue here raise issues concerning potential delays in transportation of hazardous materials. Section 705.350 provides for an annual renewable permit and for a temporary

permit which may be issued upon a showing of "compelling need" while an annual application is pending. Section 705.370(l) provides that Nevada will give 30 days' notice of permit applications before taking action on them. Under these two provisions, Nevada can take as much time as it believes is necessary to consider, grant or deny permit applications.

Moreover, it can prolong the permit process by insistence upon compliance with its extensive information and documentation requirements and upon submission of any other "pertinent" information under § 705.340(9). Further, Nevada has considerable discretion concerning whether to act on a permit application as there is no requirement that Nevada even issue a permit when certain conditions have been met by the applicant or determined by Nevada.

Delays and the potential for delay, many of them similar to those present here, consistently have resulted in findings of inconsistency with the HMTA and the HMR. IR–2, *supra;* IR–3 (46 FR 18918; Mar. 26, 1981); IR–6 *supra;* IR–18, *supra;* IR–20, *supra;* IR–21, *supra;* *Missouri Pacific RR Co.* v. *Railroad Commission of Texas, supra.*

Therefore, I affirm the finding in IR–19 that the entire permitting process contained in the Nevada regulations is likely to cause extensive delays and thus is inconsistent with the HMR.

H. Regulation of Transportation-Related Storage

Nevada appeals the finding in IR–19 that the HMR contains comprehensive regulations dealings with the storage of hazardous materials transported by rail and that Nevada's regulatory scheme for storage of hazardous material transported by rail constitutes an obstacle to the accomplishment of the objectives of the HMTA and the HMR.

Nevada claims that if the HMR provisions relating to storage were as comprehensive as stated in IR–19, then the storage of explosives by Southern Pacific at Hafed certainly would have been in violation of those regulations. This contention is not relevant to the issue of the consistency of Nevada's permit requirement for storage of hazardous materials for more than 48 hours. Once again the State fails to distinguish between it concept of adequacy and the relevant issue of consistency. Issues of adequacy may be properly addressed in petitions for rulemaking and requests for waivers of preemption.

Under Nevada's §§ 705.310 and 705.320, storage of hazardous materials on railroads property is prohibited for more than 48 hours without a permit. However, it is unclear how long and under what conditions Nevada would allow hazardous materials to be stored on railroad properties if and when a permit were issued. IR–19 contains numerous examples of extensive HMR regulations concerning railroad-related storage of hazardous materials. These regulations either authorize or prohibit specific types of hazardous materials storage under specified circumstances. Nevada's regulatory scheme for storage of hazardous materials transported by rail creates the risk of widespread confusion. In essence, Nevada's regulations are so discretionary that they authorize Nevada to approve storage prohibited under Federal regulations or to disapprove storage authorized under Federal regulations. Such potential inconsistencies were manifested in a criminal action instituted against Southern Pacific for holding cars at a siding beyond 48 hours to wait for a weekly train on a branch line (a holding authorized under § 174.14 of the HMR).

Therefore, I affirm the finding in IR–19 that Nevada's regulations relating to storage of rail-transported hazardous materials are inconsistent with the HMTA and the HMR.

III. Conclusion

For the reasons indicated above and for the reasons set forth in IR–19 itself, I affirm the determination by the Director of the Office of Hazardous Materials Transportation in IR–19 that §§ 705.310 through 705.370 of the Nevada Administrative Code are inconsistent with the HMTA and the HMR.

This decision on appeal constitutes the final administrative action in this proceeding.

Issued in Washington, DC on April 1, 1988.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 88–7682 Filed 4–6–88; 8:45 am]

BILLING CODE 4910–60–M

federal register

Thursday
April 7, 1988

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 773

Surface Coal Mining and Reclamation Operations; Requirements for Permits and Permit Processing; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 773

Surface Coal Mining and Reclamation Operations; Requirements for Permits and Permit Processing

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

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the Department of the Interior (DOI) is adopting a final rule revising the regulatory prohibition on mining without a permit more than eight months after approval of the State or Federal regulatory program. The grace period will be available only to persons conducting surface coal mining operations under a permit from the State regulatory authority, issued in accordance with the initial regulatory program. This change responds to a decision rendered in Federal district court. The effect of this change is that any existing mining operation that has no permanent program permit and does not qualify for the exception will have to cease operations and remain shut down until a permanent program permit is issued. This change is not intended to affect coal preparation plants separately authorized to operate under 30 CFR 785.21(e).

EFFECTIVE DATE: May 9, 1988.

FOR FURTHER INFORMATION CONTACT: Patrick W. Boyd, Branch of Federal and Indian Programs, OSMRE, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone (202) 343–1864 (FTS or commercial).

SUPPLEMENTARY INFORMATION:

I. Background

Section 502(d) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*, prohibits the conduct of surface coal mining operations without a permanent program permit for more than eight months after approval of the State or Federal regulatory program. All operators who expect to continue to operate eight months after the Secretary of the Interior approves a State regulatory program (primacy) or implements a Federal program must submit a permit application to the regulatory authority within two months following primacy or the implementation of a Federal program. In addition, the regulatory authority must process, and grant or deny, permanent program permits within the eight-month period after primacy or the implementation of a Federal program for the operators who wish to continue to operate beyond that period.

However, section 506(a) of SMCRA recognizes the possibility that this task may be unachievable in some States due to workforce limitations and potential administrative delay in permit processing. As a result, that section provides that certain operators may continue to operate after the eight-month period elapses under their existing permits from the State regulatory authority issued in accordance with the initial regulatory program. Operators holding such permits may continue to operate beyond the eight-month period if they have filed applications, within the two-month deadline, for permanent program permits and no initial administrative decision has been rendered.

On September 18, 1978, OSMRE proposed a rule to implement the section 506(a) exception. See the discussion at 43 FR 41687. The final rule was published on March 13, 1979 as 30 CFR 771.13(b). See 44 FR 15014 for the discussion and 44 FR 15350 for the rule. The final rule provided that an operator holding a permit issued or amended by the regulatory authority in accordance with the requirements of section 502 of SMCRA could continue operating after the eight-month period if a timely and complete permanent program permit application had been filed, no initial administrative decision had been rendered, and the operation was conducted in compliance with 30 CFR Chapter VII, Subchapter B; SMCRA; and applicable State statutes and rules.

On June 25, 1982, OSMRE proposed to revise this rule by providing a second exception to the prohibition on mining without a permit eight months after primacy or the implementation of a Federal program. Under the proposal, in addition to those holding a permit, any person authorized under the initial regulatory program to conduct surface coal mining operations could also continue operations beyond the eight-month period provided certain conditions were met. The purpose of the proposed change was to recognize that some existing operations required to have permits under the permanent regulatory program might not have been required to have permits under the initial regulatory program (47 FR 27694). The final rule, unchanged from the proposed rule, was published on September 28, 1983. Although the rule was adopted unchanged, one commenter did suggest that allowing continued operation of "unpermitted but authorized" mining operations exceeds the requirements of SMCRA. In disagreeing with the commenter, OSMRE stated that it would be "inequitable and contrary to [the intent of SMCRA] to deny some operators the privilege on continuing operations solely because they were not required to have a permit during the initial program." 48 FR 44354.

Subsequently, the regulation was challenged in the U.S. District Court for the District of Columbia. The court concluded that the rule "does not address the plain language of section 506(a) and Congress' express requirement that only permit holders be extended the grace period." It remanded the rule to the Secretary of the Interior. *In Re: Permanent Surface Mining Regulation Litigation (II)*, No. 79–1144, (D.D.C.) July 15, 1985, Slip Op. at 133.

Thus, on November 9, 1987, OSMRE proposed to return to the language of the 1979 regulation, deleting the remanded exception for those who were authorized to conduct surface coal mining operations but who did not have an initial program permit. This action would bring the rule into conformance with the court order.

II. Discussion of Rule Adopted and Response to Comments

Section 506(a) of SMCRA prohibits mining without a permit eight months after the permanent regulatory program has been approved, unless an operator holding a permit from the regulatory authority issued in accordance with section 502 of SMCRA has applied for a permanent program permit but an initial administrative decision has not been rendered before the eight-month period expires. The rule language adopted today is unchanged from the proposal and closely conforms to the statutory language. The remanded exception for those who were authorized to conduct surface coal mining operations but who did not have an initial program permit has been deleted.

The rule is not intended to limit the responsibility of operators for the reclamation of surface coal mining operations. Operators must reclaim all operations that were not required to obtain permits under the initial program and that have ceased or will cease operation rather than obtain a permanent program permit. This rule is not intended to affect coal preparation plants for which a separate interim authorization to operate is found in 30

CFR 785.21(e). To avoid confusion, specific reference is made to the coal preparation plant regulations in the final rule.

Subparagraphs (i), (ii) and (iii) under 30 CFR 773.11(b)(2) remain unchanged. These paragraphs qualify the exception by establishing three requisite conditions. Under the first, the operator must file the permanent program permit application within two months following the effective date of the program. In addition, the regulatory authority must have not yet rendered an initial administrative decision on the application. Also, the surface coal mining operation must be in compliance with all applicable laws, rules and permit terms and conditions.

One commenter indicated that the proposal "appears to bring the OSMRE regulations into compliance with the decision of [the Federal district court]" and noted "the acknowledgment by OSMRE that those operations which were not required to obtain permits under the initial program and which ceased operation rather than obtain a permanent program permit are nevertheless subject to regulation under SMCRA and are required to reclaim all operations pursuant to the initial program procedures."

The commenter also noted that, "By extension, [SMCRA] jurisdiction covers coal preparation plants which operated after the effective date of [SMCRA] and which terminated operations rather than apply for a permanent program permit under 30 CFR 785.12(e)." As stated above in the discussion of the rule adopted, this rule is not intended to affect coal preparation plants that are covered by 30 CFR 785.21(e). The rules governing such coal preparation plants are found in 30 CFR Parts 700, 701, 785, and 827. The commenter will find a thorough discussion of the subject in the May 11, 1987, **Federal Register** (52 FR 17724).

Two commenters pointed out that the proposal erroneously indicated that it would apply to Indian lands. The Indian lands rules specify that 30 CFR 773.11 is not applicable to permitting on Indian lands. See 30 CFR 750.12(c)(2)(ii). The preamble to the final rule has been modified to correct the misstatement.

III. Procedural Matters

Effect in Federal Program States and on Indian Lands

This rule applies through cross-referencing in those States with Federal programs. They are Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington. The Federal programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947 respectively. The rule does not apply to Indian lands pursuant to 30 CFR 750.12(c)(2)(ii). No comments were received concerning unique conditions that exist in any of these States or on Indian lands that would have required changes to the national rule.

Effect on State Programs

Following promulgation of the final rule, OSMRE will evaluate permanent State regulatory programs approved under section 503 of SMCRA to determine whether any changes in these programs will be necessary. If the Director determines that certain State program provisions should be amended in order to be made no less effective than the revised Federal rules, the individual States will be notified in accordance with the provisions of 30 CFR 732.17.

Federal Paperwork Reduction Act

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

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and certifies that it will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This rule affects a relatively small number of surface coal mining operations. The rule does not distinguish between small and large entities. The economic effects of the proposed rules are estimated to be minor and no incremental economic effects are anticipated as a result of the rule.

National Environmental Policy Act

OSMRE has prepared an environmental assessment (EA) and has made a finding that the final rule will not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The EA is on file in the OSMRE Administrative Record, Room 5131, 1100 L Street NW., Washington, DC.

Author

The principal author of this rule is Patrick W. Boyd, Branch of Federal and Indian Programs, OSMRE, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: (202) 343–1864.

List of Subjects in 30 CFR Part 773

Reporting and recordkeeping requirements, Surface mining, Underground mining.

Accordingly, 30 CFR Part 773 is amended as set forth herein.

Dated: March 4, 1988.

J. Steven Griles,

Assistant Secretary—Land and Minerals Management.

PART 773—REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

1. The authority citation for Part 773 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, 16 U.S.C. 470 *et seq.*, 16 U.S.C. 1531 *et seq.*, 16 U.S.C. 661 *et seq.*, 16 U.S.C. 703 *et seq.*, 16 U.S.C. 668a, 16 U.S.C. 469 *et seq.*, 16 U.S.C. 470aa *et seq.*, and Pub. L. 100–34.

2. The introductory language to paragraph (b)(2) of § 773.11 is revised to read as follows:

§ 773.11 Requirements to obtain permits.

* * * * *

(b) * * *

(2) Except for coal preparation plants separately authorized to operate under 30 CFR 785.21(e), a person conducting surface coal mining operations, under a permit issued or amended by the regulatory authority in accordance with the requirements of section 502 of the Act, may conduct such operations beyond the period prescribed in paragraph (a) of this section if—

* * * * *

[FR Doc. 88–7642 Filed 4–6–88; 8:45 am]

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federal register

Thursday
April 7, 1988

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Palo de Nigua and White-haired Goldenrod; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Cornutia obovata (Palo de Nigua)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Cornutia obovata* (Palo de Nigua) to be an endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. *Cornutia obovata* is endemic to semievergreen seasonal forests of the limestone hills and lower mountains of northern and central Puerto Rico. The species is threatened by deforestation and extremely low population size. This final rule will implement the Federal protection and recovery provisions afforded by the Act for *Cornutia obovata*.

EFFECTIVE DATE: May 9, 1988.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622, and at the Service's Southeast Regional Office, Suite 1282, 75 Spring Street SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Mr. Robert T. Pace at the Caribbean Field Office address (809/851–7297) or Mr. Tommy Turnipseed at the Atlanta Regional Office address (404/331–3583 or FTS 242–3583).

SUPPLEMENTARY INFORMATION:

Background

Cornutia obovata was first collected by Paul Sintenis in 1885 on Monte Torrecilla near Barranquitas in the mountains of central Puerto Rico. The species was known only from the type locality until 1938, when it was discovered in Rio Abajo Commonwealth Forest. Recently, a single tree was found immediately to the west of Rio Abajo near the Arecibo Observatory. However, a small population reported from Susua Commonwealth Forest in southwestern Puerto Rico (Vivaldi and Woodbury 1981) has never been relocated. At present, only seven individuals are known to exist in two widely separated localities.

Cornutia obovata is an evergreen tree reaching 33 feet (10 meters) in height, with a trunk diameter of 6 inches (15 centimeters). The leaves are opposite, obovate, blunt or rounded at the apex, with the lower surface finely hairy. The flowers are terminally clustered, tubular, and purplish in color. The fruits are small, round, and finely hairy. The species is endemic to semievergreen forests on both limestone and volcanic soils from 1,000 to 3,000 feet (300 to 900 meters) in elevation. The two sites where the species is known to occur are widely disjunct: Rio Abajo Commonwealth Forest and its surrounding areas are within the limestone karst region of northern Puerto Rico, while Monte Torrecilla is located in the Central Cordillera, a montane region of volcanic origin.

Although deforestation has undoubtedly caused the loss of many populations or individuals of *Cornutia obovata*, the species has never been found in large numbers. It is known that individual trees have been lost to forest clearing for a variety of land uses.

Cornutia obovata was recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilipps 1978). The species was included among the plants being considered as endangered or threatened species by the Fish and Wildlife Service, as published in the **Federal Register** (45 FR 82480) dated December 15, 1980. The species was designated category 1 (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened), and was retained in category 1 in the November 28, 1983, update (48 FR 53640) of the 1980 notice, and the September 27, 1985, revised notice (50 FR 39526).

In a notice published in the **Federal Register** on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of section 4(b)(3)(A) of the Act, as amended in 1982. The service made subsequent petition findings in October of 1983, 1984, 1985, and 1986 that listing *Cornutia obovata* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. The Service proposed listing *Cornutia obovata* on April 24, 1987 (52 FR 13792).

Summary of Comments and Recommendations

In the April 24, 1987, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate agencies of the Commonwealth of Puerto Rico, municipal governments, Federal agencies, scientific organizations, and other parties were contacted and requested to comment. A newspaper notice inviting general public comment was published in *The San Juan Star* on May 23, 1987. A public hearing was neither requested nor held. Five letters of comment were received from the Secretary of the Puerto Rico Department of Natural Resources, the Forest Supervisor of the Caribbean National Forest (U.S. Forest Service), administrators of the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers (Jacksonville District Office), and the Natural History Society of Puerto Rico.

The Puerto Rico Department of Natural Resources supported the proposed listing, stating that a management plan for the Rio Abajo Commonwealth Forest is presently being prepared. The Environmental Protection Agency and the Corps of Engineers acknowledged the proposal, noting that they were not aware of any ongoing or proposed actions that would impact the species. The Forest Service acknowledged the proposal but stated that the species does not occur in the Caribbean National Forest. The Puerto Rico Natural History Society supported the proposed listing.

Summary of Factors Affecting the Species

After a thorough review and consideration of all the information available, the Service has determined that *Cornutia obovata* should be classified as endangered. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cornutia obovata* Urban (Palo de Nigua) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Modification of habitat or direct destruction of plants appear to have been significant factors reducing the numbers of *Cornutia obovata* in the past. At present, two of the seven known individuals occur on private land, one near a trail utilized heavily by squatters, and one other near a Commonwealth of Puerto Rico communication facility that receives heavy use. Both of these areas are subject to deforestation for a variety of purposes, and thus this significant

proportion of the remaining plants is at risk. The other five trees are within a unit of the Commonwealth Forest system, and will only be threatened if management policies allowing alteration of vegetation fail to consider them.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Taking for these purposes has not been a documented factor in the decline of this species.

C. *Disease or predation.* Disease and predation have not been documented as factors in the decline of this species.

D. *The inadequacy of existing regulatory mechanisms.* The Commonwealth of Puerto Rico has recently adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Cornutia obovata* is not yet on the Commonwealth list. Federal listing would provide interim protection and, if the species is ultimately placed on the Commonwealth list, enhance its protection and possibilities for funding needed research.

E. *Other natural or manmade factors affecting its continued existence.* With only several plants known to exist, rarity is itself a factor affecting the survival of *Cornutia obovata.* The species has always been found as widely separated individual mature trees, without evidence of regeneration. Although it is unlikely that any single natural event could lead to its extinction, gradual attrition of individuals from a variety of natural causes appears likely. If still undetermined factors are preventing its reproduction by seed or vegetative means, there will be a net decline in its numbers and a loss of genetic diversity.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on the evaluation, the preferred action is to list *Cornutia obovata* as endangered. Since there are so few individuals remaining and a continuing risk of damage to the plants and/or their habitat, endangered status seems an accurate assessment of the species' condition. It is not prudent to designate critical habitat because doing so would increase the risk to this species, as detailed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. The number of individuals of *Cornutia obovata* is sufficiently small that collecting or vandalism could seriously affect the survival of the species. Publication of critical habitat descriptions and maps in the **Federal Register** would increase the likelihood of such activities. The Service believes that Federal involvement in the areas where this plant occcurs can be identified without the designation of critical habitat. All involved parties and landowners have or will be notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will also be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not be prudent to determine critical habitat for *Cornutia obovata* at this time.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being designated for *Cornutia obovata,* as discussed above. Federal involvement is not expected where the species is known to occur.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits for *Cornutia obovata* will ever be sought or issued since the species is not known to be in cultivation and is uncommon in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Central Station, Washington, DC 20038–7329 (202/343–4955).

National Environmental Policy Act

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

References Cited

Ayensu, E.S., and R.A. DeFilipps. 1978. Endangered and Threatened. Plants of the United States. Smithsonian Institution and World Wildlife Fund, Washington, DC xv + 403 pp.

Vivaldi, J.L., and R.O. Woodbury. 1981. Status report on *Cornutia obovata* Urban. Unpublished status report submitted to the U.S. Fish and Wildlife Service, Atlanta, Georgia. 35 pp.

Author

The primary author of this final rule is Mr. David Densmore, Caribbean Field Office, U.S. Fish and Wildlife Service,

P.O. Box 491, Boqueron, Puerto Rico 00622 (809/851–7297).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

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

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Verbenaceae—Verbena family:						
*	*	*	*	*	*	
Cornutia obovata	Palo de Nigua	U.S.C. (PR)	E	307	NA	NA
*	*	*	*	*	*	

Dated: March 24, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–7648 Filed 4–6–88; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Solidago albopilosa (White-haired Goldenrod)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Solidago albopilosa* to be a threatened species under authority of the Endangered Species Act of 1973 (Act), as amended. This species is known only from rockhouses and beneath overhanging ledges primarily in the Daniel Boone National Forest, Red River Gorge area of Menifee, Powell, and Wolfe Counties, Kentucky. All known population of the species are threatened by trampling from recreational use of their specific habitat within the National Forest. This action will implement the Federal protection provided by the Act for *Solidago albopilosa*.

EFFECTIVE DATE: May 9, 1988.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Currie at the above address (704/259–0321 or FTS 672–0321).

SUPPLEMENTARY INFORMATION:

Background

Solidago albopilosa E.L. Braun (white-haired goldenrod) is an upright-to-slightly-arching herbaceous plant that attains a height of 3 to 10 decimeters (12 to 39 inches). Braun (1942) described this species based on specimens discovered in the summer of 1940 in the Red River Gorge area of Menifee and Powell Counties, Kentucky. The leaves of *Solidago albopilosa* are prominently veined with a dark green upper surface and a pale underside. They vary in length from 6 to 10 centimeters (2.5 to 4.0 inches), with the larger leaves closer to the base of the stem. The stem is cylindrical and densely covered with fine white hairs. Clusters of small, yellow flowers begin blooming in late August. Pale brown, pubescent, oblong achenes (dry single-seed fruits) appear in October. *Solidago albopilosa* can be distinguished from its close relative *Solidago flexicaulis* by its generally downy appearance in contrast to the slick, smooth appearance of *S. flexicaulis* (Medley 1980).

The species is endemic to outcroppings of Pottsville sandstone in the Red River Gorge area of Menifee, Powell, and Wolfe Counties, Kentucky. Usually it is found in rockhouses (natural, shallow, cave-like formations) and beneath overhanging ledges. The plants grow behind the dripline in loose sand, on the floor, in crevices, and on ledges along the walls of rockhouses. Associated rockhouse species include round-leaved catchfly (*Silene rotundifolia*) and alumroot (*Heuchera parviflora*). Associated overstory species of the mixed mesophytic forest are oaks (*Querus* spp.), maples (*Acer* spp.), and mountain-laurels (*Kalmia* spp.) (Kral 1983).

Solidago albopilosa is only found within Kentucky's Red River Gorge. Most of this small area is within Daniel Boone National Forest and has been designated a National Geological Area (36 CFR 294.1). The Forest Service is planning to acquire the most significant of the several small, private inholdings within the Gorge in the future. One population segment of *Solidago albopilosa* occurs within one of these private inholdings. The geological features (rockhouses) with which the species is associated are common within the Red River Gorge; however, only a small percentage of these rockhouses currently supports the species (Andreasen and Eshbaugh 1973; Don Figg, Daniel Boone National Forest, personal communication, 1986).

The unique features and habitat of *Solidago albopilosa* have made it an object of great interest to botanists. Thorough searches of suitable habitat in areas adjacent to the Gorge and in other parts of the state have failed to reveal the presence of any additional populations. (Marc Evans, Kentucky Nature Preserves Commission, personal communication, 1986). *Solidago albopilosa's* unique habitat is subject to intensive disturbance by recreational visitors to the Gorge (Medley 1980). Rockhouses, including those that support *Solidago albopilosa*, are very popular destinations or sites for hiking, camping, climbing, picnicking, building campfires, and digging for Indian artifacts. These activities have threatened and continue to threaten *Solidago albopilosa*.

Federal government actions on this species began with section 12 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This

report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice (40 FR 27823), which formally accepted the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act. By accepting this report as a petition the Service also acknowledged its intention to review the status of the plant taxa named within the report. *Solidago albopilosa* was included in the July 1, 1975, notice of review. On June 16, 1976, the Service published a proposed rule (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act; *Solidago albopilosa* was included in this proposal.

The 1978 amendments to the Endangered Species Act required that all proposals over two years old be withdrawn. On December 10, 1979 (44 FR 70796), the Service published a notice withdrawing the proposal of June 6, 1976. On December 15, 1980, the Service published a revised notice of review for native plants (45 FR 82480). *Solidago albopilosa* was included in that notice as a Category-1 species. Category-1 species are those species for which the Service has sufficient biological data to propose to list them as endangered or threatened species.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Solidago albopilosa* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983; October 12, 1984; October 11, 1985; and October 12, 1986, the Service found that the petitioned listing of *Solidago albopilosa* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act.

On April 24, 1987, the Service published (52 FR 13797) a proposal to list *Solidago albopilosa* as an endangered species. That proposal constituted the final 1-year finding as required by the 1982 amendments to the Endangered Species Act. The proposal provided information on the species' biology, status, and threats, and the potential implications of listing. The proposal also solicited comments on the status, distribution, and threats to the species.

Summary of Comments and Recommendations

In the April 24, 1987, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the *Menifee County News* and the *Clay City Times* on May 21, 1987, and in the *Wolfe County News* on May 22, 1987. The Service received five responses to the proposed rule—one from a State commission and four from Federal agencies.

The Kentucky Nature Preserves Commission supported the proposed addition of *Solidago albopilosa* to the Federal threatened and endangered species list.

The U.S. Army Corps of Engineers, Louisville District; the Federal Energy Regulatory Commission; and the Tennessee Valley Authority stated that the addition of this species to the Federal list would not affect any of their projects currently under consideration.

The U.S. Forest Service stated that based upon the current known distribution of the species, the ability of the species to recover from intensive disturbances, and the existence of several remote sites supporting population segments of the plant, that listing the species as threatened rather than endangered should be considered. They further offered their assistance and support to future activities needed to ensure the continued existence of *Solidago albopilosa*.

The Service concurs with the conclusion that *Solidago albopilosa* merits protection under the Act. The Service has reevaluated the available information on the status of, and threats to, this species and believes that threatened, rather than endangered, status is appropriate.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Solidago albopilosa* should be classified as a threatened species. Procedures found at section 4(a)(1) of the Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Solidago albopilosa* E. L. Braun (white-haired goldenrod) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Solidago albopilosa* is only known from a small number of rockhouses in the Red River Gorge of Menifee, Powell, and Wolfe Counties, Kentucky. The species has been extirpated from some of these sites and is being adversely impacted by human activities at most other sites (Medley 1980). A census taken by Medley (1980) resulted in a population estimate of 10,500 individuals. Field work since that time by Forest Service personnel (B. Knowles, personal communication, 1986) has revealed the presence of several additional population segments. These additional segments are located in the more remote and inaccessible portions of the Gorge. Medley (1980) states that all but two of the sites he visited showed some disturbance by recreational use of the gorge. He further reports that J. Varner, a local botanist who has observed the species over several years, believes that *Solidago albopilosa* has been extirpated from numerous rockhouse sites. Recreational activities that directly impact rockhouses and *Solidago albopilosa* include hiking, picnicking, rappelling, camping, and climbing. The presence of Indian artificats within the area, and the damage caused by collectors pursuing them, subjects even the most remote rockhouses to human disturbance (Marc Evans, Kentucky Nature Preserves Commission, personal communication, 1984; D. Figg, personal communication, 1986). Due to its vulnerable position on the floors and walls, *Solidago albopilosa* is especially susceptible to visitor damage. Recreational use of the Red River Gorge is currently at about 240,000 recreational visitor days per year. Management practices designed to reduce recreational use of the rockhouses are needed to ensure the continued existence of the plant.

Solidago albopilosa would also be affected by the proposed Red River Lake project. Though no longer being pursued as a viable project by the U.S. Army Corps of Engineers, the project, if implemented, could adversely affect the species through associated construction and recreation activities. Although the proposed high water level would not inundate the plant's habitat, the project would need to be planned and completed with the protection of *Solidago albopilosa* being a major consideration.

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Solidago albopilosa* is subject to taking and vandalism due to the accessibility of most of the rockhouses and the high rate of visitor use the gorge and particularly the rockhouses receive.

C. *Disease or predation.* No such threats currently face *Solidago albopilosa.*

D. *The inadequacy of existing regulatory mechanisms.* Endangered, threatened, and unique plants found on National Forest lands are protected from damage and taking by Federal regulation (36 CFR 261.9). However, limited manpower makes enforcement of this regulation difficult. *Solidago albopilosa* is included as an endangered species on the unofficial list of endangered, threatened, and rare species prepared by the Kentucky Academy of Science, but receives no additional protection from this recognition.

E. *Other natural or manmade factors affecting its continued existence.* Due to its unique topographic structure, the Red River Gorge experiences different climatic conditions from those found on the Cumberland plateau and landscapes to the east and west (Martin 1976). *Solidago albopilosa* is adapted to the unique combination of climatic, geologic, and topographic conditions present within the Gorge. Even seemingly minor changes in the surrounding forest could impact this shade-tolerant plant directly through drying and erosion and indirectly by increasing competition with less shade-tolerant species (Kral 1983). While no such changes currently threaten the plant, management planning designed to take into account the requirements of the species is needed to ensure its continued existence.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Solidago albopilosa* as threatened. Threatened status is deemed appropriate for this species because of the Federal ownership of most of the lands on which it occurs and the commitment of the Federal agency responsible for managing these lands to take whatever actions are necessary to ensure the continued existence of *Solidago albopilosa.* Critical habitat is not being proposed for the species for the reasons given below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. *Solidago albopilosa* occurs only in rockhouses, where the species is vulnerable to taking and vandalism. Publication of a critical habitat description and map in the **Federal Register** would draw attention to the remaining populations of *Solidago albopilosa,* making the species more vulnerable and increasing law-enforcement problems. Since almost all of the known plants occur on Federal land, any activity that could affect the continued existence of the species will be brought to the attention of the Service through the section 7 consultation process. The private landowners on whose land the species occurs have been notified of the presence of *Solidago albopilosa* and of the importance of protecting its habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not be prudent to determine critical habitat for *Solidago albopilosa* at this time.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Effects upon the U.S. Forest Service will be minimal, consisting of the development and implementation of management practices designed to reduce visitor impacts to the most important rockhouses that support the plant and the careful planning of any future timber removal operations so that the continued existence of *Solidago albopilosa* is ensured. Involvement of the U.S. Army Corps of Engineers will occur only if the suspension of the Red River Lake Project is lifted. Development of plans designed to reduce the impacts of reservoir construction activities and recreational development, the construction of the dam, and the subsequent recreation activity, will be needed if the project is reauthorized in the future. Because of the geological and biological significance of the Red River Gorge and the official objection to the project by the Commonwealth of Kentucky, it is not anticipated that the project will be reauthorized.

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

addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20038–7329 (202/343–4955).

National Environmental Policy Act

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

References Cited

Andreasen, M.L., and W.H. Eshbaugh. 1973. *Solidago albopilosa* Braun, a little known goldenrod from Kentucky. Castanea 38(2):117–132.

Braun, E.L. 1942. A new species and a new variety of *Solidago* from Kentucky. Rhodora 44:1–4.

Kral, R. 1983. A report on some rare, threatened, or endangered forest-related vascular plants of the South. Vol. II. Technical Publication R8–TP2, USDA, Forest Service, Atlanta, Georgia. Pp. 1252–1255.

Martin, W.H. 1976. The Red River Gorge controversy in Kentucky: a case study in preserving a natural area. Association of Southeastern Biologists Bulletin 23(3):163–167.

Medley, M.E. 1980. Endangered and threatened plant status surveys. Unpublished report to the Southeastern region of the U.S. Fish and Wildlife Service under Contract No. 14–16–0004–79–105, 24 pp.

Authors

The primary author of this final rule is Robert R. Currie, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

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

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family:						
*	*	*	*	*	*	
Solidago albopilosa	White-haired goldenrod	U.S.A. (KY)	T	308	NA	NA
*	*	*	*	*	*	

Dated: March 25, 1988.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–7649 Filed 4–6–88; 8:45 am]

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federal register

Thursday
April 7, 1988

Part VI

Department of Transportation

Research and Special Programs Administration

49 CFR Part 177

Highway Routing Standards for Hazardous Materials; Advance Notice of Proposed Rulemaking and Notice of Public Hearing

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 177

[Docket No. HM-203 Notice No. 88-3]

Highway Routing Standards for Hazardous Materials

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Advance Notice of Proposed Rulemaking and Notice of Public Hearing.

SUMMARY: This Notice invites public comment and announces a public hearing concerning the possible need to establish routing criteria, requirements, and methodologies for analyzing alternative routes for the highway transportation of non-radioactive hazardous materials. This inquiry is intended to assist RSPA in deciding what Federal regulatory action, if any, should be undertaken to improve the transportation safety of non-radioactive hazardous materials through highway routing requirements.

DATES: *Comments.* Comments must be submitted on or before October 11, 1988.

Public Hearings. Public hearings will be held on June 14, 1988, from 9:30 a.m. to 5:00 p.m., in Sacramento, California and on Septembr 15, 1988, 9:30 a.m. to 5:00 p.m., in Washington, DC. Hearings may close earlier than 5:00 p.m. upon presentation of oral comments from all persons desiring to comment.

ADDRESSES: *Comments.* Written comments should be submitted to the Dockets Unit (DHM-30), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should identify the docket and notice number and should be submitted in five copies. Persons wishing to receive confirmation of the receipt of their comments should include a self-addressed stamped postcard. The Dockets Unit is located in Room 8426 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, except holidays.

Public hearings. The public hearings will be held at the following locations:

(1) June 14, 1988—Holiday Inn—Capital Plaza, 300 J Street, Sacramento, California 95814. (Telephone: (916) 446-0100)

(2) September 15, 1988—U.S. Department of Transportation, FAA Auditorium, Third Floor, 800 Independence Avenue SW., Washington, DC 20590

Any person wishing to present an oral statement at the public hearings should notify the Dockets Unit, by telephone or in writing, at least two days in advance of the hearing date. Each request must identify the speaker; organization represented, if any; daytime telephone number; and the anticipated length of the presentation, not to exceed ten minutes. Written text of oral statements should be presented to the hearing officer prior to the oral presentation.

FOR FURTHER INFORMATION CONTACT: Joseph Nalevanko, Policy Development and Information Systems Division, (202) 366-4484, or Lee Jackson, Standards Division, (202) 366-4488, Office of Hazardous Materials Transportation, RSPA, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

As demonstrated by its recent legislative proposal (H.R. 4069), the Department is concerned about the adequacy of present legal requirements concerning the routing of non-radioactive hazardous materials. While Congress explores various legislative improvements, the Department is undertaking an exhaustive consideration of possible regulatory requirements for the routing of non-radioactive materials.

The Hazardous Materials Transportation Act (HMTA: Pub. L. 93-633) (49 App. U.S.C. 1801 *et seq.*) is the basic Federal legislation which addresses the safe transportation of hazardous materials. Under the HMTA, DOT has the authority to regulate, among other things, the routing of hazardous materials (see: 49 App. U.S.C. 1804). The Department can exercise this authority in a variety of ways. It can establish specific routing criteria, such as criteria which require avoidance of highways traversing heavily populated areas or selection of routes least likely to result in the release of a hazardous material. The Department can also establish specific procedural requirements for routing hazardous materials, such as a requirement that routing decisions be based on documentable risk analysis methodology or a requirement that parties affected by routing decisions be included in the decision-making process.

The purpose of this rulemaking is to consider the transportation safety aspects of the highway routing of non-radioactive materials. This will include consideration of routing decisions now being made by carriers and shippers and State and local governments and the methods by which those decisions are made. This rulemaking will also consider the effects, particularly in terms of safety, of existing and possible Federal, State, and local routing actions, including the effects of actions by one State or locality on other jurisdictions.

Previous Routing Regulatory Activity

The Department has previously exercised its routing authority under the HMTA relative to the transportation of radioactive materials by highway under Docket HM-164 (46 FR 5298). Due to the several years of successful routing experience gained in this area, it will be useful to describe this rulemaking in some detail.

As a result of Docket HM-164, § 177.825 of the Hazardous Materials Regulations (HMR) was promulgated and requires that motor carriers, in selecting routes for transporting placarded radioactive materials, consider information such as accident rates, transit time, population density, time of day, and day of week during which transportation will occur.

Additionally, for highway route-controlled quantity (HRCQ) shipments of radioactive materials (e.g., spent nuclear fuel), motor carriers must use "preferred routes." A preferred route is either (1) an Interstate System highway for which an alternative route has not been designated by a State routing agency, or (2) an alternative route designated by a State routing agency in accordance with DOT guidelines or an equivalent routing analysis (see § 171.8, "State Designated Route"). Motor carriers of HRCQ shipments must select preferred routes which minimize transit time for shipments, except that an Interstate System bypass or beltway around a city must be used when available. During the rulemaking process, DOT addressed the risks of using the limited access Interstate System highways versus secondary highway systems for the transportation of radioactive materials. Based on available risk assessments, and the extensive comments received in response to the rulemaking, DOT concluded that the use of Interstate System highways generally would ensure the safe routing of HRCQ shipments of radioactive materials.

In Docket HM-164, DOT recognized the significant concerns and interests that State, regional and local governments have in the highway routing of radioactive materials and the important role which their actions and knowledge of local conditions can have in reaching effective routing decisions. Accordingly, 49 CFR 177.825(b) provides

that a State routing agency may designate an alternative route in place of or in addition to an interstate highway. In designating such routes, States are required to consult and coordinate with affected local jurisdictions and other affected States to ensure consideration of impacts and continuity of designated routes. To assist a State routing agency in determining an acceptable alternative route, DOT developed a guidance document entitled, "Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials". It should be emphasized that although this guidance document provides a methodology for analyzing alternative routes, it is not the only methodology which can be used when conducting an analysis of routing alternatives. State routing agencies may use equivalent routing analyses which consider overall risk to the public; thus, they may develop better methods of risk assessment to identify important risk factors peculiar to their own situations. Under Docket HM–164, state governments are given considerable latitude to carry out their highway routing functions. The routing criteria and requirements for the transportation of radioactive materials have been effectively applied by a number of State governments for several years.

Routing of Non-radioactive Materials

The Department is considering the extent to which, if at all, it should exercise its rulemaking authority with respect to the routing of non-radioactive hazardous materials. This is important because, although the current regulations recognize the authority of state and local governments to make routing decisions concerning non-radioactive hazardous materials, the regulations do not provide a framework which ensures that such decisions are consistent, cost-effective and, in fact, conducive to the public safety. Since the publication of the final rule in Docket HM–164, many requests and solicitations have been made to the Department by Congress, by State and local governments, by industry, and by others expressing concern over the further use of the Department's routing authority in its application to hazardous materials, other than radioactive hazardous materials, and of the public safety implications of doing so.

The concern of many sectors of the public and their deep interest in these matters stem from a variety of factors, which are discussed below.

Inconsistent and Ambiguous Federal Regulations

An existing DOT regulation (49 CFR 397.9) currently addresses the highway routing of non-radioactive hazardous materials, including Class A or Class B explosives. Section 397.9, which was issued under statutes that predate the HMTA (18 U.S.C. 834 and 49 U.S.C. 304), states, in part:

Section 397.9 Routes.

(a) Unless there is no practicable alternative, a motor vehicle which contains hazardous materials must be operated over routes which do not go through or near heavily populated areas, places where crowds are assembled, tunnels, narrow streets, or alleys. Operating convenience is not a basis for determining whether it is practicable to operate a motor vehicle in accordance with this paragraph. This paragraph does not apply to radioactive materials (see § 177.825 of this title).

Except for hazardous materials shipments originating from or destined to heavily populated areas, this regulation prohibits motor carriers from operating placarded vehicles containing non-radioactive hazardous materials on routes, including Interstate System highway routes, that pass through heavily populated areas, unless there is no practical alternative. But there are few, if any, heavily populated areas or major cities that are not connected by the Interstate system. In recognition of the fact that accident statistics, both in terms of the frequency and severity of accidents, support the use of Interstate System highways, DOT published an interpretation of 49 CFR 397.9 in the Federal Register on November 23, 1977, (42 FR 60078) which states that when "a vehicle is passing through a populated or congested area, use of a beltway or other bypass would be considered the appropriate route." This interpretation, which itself is somewhat ambiguous and perhaps not widely know, greatly restricts the scope of § 397.9. Also, that section has been determined by the Department's General Counsel not to justify local prohibition of hazardous materials transportation conducted in accordance with the HMR. See Appendix C to Inconsistency Ruling 1, 43 FR 16954 at 16961, published April 20, 1978.

Another DOT regulation (49 CFR 397.3) not issued under the authority of the HMTA, expressly recognizes state and local traffic regulations, and states:

Section 397.3 State and local laws, ordinances, and regulations.

Every motor vehicle containing hazardous materials must be driven and parked in compliance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated, unless they are at variance with specific regulations of the Department of Transportation which are applicable to the operation of that vehicle and which impose a more stringent obligation or restraint.

This regulation sanctions State and local requirements which concern the mechanics of driving and handling vehicles. It might appear that this regulation could also be interpreted to mean that if such requirements include routing restrictions for certain types of non-radioactive materials, then motor carriers are expected to comply with them. However, in a 1976 letter to the Nuclear Regulatory Commission, the Department's General Counsel stated that 49 CFR 397.3 requires compliance only with state or local requirements related to the mechanics of driving and the handling of vehicles of the type contained in Part 397 and that it does not require compliance with state or local restrictions that are tantamount to a ban on hazardous materials transportation. See Appendix C to Inconsistency Ruling 1, 43 FR 16954 at 16961, published April 20, 1978.

Recent Congressional action (the Motor Carrier Safety Act of 1984), when read in the light of Secretarial rulemaking delegations, has in effect transferred at least partial responsibility for these regulations to RSPA. Section 206(b) of the Motor Carrier Safety Act of 1984 states:

The Secretary shall not eliminate or modify any existing motor carrier safety rule pertaining exclusively to the maintenance, equipment, loading or operation (including routing) of vehicles carrying materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. App. 1801–1812) unless and until an equivalent or more stringent regulation has been promulgated under the Hazardous Materials Transportation Act.

This provision includes Part 397 of the Federal Motor Carrier Safety Regulations and, as a result, no portion of Part 397 which pertains to hazardous materials transportation may be modified, unless an equivalent or more stringent regulation is issued under the Hazardous Materials Transportation Act.

Another regulation (49 CFR 177.810) with important routing implications was issued under the HMTA and authorizes restrictions on the transportation of non-radioactive hazardous materials through certain urban tunnels. Section 177.810 states:

Section 177.810 Vehicular tunnels.

Except as regards radioactive materials, nothing contained in Parts 170–189 of this subchapter shall be so construed as to nullify or supersede regulations established and

published under authority of State statute or municipal ordinance regarding the kind, character, or quantity of any hazardous material permitted by such regulations to be transported through any urban vehicular tunnel used for mass transportation. For radioactive materials, see § 177.825 of this part.

A fourth regulation (49 CFR 177.853(a)) that could be interpreted as establishing a criterion for the routing of hazardous materials states, in part:

Section 177.853 Transportation and delivery of shipments.

(a) *No unnecessary delay in movement of shipments.* All shipments of hazardous materials shall be transported without unnecessary delay, from and including the time of commencement of the loading of the cargo until its final discharge at destination.

The intent of this section is to prevent hazardous materials shipments from sitting for extended periods of time on loading docks or in idle trucks. However, this section might also be interpreted to mean that hazardous materials should travel via the fastest route available; in other words, it could be interpreted as establishing a routing criterion that the in-transit time of hazardous materials shipments be minimized.

In a recent Congressional report, entitled "Promoting Safer Highway Routing of Ultrahazardous Cargoes: DOT Oversight", it was pointed out that these regulations are in many respects ambiguous and entail potentially conflicting routing criteria. RSPA is seeking suggestions for the elimination or amelioration of these problems.

The Need for Consistent and Cost-effective Routing Standards

There are a variety of other factors that underlie the concerns of many sectors of the public in the routing of hazardous materials and their deep interest in these matters. Currently, there exists a large number of State and local routing requirements and control measures for the transportation of non-radioactive hazardous materials. In some cases, these requirements and control measures (such as speed and time of day restrictions) can serve to impede the free flow of commerce, with little or no demonstrable effect on public safety. In some cases, they merely result in the exportation of risk from one jurisdiction to other jurisdictions, which may not be as prepared or as able to deal with such risks.

In cases where reducing population exposure is of primary concern (e.g., 49 CFR 397.9, discussed above), State and local governments have attempted to route hazardous materials shipments via secondary roads, despite the fact that the Interstate System highways generally have the lowest truck accident rate per mile and provide the shortest distance between major cities. In many cases, requirements have been imposed on the basis of rudimentary and incomplete analyses, or by a decision-making process that is essentially subjective and undocumented. While it is difficult to assess the net overall effect of these routing requirements, either in terms of enhancing public safety or of improving national transportation efficiency, it is likely that these requirements have caused confusion and concern and have greatly complicated the logistical network involving both hazardous and non-hazardous materials shipments.

On the other hand, RSPA realizes that virtually every community in the United States is subject to the transportation of hazardous materials, and that the people of these communities have a direct stake and interest in a safe and efficient national system for the transportation of these materials. For example, gasoline and many agricultural chemicals are hazardous materials which are needed in virtually every community; serious economic dislocations and social hardships could occur in these communities, if such materials are effectively banned by neighboring jurisdictions. In fact, the transportation of hazardous materials is vital to the nation's economic well-being, its competitive international standing, and its national security.

In addition, no other industrial activity in the United States as vast and complex as the transportation of hazardous materials has a comparable safety record. The safety record of both radioactive and non-radioactive hazardous materials transportation has been, and continues to be, excellent; and this record, from a highway transportation safety standpoint, can be correlated in large part to the extensive use of the Interstate System highways. This system generally connects heavily populated urban areas. Large volumes of hazardous materials are moved annually into and out of the industrial and commercial zones that surround or are located within such areas. Generally, the population exposed to hazardous materials shipments in such areas cannot be significantly reduced, unless there are significant reductions in the amount of hazardous materials moved into and out of such areas. In particular, the total population exposure to hazardous materials shipments in such areas cannot be significanty reduced by banning or diverting hazardous materials shipments that merely *transit* such areas. Likewise, the magnitude of the task facing emergency response personnel in such areas is not significantly reduced by such bans or reroutings. Such actions, however, can signficantly increase the tasks of emergency response personnel in other areas, often nearby towns and rural communities, who may not be as well trained and equipped as responders in metropolitan areas.

In summary, it is understandable that State and local governments should focus their attention on the routing of hazardous materials. The Department has consistently recognized the significant role of State and local governments in making highway routing decisions. The Department knows that it lacks, and cannot possibly duplicate, their expertise and knowledge concerning local highways, land use patterns, highway geometry, and the emergency response capabilities of their jursidictions. Nevertheless, there appears to be a need for uniform national standards to prevent the widespread proliferation of varying, conflicting, counterproductive, and unduly burdensome hazardous materials routing requirements by State and local governments.

Some Possible Regulatory Routing Options

Three alternatives to existing routing requirements are outlined below to illustrate possible approaches that might be used to regulate the highway routing of non-radioactive hazardous materials. At this time, RSPA is not proposing to adopt any of these alternatives. They are presented merely as illustrations of the type of regulatory authority which RSPA might exercise under the HMTA.

A. *Require compliance with routing standards and an administrative/analytic process similar to those required for radioactive materials.* This option would establish Federal routing standards for certain types of hazardous materials (e.g., materials extremely toxic by inhalation and Class A and B explosives) similar to those which exist for the routing of certain types of radioactive materials. This option might require use of Interstate System highways, unless a State routing authority designates an alternative "preferred" route based on an objective, documentable risk-analysis methodology and full consultation with other affected jurisdictions. In the absence of a State designated "preferred" route, and in place of utilizing Interstate System highways, motor carriers might be required to ensure that any motor vehicle containing non-radioactive hazardous

material for which placarding is required is operated on routes that minimize transportation risk. This would require a risk analysis of one or more alternative routes. The administrative and analytical process to be pursued by states in designating a "preferred" route would be contained in guidelines or a guidance document which would set forth the minimum requirements for conducting a risk assessment of alternative routes. Such a document currently exists and is entitled "Guidelines for Applying Criteria to Designate Routes for Transporting Hazardous Materials." This document is being revised and will be republished by RSPA in the near future.

B. *Require shippers and motor carriers of non-radioactive hazardous materials to conduct risk analyses of highway routes, in accordance with certain Federally prescribed procedures, and to select only the safest routes for the transportation of hazardous materials.* This option follows very closely the recommendations of the recent Congressional report on the routing of certain hazardous materials, noted previously. Under this option, DOT would promulgate by regulation a formula for the risk analyses of highway routes for non-radioactive hazardous materials. The regulation would specify the types of data to be taken into account in such analyses, e.g., demographic data, highway characteristics, location of emergency response resources, accident data per route segment, etc. The regulation would tailor the routing analyses to the particular public health and safety threats posed by hazardous materials, with more stringent analysis standards being applied to the more dangerous types of hazardous materials. Such standards would require the use of alternative-route risk analyses to ascertain routes with the lowest risk. To make enforcement possible, a recordkeepng requirement would be included. The records would contain: the analysis of the routes, alternative routes considered, and a certification that the safest route is taken.

C. *Require each motor carrier of certain types of hazardous materials to be licensed for each non-radioactive hazardous materials route.* This option would require that each motor carrier obtain prior Departmental approval of any route to be used for the transportation of non-radioactive hazardous materials. Motor carriers might be required to file proposed route plans supported by routing analyses, and public comment might be solicited on the routes proposed. If a carrier's route proposal were accepted, RSPA would authorize carrier operation under the plan for a specified period of time, perhaps two years. Plan approval would preempt state and local requirements not consistent with the plan; however, State or local requirements which affect the carrier that are consistent with the plan might be expressly incorporated into the plan by the carrier or RSPA. As with the other options, it would be necessary to establish some general criteria for evaluating route plans. Alternative versions of this option would involve similar licensing programs at the State or local level.

Request for Comments

Comments are solicited concerning the preceding discussion of possible regulatory options and on the following questions. Supporting data and analyses will enhance the value of comments submitted.

1. Should non-radioactive hazardous materials be subjected to any Federal highway routing requirements?

2. If so, what types, quantities, and forms of non-radioactive hazardous materials should be subject to such regulatory requirements?

3. What routing criteria, or combination of criteria (e.g., minimization of the population exposed to such shipments, or of the time people are exposed to such shipments) should be considered for any such routing requirements?

4. Should the risk analysis be based on absolute risk or on relative risk considerations, or on a combination of both?

a. What is an acceptable level of absolute risk, below which alternatives need not be analyzed?

b. When should relative route risk analyses be required?

c. If a relative route risk analysis is performed, should a minimum level of relative risk reduction be required to justify a routing decision?

5. What factors and data should be taken into consideration in alternative-route risk analyses?

6. Who should conduct the analyses: industry (shippers and/or carriers), or the government?

7. To what extent does industry now conduct such analyses?

8. How often should they be conducted?

9. How expensive are such analyses?

10. What are the additional costs and the safety benefits to industry, emergency response personnel, and the public of imposing routing requirements?

11. What are the costs and benefits of imposing routing requirements on hazardous materials shipments that merely transit a city, i.e., that do not originate or terminate in that city?

12. What are the costs of communicating to interested parties (e.g., via road signs, maps) routes that are prohibited from, or restricted to, certain types of hazardous materials?

13. What should be the roles of Federal, State and local governments in the routing of non-radioactive hazardous materials?

14. What role, if any, should carriers and/or shippers play in the routing of non-radioactive hazardous materials?

15. Is a generalized DOT requirement preferable to a procedure that entails an individual DOT examination of some or all routes?

16. To what extent, if at all, should DOT require consultations with or agreements by, all affected jurisdictions, as conditions precedent to the imposition of a routing requirement?

17. What role, if any, should DOT play in arbitrating or resolving interstate or interjurisdictional routing issues?

18. Should there be Federal, State or local licensing of non-radioactive hazardous materials transportation routes?

Commenters are not limited to responding to the questions raised above and may submit any comments and evidence relevant to the highway routing of non-radioactive hazardous materials. In addition, commenters are encouraged to provide comments on "major rule" considerations under the DOT regulatory procedures (44 FR 11034), potential environmental impacts subject to the National Environmental Policy Act, information collection burdens which must be reviewed under the Paperwork Reduction Act, and economic impact on small entities subject to the Regulatory Flexibility Act.

It is likely that any rulemaking issued to implement the concepts discussed in this ANPRM will have sufficient Federalism implications to warrant the preparation of a Federalism Assessment pursuant to Executive Order 12612 ("Federalism") (52 FR 41685, October 30, 1987). Therefore, commenters are requested to address, with respect to each possible regulatory proposal, the following matters:

(1) the extent to which each proposal would impose additional costs or burdens on the States, including the likely source of funding for the States and the ability of the States to fulfill the purposes of that proposal;

(2) the extent to which each proposal would affect the States' ability to discharge traditional state governmental

functions, or other aspects of state sovereignty; and

(3) the extent to which each proposal is consistent with the requirements in Executive Order 12612 that Federal agencies shall: (1) encourage States to develop their own policies to achieve program objectives and to work with appropriate officials in other states; (2) refrain, to the maximum extent possible, from establishing uniform, national standards for programs, and when possible defer to the states to establish standards; and (3) when national standards are required, consult with appropriate officials and organizations representing the states in developing those standards.

Commenters should be aware that section 105(b) of the HMTA requires DOT to consider any relevant suggestions of the Interstate Commerce Commission before issuing any regulation with respect to the routing of hazardous materials.

Issued in Washington, DC on April 1, 1988, under the authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

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Part VII

Department of Transportation

Urban Mass Transportation Administration

Summary of Legal Opinions by the Urban Mass Transportation Administration During Calendar Years 1986 and 1987; Notice

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

Summary of Legal Opinions by the Urban Mass Transportation Administration During Calendar Years 1986 and 1987

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice.

SUMMARY: With this Notice the Urban Mass Transportation Administration (UMTA) is publishing summaries of its legal opinion in the areas of charter bus service, private enterprise participation and bid protests. The publication of these opinions and decisions will help to make UMTA recipients, private transit operators and other interested parties better informed of UMTA's interpretation of the laws and regulations which affect UMTA's programs.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Zeiter, Procurement Analyst, Urban Mass Transportation Administration, Office of Procurement and Third Party Contract Review, 400 7th Street, SW., Room 7405, Washington, DC 20590 (202) 366–4980.

SUPPLEMENTARY INFORMATION: The United States General Accounting Office (GAO) performed an audit of UMTA's enforcement of the Urban Mass Transportation Act of 1964, as amended (UMT Act), and the implementing regulations. GAO issued its audit report entitled "UMTA Needs Better Assurance that Grantees Comply with Selected Federal Requirements", on February 19, 1985. The GAO found that grant recipients often were not aware of UMTA's interpretations and decisions and, as a result, were not complying with legal and regulatory requirements. Therefore the GAO audit recommended that UMTA circulate its legal opinions more widely to facilitate compliance.

It is UMTA's goal that the following summaries of its legal opinions and administrative decisions issued in 1986 and 1987 will help to better inform the public of UMTA's interpretation of the UMT Act and the relevant regulations. We trust that this will assist our grantees in complying with UMTA's requirements as well as assist interested parties in enforcing these requirements.

Bid Protest Decisions for 1986

Premier Electrical Construction Company (Premier Electrical) vs. Chicago Transit Authority (CTA), 1/31/86

Premier Electrical and supplier alleged that CTA's specifications were restrictive by naming a particular supplier for high-mast poles. CTA's Specification 5128–83, Volume I, Requirements for Bidding and Instructions to Bidders, Section 15, Trade Names clearly indicated that reference to manufacturers names was intended to be descriptive and not restrictive. Other makes would be considered provided the bidder clearly stated on the face of his proposal exactly what the bidder proposed to furnish.

Premier Electrical did not specify in its bid documents or at any time prior to a pre-construction meeting that it intended to provide a substitute product. Premier Electrical and supplier failed to make the approved equal request until nearly five months after bid opening.

UMTA ruled that (1) an approved equal was not requested in conformance with CTA bid documents and (2) the actions of the prime contractor and supplier violated the procedural requirements of UMTA Circular 4220.1A.

The protest was denied.

General Motors Corporation (GMC) vs. Niagara Frontier Transportation Authority (NFTA) 1/9/86

GMC alleged impropiety by the NFTA in its review and bid calculation with respect to the spare parts inventory as part of Life Cycle Cost (LCC) consideration. UMTA cited prior legal opinion that "UMTA's decision to leave great flexibility in its grantees to manage life cycle procurements was necessitated by the very nature of the life cycle cost process with its inherent characteristic for more discretion in evaluation than is usual in a low bid price competition." Accordingly, UMTA ruled thta NFTA's handling of the LCC data under the circumstance of this procurement was not arbitrary or capricious or in violation of applicable federal requirements.

The protest was denied.

Cubic Western Data (CWD) vs. Milwaukee County, Wisconsin (County), 2/12/86

The CWD alleged the County excluded CWD from bidding and established a "de facto sole source procurement" by failing to (1) delete a specification requirement that the revenue transfer process from cashbox to receiver "shall be manual in operation, requiring no electrical devices or components" and (2) amend the time between "Notice to Begin Testing" and equipment installation, from 30 days to 100 days. UMTA concluded that the County's refusal to acquiesce to CWD's request for changes was properly based on the transit system's minimum operation needs. In reaching this conclusion UMTA was mindful that under Circular 4220.1A UMTA is not to substitute its judgment for that of the grantee in situations such as the subject protest where the questioned specification is rooted in the operating efficiency requirements of the grantee. Once having concluded that the grantee had a rational basis for the particular justifications for not granting CWD's requested changes, UMTA's review was complete.

The protest was denied.

Westinghouse Electric Corporation (Westinghouse) vs. Jacksonville Transportation Authority (JTA), 2/6/86

Westinghouse alleged (1) that JTA's consideration of another contractor's (MATRA) proposal was invalid because the proposal allegedly contained an improper Buy America certificate and violated UMTA Buy America regulations and (2) that JTA's requirement for spiral transition track switches constituted an impermissibly discriminatory or exclusionary specification.

UMTA ruled that the MATRA Buy America certificate did not violate applicable UMTA regulations governing certificates of compliance. UMTA also ruled that Westinghouse knew or should have known the effect of the spiral switch requirement on its ability to submit a proposal and should have filed a bid protest within the required time limitations. Instead, Westinghouse delayed approximately two months after bid opening before formally protesting what it perceived to be a fatal defect in the specification.

The protest was denied.

Communications, Inc. (Communications) vs. Sacramento Regional Transit District (Sacramento RTD), 3/11/86

The protestor alleged that the grantee failed to respond to eight allegations of improprieties and errors regarding the solicitation. The allegations were: (1) the use of Requests for Qualifications (RFQ)

was improper for graphics design services procurement; (2) the RFQ discriminated against small businesses; (3) the selection method in the RFQ was not a competitive selection process; (4) the RFQ process was approved by Sacramento RTD based on erroneous advice; (5) additional requirements in the resolicitation discriminated against small businesses; (6) short submission deadlines discriminated against small businesses; (7) the advertising process did not allow sufficient time to respond to the RFQ; and (8) the RFQ contained major discrepancies in the EEO and MBE plans.

UMTA found the protest was largely unsubstantiated. The grantee's competitive negotiation where price need not be treated as a significant evaluation factor, is permitted by UMTA. UMTA took exception to the grantee proposing to negotiate with only the highest ranked firm without justification and requested the grantee to alter its evaluation scheme to include negotiation with all competitors in the competitive range.

The protest was dismissed in part and upheld in part.

Saturn Construction Company (Saturn) vs. Washington Metropolitan Area Transit Authority (WMATA), 3/28/86

Protester, Saturn (1) challenged the grantee's finding that the protester was non-responsive for failure to include disadvantaged business enterprise (DBE) subcontractor price information, and (2) questioned whether the grantee's policy and practice of prohibiting bid shopping among DBE subcontractors required Saturn's bid be found not responsive for failure to provide price information on the schedule.

UMTA found that Saturn's commitment to the DBE goal established for the contract was unambiguous taking the bid documents as a whole and for that reason failure to submit price information was an element of responsibility and not an element of responsiveness. Therefore the WMATA acted unreasonably in finding the protester's bid not responsive.

Protest was upheld.

Brutoco Engineering and Construction Co. vs. City of Oceanside, 3/28/86

Protester alleged that the low bidder, Transco, was proposing to use firms to satisfy the Federally-required DBE/WBE goals which do not qualify under the Federal criteria as women owned or minority owned business enterprises. The protestor alleged that because of this and because Transco did not show good faith efforts, Transco was not eligible to be awarded the contract.

UMTA ruled that the protester's claim that the low bidder failed to meet the goal was without merit.

The protest was denied.

Silverite Construction Co. vs. Metro-North Commuter Railroad, 3/12/86

Protestor, Silverite Construction Co. raised the issues of whether Metro-North acted reasonably in determining that Fischbach & Moore (Fischbach) was a responsible bidder and whether Metro-North violated fundamental principles of Federal procurement policy in its handling the Silverite protest.

UMTA concluded that Metro-North acted arbitrarily and in abuse of its discretion. This decision was based on the fact that Metro-North determined that Fischbach was a responsible bidder, in spite of a GSA debarment and subsequent court actions involving the firm. Fundamental principles of Federal procurement law were violated when Metro-North awarded the contract one day before notifying Silverite of the status of its bid protest, thereby undermining Silverite's right to appeal to UMTA.

Protest was upheld.

Clayton Industries (Clayton) vs. Pioneer Valley Transit Authority (PVTA) 4/23/86

Reconsideration of UMTA's December 27, 1985, denial of a protest submitted by Clayton. This protest concerns the PVTA decision not to accept a Clayton dynamometer and brake analyzer claiming the specifications were restrictive and proprietary.

UMTA concluded that its December 27, 1985, opinion is a correct interpretation of the law and facts in this case. The protester's protest was untimely. Further, the PVTA's determination that Clayton's specified product did not conform to the IFB specifications was ruled not arbitrary and capricious.

The protest was denied.

F&M Global Communications, Inc. vs. San Mateo Transit District (Samtrans) 4/18/86

The protestor alleged that (1) Samtrans improperly changed the method of procurement from competitive bidding to negotiation, (2) the protestor received unequal treatment in the procurement, (3) Samtrans improperly waived certain nonwaivable irregularities, (4) Samtrans failed to evaluate bids pursuant to clearly stated and consistent requirements, (5) award to Motorola, the second low bidder was contrary to state law, and (6) Samtrans conducted negotiations improperly.

UMTA ruled in response to allegation (1) that the specifications explicitly provided for a clarification process, the protestor was bound by the solicitation and could not object to the clarification process. On allegations (2) (3) and (4), UMTA determined the protestor failed to support its claims. Allegations (5) and (6) were not accepted for investigation because allegation (5) was ruled outside UMTA jurisdiction, and alelgation (6) was set aside as resolved by the face of protest.

The protest was denied.

Metro-North Commuter Railroad (Metro-North) vs. Silverite Construction Company (Reconsideration) 5/1/86

Metro-North requests reconsideration of UMTA's bid protest decision dated March 12, 1986. In that decision, UMTA upheld the bid protest filed by the Silverite Construction Co. Firstly, Metro-North disputed as a matter of law UMTA's interpretation of the phrase "Violations of Federal law or regulations * * *"as including fundamental principles of procurement as established by Federal case law. UMTA determined Metro-North provided no basis for its position and granted no reconsideration on this argument. Secondly, Metro-North argued that UMTA erred in its determination that Metro-North failed to distinguish General Services Administration's (GSA) debarment. UMTA determined that where an UMTA recipient examined the underlying facts which led to debarment of a firm by the Federal Government, and that recipient determines the firm to be a responsible bidder, contrary to the Federal position, UMTA considers minimal documentation of the recipient's rationale to be required. Metro-North did not document the basis for its decision to a degree UMTA considers minimally necessary. Reconsideration on the basis of this argument was denied.

UMTA modified its decision as necessary to reflect that the firm of Fischbach amd Moore, Inc. was debarred by the New York City Transit Authority (NYCTA) rather than by the NYCTA's parent organization, the Metropolitan Transit Authority. UMTA carefully reexamined the protest record as supplmented by the additional information. On the basis of that reexamination, UMTA reversed part of its March 12, 1986, decision to the extent that UMTA would participate in funding any aspect of the Metro-North Contract awarded January 8, 1986, which is otherwise eligible for reimbursement under the applicable UMTA grant agreement with Metro-North. UMTA admonished Metro-North of its obligation to maintain adequate records of its third-party contract.

UMTA's decision was upheld in part, modified in part and reversed in part.

Flxible vs. Winston Salem Transit Authority (WSTA), 5/12/86

The protestor alleged that the low bidder, General Motors Corporation, (GMC) did not comply with the requirements of the WSTA specification and should have been disqualified at the time of bid opening.

UMTA found that WSTA failed to clearly define how bids were to be evaluated and the low bid determined. GMC's failure to submit all bid prices was not a minor informality but rendered the bid nonresponsive. Without complete bid prices, WSTA was not in a position to properly compare bids on the optional wheelchair lifts.

The protest was upheld.

Rail-Roadway Constructors/Jim Winston & Sons, J.V. (Roadway) vs. Santa Clara County Transit District (SCCTD), 5/20/86

The protestor alleged (1) SCCTD improperly found Roadway's protest to SCCTD untimely, (2) Award to the second-low bidder, Granite, would violate applicable Federal requirements, with respect to subcontracting to MBE/WBEs, (3) SCCTD failed and refused to properly review Roadway's protest of the proposed award to Granite and in so doing, the SCCTD failed to observe its own procedures. UMTA dismissed Roadway's protest as it found that (1) Roadway's filing of its protest was untimely, (2) Roadway's claim pursuant to the DBE regulation was without merit, (3) Roadway's failure to protest its state debarment meant Roadway could not be considered an interested party in the award. Roadway attempted to displace SCCTD's judgement with its own, rather than show that SCCTD acted unreasonably.

The protest was dismissed.

Saab-Scania of America (Saab) vs. Central New York Regional Transportation Authority (CNYRTA), 5/30/86

The protestor alleged that the awardee, Neoplan, failed to supply the warranties and/or certifications required by Federal law and CNYRTA and that CNYRTA did not have written bid protest procedures leading to unjust discrimination.

UMTA found that CNYRTA had adequate justification and a rational basis to award the contract to Neoplan. CNYRTA's actions relative to its acceptance of Neoplan's certifications after the bid opening date were a valid and permissible exercise of its authority and CNYRTA treated Saab and Neoplan equitably. With regard to Saab's allegation of no written bid protest procedures, CNYRTA's counsel indicated it would use UMTA's guidelines. Saab consented to the procedures and was afforded procedural due process.

The bid protest was denied.

Liebensperger Transportation Sales Inc. (Liebensperger) vs. York Transportation Club (YTC) and Pennsylvania Department of Transportation (PennDOT) 6/23/86

The protestor, Liebensperger, appealed YTC and PennDOT's decisions that a solicitation should be cancelled and readvertised. This decision was based on the premise that Rohrer Bus Sales' bid would have been timely but for ambiguous bid instructions in the original solicitation.

UMTA determined that intervention was warranted because neither YTC or PennDOT included any information concerning the procurement standards or evaluation criteria applied in reaching their decisions. Further, UMTA learned it was PennDOT's policy that late bids would not be accepted under any circumstance.

UMTA held that Rohrer did not allow sufficient time for mailing its bid and the Comptroller General has consistently held that it is the bidder's responsibility to see that its bid is mailed in time for bid opening. The mere existence of a technical deficiency in the solicitation is not, absent a showing of prejudice, a compelling reason to cancel an invitation and readvertise.

UMTA upheld Liebensperger's protest.

Badger Body and Truck Equipment Co. (Badger Body) vs. Iowa Department of Transportation (IDOT), 6/20/86

Badger Body appealed to UMTA from the decision of the IDOT to uphold a protest by Saf-T-Liner Bus Sales Inc. The protester alleges that the low bid is not responsive and the Western Alliance of Regional Transit Systems (WARTS) did not follow procurement procedures in the evaluation of life cycle costs.

UMTA found no evidence of a violation of Federal law or regulations. Determination of a bidder's responsiveness and its responsibility are within the discretionary powers of the grantee and UMTA found that IDOT's decision was not so unreasonable as to constitute an abuse of the grantee's discretion. While there may have been several weaknesses in the solicitation, the mere existence of a technical deficiency in the solicitation is not, absent a showing of prejudice, a compelling reason to cancel an invitation and readvertise.

The protest was denied.

Eagle International, Inc. (Eagle) vs. New Jersey Transit Corporation (NJ Transit), 7/16/86

The protestor alleges that: (1) the IFB imposes extraordinary and unnecessary bonding requirements seriously restricting competition without justification, (2) the Life Cycle Costing (LCC) provisions unduly benefit Motor Coach Industries (MCI) and fail to consider other important LCC factors, (3) the unusual number of sole source restrictions on major components of the coach has added substantial and unnecessary costs to the IFB, and (4) NJ Transit's refusal to stay the entire procurement process until after protests are resolved places bidders in the position of submitting bids based on possibly faulty assumptions about the outcome of the protest process.

UMTA denied the protest in regard to bonding requirements pursuant to locally promulgated regulations allowing such bonding and the fact that historically NJ Transit has required such bonding on all its UMTA funded bus procurements. UMTA upheld the protest of LCC provisions citing that NJ Transit specifications did not identify the evaluation scheme it would use so as to provide all potential bidders with a knowledgeable basis on which to make their bids. UMTA upheld the protest related to sole source restrictions directing NJ Transit to review its specifications and identify the salient characteristics of each brand name listed. UMTA dismissed the protest to stay the bid process since NJ Transit agreed to delay its procurement until the resolution of the protest.

The bid protest was denied in part, upheld in part and dismissed in part.

Atkinson System Technologies Company (Atkinson) vs. City and County of Honolulu (Honolulu), 7/10/86

The protestor claimed that Honolulu violated Disadvantaged Business Enterprise/Women Business Enterprise (DBE/WBE) regulations by the manner in which bidders were evaluated for DBE and WBE goals attainment and good faith efforts.

UMTA took issue with Honolulu's sequence of evaluating DBE/WBE compliance. Honolulu first reduced the quantities offered in each bid to meet the maximum budget and then evaluated DBE/WBE compliance based on the reduced scope. UMTA determined that absent specific information on possible

quantity reductions for the solicitation, bidders did not have notice and thus could not be expected to prepare their bids accordingly. Thus, Honolulu should first apply the DBE evaluation criteria established by the solicitation and then reduce the scope of award to that bidder.

The protest was upheld.

Flxible Corporation (Flxible) vs. South Bend Public Transportation Corporation (SBPTC), 7/29/86

Protestor raises the issues of whether (1) SBPTC improperly applied credits for "corrosion resistance—structural integrity" in evaluating bids, and (2) SBPTC improperly renegotiated prices after bid opening and increased the procurement from 10 to 20 buses in a manner not in accordance with the option pricing requirements of the solicitation.

UMTA found that SBPTC's application of the credit for "corrosion resistance—structural integrity" was so unreasonable as to constitute an abuse of discretion. UMTA further found that SBPTC's attempt to exercise the option for an additional number of vehicles and to renegotiate the price of those vehicles after bid opening is permissible under the terms of the IFB.

The protest was upheld in part and denied in part.

Goodyear Tire & Rubber Company (Goodyear) and Washington Metropolitan Area Transit Authority (WMATA), 8/5/86

The protestor raised the issues of (1) whether UMTA Circular 4220.1A bid protest procedure applies to the subject procurement, (2) whether the Buy America provisions of the Surface Transportation Assistance Act of 1982, apply to the subject procurement, (3) whether WMATA's acceptance of Firestone's Buy America certification submitted with its bid as meeting the requirements of 49 CFR 661 and the IFB constitutes "a violation of federal law or regulation" as that term is used in UMTA Circular 4220.1A, and (4) whether WMATA's treatment of the Buy America provision in the IFB violates the fundamental principle of federal procurement that all suppliers be given a full and fair opportunity to compete on an equal basis.

UMTA determined that (1) UMTA Circular 4220.1A applies to the subject procurement, (2) Buy America provisions apply to the subject procurement, (3) WMATA's acceptance of Firestone's Buy America certification did not constitute a violation of federal law or regulation, and (4) WMATA provided all suppliers a full and fair opportunity to compete on an equal basis.

The protest was upheld in part and denied in part.

Braun Corporation (Braun) vs. Minnesota Department of Transportation (MN-DOT), 8/29/86

The protestor raised the issues of (1) whether MN-DOT acted arbitrarily or capriciously in finding Braun's bid nonresponsive to the solicitation requirement that the wheelchair lift provide for "power-up and power-down" operation, and (2) whether MN-DOT acted arbitrarily or capriciously in finding Braun's bid nonresponsive to the solicitation requirement that the wheelchair lift be powered by a second battery, based upon MN-DOT's interpretation of the "specifications questionnaire" filed by Braun.

UMTA denied the protest on the first issue as it found that MN-DOT could reasonably find the Braun bid nonresponsive on its face. UMTA dismissed the protest on the second issue as it found that post-bid opening submission of the "MN-DOT Specifications questionnaire" to determine bidder responsiveness was a threshold issue which must be addressed at the local level before the second issue would be ripe for UMTA review.

The protest was denied in part and dismissed in part.

Hegenscheidt Corporation (Hegenscheidt) vs. Metropolitan Atlanta Rapid Transit Authority (MARTA), 9/9/86

The protest raised the issues of (1) whether Hegenscheidt's protest should be dismissed as untimely, (2) whether MARTA's specification of the Simmons-Stanray wheel truing machine in its Invitation for Bids (IFB) constitutes a violation of Federal laws or regulations prohibiting the use of exclusionary and discriminatory specifications, and (3) whether MARTA's actions following Hegenscheidt's prebid protest of the wheel truing machine language contained in the IFB evidence a failure to properly review a protest in violation of UMTA Third Party Contracting Guidelines.

UMTA determined that (1) any untimeliness in filing with UMTA was caused by actions of the grantee and is therefore excusable, (2) MARTA's specifications were exclusionary and discriminatory. Further, the use of "brand name or equal" specifications must be accompanied by a listing of the salient characteristics of the product specified and MARTA failed to include any salient characteristics in the IFB, nor did it state the evaluation factors it would use in determining whether a proposed product was "equal", and (3) MARTA violated UMTA's requirement that protests receive proper review at the grantee level.

The protest was upheld on all issues.

VO-ED Services vs. the Alameda-Contra Costa Transit District, 9/16/86

The protestor alleged that the successful firm had less experience and a less educated staff than protestor's firm and that the protestor's costs were lower.

UMTA determined the protestor did not provide concrete evidence that the grantee acted arbitrary or capricious in its evaluation process. Further, in an RFP situation, price is only one factor.

UMTA denied to accept the protest for consideration.

Firestone Tire and Rubber Company (Firestone) vs. Metropolitan Transit Commission (MTC), 9/29/86

The protest raises the issue of whether it was a violation of federal law and/or procurement practices for the MTC to convert the Goodyear price escalation factors, submitted in terms of cents, to dollars, where the IFB required that they be submitted in cents.

UMTA found that converting Goodyear's escalation factors to dollars from cents did not prejudice Goodyear nor violate federal law, since the conversion was necessitated by the failure of Firestone and the Michelin Tire Corporation, the other unsuccessful bidder, to submit their bids in terms of cents as required by the IFB.

The protest was denied.

North Star Contracting Corporation (North Star) vs. New York Transit Authority (NYCTA), 9/10/86

The basis of the protest was that North Star was the lowest responsible bidder on the subject contract and was wrongfully denied award of the contract. Allegedly, its proposal was declared nonresponsive because of its omission of not acknowledging receipt of addendum 5, which should have been treated as a minor informality and rectified prior to award.

UMTA could not conclude that NYCTA acted arbitrarily or capriciously in determining North Star to be nonresponsive. NYCTA determined that waiving the defect was impermissible under state law and would impugn the integrity of the bidding process. NYCTA's actions were consistent with the relevant Federal procurement principles.

The protest was denied.

Motorola vs. Metro Area Transit of Omaha (MAT), 10/23/86

Motorola protested an award to General Railway Signal (GRS) alleging that GRS's bid was nonresponsive as submitted and was made responsive by substantial alteration of the original proposal after bid opening.

UMTA found that the issue raised was clearly within the discretionary powers of the grantee and that the grantee's determination was not so unreasonable as to constitute an abuse of the grantee's discretion. MAT determined that GRS' bid was responsive as submitted and that information sought and received after bid opening was merely to clarify and verify that the equipment bid was acceptable. As Motorola failed to show the grantee abused its discretionary power, UMTA found no basis to review the grantee's determination that GRS submitted a responsive bid.

The protest was dismissed.

SHB and LEBCO vs. the City of Galveston (Galveston), 11/12/86

The protestor alleged that Galveston violated Federal regulations requiring maximum open and free competition and that award must be made to the low responsive, responsible bidder.

UMTA found that Galveston determined the protestor to be nonresponsive and not responsible. Further, UMTA will not substitute its judgment for that of the grantee absent a showing that Galveston was arbitary in determining the protestor was nonresponsive and not responsible.

The protest was dismissed.

The Flxible Corporation vs. Central Ohio Transit Authority (COTA) 11/13/86

The protester raised the issue of whether COTA acted arbitrarily or capriciously in its decision to award the bus contract to GMC in light of Flxible's contention that GMC did not provide sufficient documentation as to crashworthiness testing requirements per the bid specifications.

UMTA found that COTA did not act arbitrarily or capriciously in determining GMC's responsiveness in its bid.

The protest was denied.

Bid Protest Decisions for 1987

Flxible Corporation vs. Chicago Transit Authority (CTA), 1/6/87

Flxible raised the issue of whether it is a violation of Federal law or procurement principles for the CTA to require a performance bond at 50 percent of the contract price "* * * until the end of the specified warranty period, up to maximum of seven years * * *" UMTA found that requiring a 50 percent performance bond for a 7 year period after delivery and acceptance constitutes an unnecessary bonding requirement in violation of OMB Circular A–102 and section 3a(2)(C) of the Urban Mass Transportation Assistance Act of 1964 as amended.

UMTA found that such a requirement was unnecessary and impermissibly exclusionary in light of CTA's requirements of a 100 percent performance bond until delivery and acceptance, and an extended warranty of 12 years or 600,000 miles on the structure of the bus.

The protest was upheld.

Kranco Incorporated vs. New Jersey Transit Corporation (NJ Transit), 1/12/87

The protestor protested award of the contract to Foley Handling Co., Inc. (Foley) and alleged that Foley (1) failed to satisfy the testing requirement of the solicitation, and (2) did not comply with the solicitation's subcontracting percentage limitations. UMTA upheld the protest in that it found NJ Transit did not strictly apply its definitive responsibility criteria as it related to the testing requirement and therefore was in violation of a fundamental principle of procurement. UMTA denied the protest on issue (2) because UMTA found that the protester failed to carry its burden of establishing a clear violation of law.

The protest was upheld in part and denied in part.

Lone Star Industries (Lone Star) vs. Metropolitan Atlanta Rapid Transit Authority (MARTA), 2/3/87

Lone Star protested the award to J.H. Pomeroy (Pomeroy) and raised the following issues, (1) whether MARTA acted arbitrarily or capriciously, in violation of UMTA Circular 4220.1A, in determining that Pomeroy met the good faith efforts requirement with respect to meeting the Minority Disadvantaged Business (MBE) goals, and (2) whether MARTA violated UMTA Circular 4220.1A in its review of the local Lone Star protest.

UMTA found that MARTA acted arbitrarily and capriciously in determining Pomeroy had met the good faith efforts requirements for MBE goals. UMTA determined that there was no reasonable basis for the decision to award to Pomeroy and that Lone Star's local protest was not properly reviewed.

The protest was upheld.

General Farebox Incorporated (GFI) vs. Contra Costa County Transit Authority (CCCTA), 4/10/87

The protest raised several issues pertaining to the procurement and award of the contract to Cubic Western: (1) Whether CCCTA improperly used competitive negotiation rather than sealed bids for the procurement of allegedly standard products; (2) Whether the CCCTA specifications and basic requirements were prejudicially incomplete because they failed to state specifically all important aspects of performance; (3) Whether evaluation of the GFI proposal was based on factors not in the specification and not discussed with GFI, and whether some factors that CCCTA found attractive had nothing to do with quality, performance or reliability; (4) Whether the failure of CCCTA to request "best and final" price proposals unfairly prejudiced GFI; (5) Whether GFI was unfairly prejudiced by CCCTA's apparent lack of a formal means of scoring the proposals; (6) Whether GFI was unfairly prejudiced by CCCTA's alleged failure to investigate and require tests to ascertain facts in the case; and (7) Whether CCCTA's alleged disclosure to GFI of the successful bidder's price information was reason for the procurement to be rescinded.

UMTA ruled that GFI did not show CCCTA had no rational basis for awarding the contract to Cubic Western. In response to each issue UMTA found: (1) CCCTA's reason for employing competitive negotiation to meet "specific and/or unique needs" provided a rational basis; (2) It was not unreasonable for CCCTA to refrain from listing explicitly every detail of performance that CCCTA found attractive. In fact to do so may have resulted in unduly exclusionary or discriminatory specifications; (3) The issue of specificity of evaluation factors was addressed in item (2) above and CCCTA presented a rational basis for award to the proposal that offered the lowest price; (4) It would be inappropriate to call for best and final offers where no negotiations took place or where there was insignificant movement on the part of the proposers positions. This could result in an action which violates the integrity of the procurement process; (5) The protester did not show that CCCTA arbitrarily scored the proposals; (6) Absent explicit proof that CCCTA abused its discretion, the extent of verifying is judged to be a local matter; and (7) GFI did not present evidence that CCCTA disclosed Cubic's price information to GFI.

UMTA denied the protest in its entirety.

Communication Associates (Associates) vs. Sacramento Regional Transit District (SRTD), 5/15/87

The protest raised the issues of: (1) Whether SRTD failed to comply with minority business enterprise (MBE) requirements contained in the SRTD request for proposal and Federal Regulations, (2) Whether SRTD failed to follow the selection process described in the procurement document and failed to document changes in the selection process prior to interview and negotiations, (3) Whether SRTD engaged in irregular undocumented bidding procedures; and (4) Whether the SRTD selection panel's decision reflected improper bias due to conflict of interest by certain panel members.

UMTA found that (1) SRTD was within its discretion in implementing the Federal requirements when it accepted MBE certification information after proposal opening; (2) SRTD made reasonable accommodations to negotiate with several competitors in the competitive range and did not provide a competitive advantage to any proposer or open the process to manipulation; (3) SRTD erroneously disclosed price and cost proposals and the protest was upheld on this issue. However, UMTA found no intent on the part of SRTD to induce impermissible auctioning. Further, SRTD provided the cost data in direct response to Associates request; (4) Associates failed to carry its burden of establishing the existence of any real or apparent conflict of interest which affected the award decision.

The protest was upheld in part and denied in part.

Transcontrol Corporation (Transcontrol) vs. Delaware River Port Authority (DRPA), 5/15/87

The protestor alleged that the DRPA specification was unduly restrictive and exclusionary in that it required all vital relays to be manufactured by the Union Switch and Signal Division of the American Standard Company.

UMTA found that based on supporting facts and figures, DRPA adequately demonstrated that its restrictive need was justified.

The protest was denied.

Lorien Systems (Lorien) vs. Orange County Transit District (OCTD), 7/10/87

The protest raised three issues: (1) Whether OCTD failed to adhere to written procurement procedures in violation of UMTA Circular 4220.1A, (2) Whether undue pressure was placed on OCTD's technical and purchasing staff to award contracts to bidders personally favored by politicians in disregard of the results of technical and financial analysis and UMTA Circular 4220.1A; and (3) Whether OCTD created artificial obstacles to participation by women-owned businesses through a policy and practice of favoring traditionally used vendors.

UMTA upheld protest issue (1) that OCTD violated fundamental principles of procurement because OCTD did not negotiate with each offeror in the competitive range, ask for best and final offers, and evaluate those offers in the manner described in the RFP. Because the procurement did not meet Federal standards, it was not eligible for Federal support. UMTA determined that if, however, OCTD were to negotiate with both Lorien and the other proposer on an even basis, giving each party an opportunity to revise its proposal in light of the clarifications of minimum needs, UMTA funds may be made available. Protest issues (2) and (3) were dismissed. UMTA determined the evidence of favoritism was not unimpeachable and UMTA refrained from making a determination on bid protest issue (2). On bid protest (3) Lorien did not present evidence to support the charge of barriers to women-owned business participation.

The protest was upheld in part and dismissed in part.

Ross and White Company vs. Golden Gate Bridge, Highway and Transportation District (GGBHTD), 8/27/87

Protestor alleged that the GGBHTD specification was not complete, adequate and realistic and did not clearly define the items needed.

UMTA declined to accept the protest for consideration because the protestor provided no evidence to support its allegation that GGBHTD's specification was deficient.

The protest was dismissed.

Herzog Contracting Corporation (Herzog) vs. Metropolitan Transit Development Board (MTDB), 8/25/87

The protest raised the issue of whether the awardee, Comstock Engineering, Inc. (Comstock) had an organizational conflict of interest which resulted in an unfair competitive advantage over other bidders or would impair Comstock's objectivity if a contract were awarded in violation of procurement regulation.

UMTA found that the protestor, Herzog had not demonstrated that the alleged conflict of interest resulted in an unfair competitive advantage to Comstock. Further, UMTA found that MTDB developed an appropriate means for dealing with the issue of potential post-contract award conflict of interest. However, to the extent that MTDB had not yet fully implemented such measures, UMTA directed MTDB to amend Task 3 of the design contract prior to award to avoid any potential for a conflict of interest.

The protest was denied.

Homer J. Olsen, Inc. vs. Bay Area Rapid Transit District (BART) 8/28/87

Protestor requested UMTA to reconsider its decision not to accept Homer J. Olsen's protest challenging the constitutionality of the Department of Transportation Minority Business Enterprise (MBE) regulation and its implementation by BART.

UMTA held that the protestor did not raise any factual issues, instead the protestor presented United States District and Appellate Court cases which are not applicable to UMTA.

In the absence of specified errors of law or information not previously considered, UMTA denied the request for reconsideration.

Aerotron, Inc. (Aerotron) vs. Delaware Administration for Specialized Transportation (DAST), 8/31/87

The protestor alleged that DAST's decision to award to the second low bidder, Motorola, was so unreasonable as to constitute an abuse of discretion.

UMTA found that DAST supported its position and addressed each of Aerotron's objections in a reasonable manner. There was no question but that DAST carefully and thoroughly reviewed the matter. The protestor failed to carry its burden to show that DAST was arbitrary and capricious and abusive of its discretion.

The protest was denied.

Fru-Con Construction Corporation (Fru-Con) vs. Southern California Rapid Transit District (SCRTD), 9/30/87

Protestor raised three issues: (1) Whether SCRTD failed to meaningfully review Fru-Con's protest of the determination that Fru-Con did not satisfy the contract's Disadvantaged Business Enterprise (DBE) and Women-Owned Business Enterprise (WBE) good faith efforts requirements; (2) Whether SCRTD complied with Federal law in rejecting Fru-Con's bid on the grounds that Fru-Con failed to comply with the good faith efforts requirement. Specifically, whether SCRTD incorrectly applied the UMTA requirements that the apparent successful competitor on an UMTA financially assisted contract needs to satisfy the grantee of its good

faith efforts; and (3) Whether SCRTD equitably evaluated all competitors' compliance with DBE/WBE requirements.

UMTA denied the first two issues by finding that (1) since SCRTD had procedures assuring review of Fru-Con's bid protest, followed such procedures, and meaningfully reviewed the protest, the fact that SCRTD's process did not contain certain procedural requirements was nonprejudicial but should be remedied in future procurements; and (2) SCRTD's mechanism to assure DBE/WBE participation and their standards for determining good faith efforts were within the limits of the discretion delegated to recipients by UMTA. UMTA upheld the third issue concluding that SCRTD did not have a reasonable basis for determining that the second low bidder met the contract DBE/WBE requirements.

The protest was denied in part and upheld in part.

Transcontrol Ansaldo Trasporti (Transcontrol) vs. Southeastern Pennsylvania Transportation Authority (SEPTA), 10/26/87

The protest alleged that SEPTA arbitrarily and capriciously found its bid nonresponsive for the reason that Transcontrol's bid specified 3 percent of work would be performed by Transcontrol on site when the contract documents required a minimum of 10 percent. It was argued that the error was immaterial and should have been waived.

UMTA determined that SEPTA was correct in not waiving the mistake as a minor informality. Further, had SEPTA allowed a waiver, it would have allowed Transcontrol an unfair second chance to decide whether it wished to contract and possibly on what terms.

The prostest was denied.

Evergreen Stage Lines, Inc. (Evergreen) vs. C–TRAN, 10/30/87

The protestor objected to the method used by C–TRAN in evaluating Evergreen's operating rights and the particular value assigned to those rights. The protestor also challenged the qualifications of the contractor selected by C–TRAN, claiming the contractor was not reponsible and other unsupported allegations.

UMTA concluded that matters of methods of evaluating transit operating rights and the particular value assigned to certain rights are not governed by Federal law.

UMTA declined to take jurisdiction over the bid protest.

Kingston's Associates (Kingston) vs. Washington Metropolitan Area Transit Authority (WMATA), 12/28/87

Kingston protested award of a contract to Keys and Asssociates, Inc. (Keys) alleging that Keys did not comply with the WMATA invitation for bids regarding participation of Disadvantaged Business Enterprises (DBE) and Women-owned Business Enterprises (WBE).

UMTA found that WMATA violated both its own solicitation requirements and the applicable federal regulations for DBE/WBE participation when it determined that Keys was a responsive and responsible bidder eligible for award.

The protest was upheld.

Armstrong World Industries (Armstrong) vs. Greater Cleveland Regional Transit Authority (GCRTA), 11/10/87

The protester contended that the awardee, Daleco Holographics (Daleco) was nonresponsive to the solicitation and offered a product which deviated substantially from the material specified.

UMTA found that GCRTA properly recognized that a fair reading of the specification permitted both the product which Daleco bid and the product bid by Armstrong.

The protest was denied.

Firestone Tire and Rubber Company (Firestone) vs. Transit Authority of River City (TARC), 12/11/87

Firestone alleged that TARC's decision regarding Firestone's bid was unreasonable, unduly restrictive, discriminatory, and exclusionary.

UMTA determined that Firestone's protest to UMTA was untimely based on the fact that more than 10 working days transpired between the date Firestone knew local remedies had been exhausted and the date UMTA received Firestone's protest.

The protest was dismissed as untimely.

Motorola, Inc. (Motorola) vs. Mass Transportation Administration in Baltimore, MD (MTA), 12/11/87

The protestor alleged that MTA improperly interpreted its own bid protest procedures. Therefore, MTA improperly denied Motorola's bid protest as untimely and made an award to an allegedly nonresponsive bidder.

UMTA found that the protestor's grievance related entirely to the State's interpretation of its own law and regulations. The MTA's decision to dismiss the protest on the basis of untimeliness, and the Maryland State Board of Contract Appeals' decision to uphold the MTA's decision was not shown to be unreasonable. The State's interpretation and implementation of the requirement in this case was consistent with its interpretations in prior analogous situations.

The protest was denied.

G.E. Johnson Construction Company, Inc. (Johnson) vs. Denver Regional Transportation District (RTD), 12/30/87

The protestor alleged that RTD wrongly declared Johnson's bid as late and therefore to be rejected.

UMTA found that the RTD failed to clearly designate the point of bid delivery or the controlling time clock in violation of fundamental principles of Federal procurement. UMTA further found that the protector's bid was properly delivered to the RTD prior to the established bid opening time. As a result, UMTA determined that the RTD decision to reject Johnson's bid was arbitrary and so unreasonable as to constitute an abuse of the grantee's discretion.

The protest was upheld.

Decisions 1987—Charter Bus Operations (UMT Act Sections 3(f) and 49 CFR 604)

Erin Tours v. *Command Bus Company 9/9/1987*

Erin Tours (Erin) alleged that the Command Bus Company (Command), an UMTA subrecipient, had operated charter service using UMTA-funded equipment which had been deleted from regular service. Specifically, Erin alleged that Command has violated 49 CFR 604.11(b)(1), by operating weekday charters during peak rush hours. UMTA determined that Command's charter activities were in violation of Sections 3(f) and 12(c)(6) of UMT Act, and the implementing regulations in 49 CFR part 604. UMTA found that Command, at least on one occasion, used UMTA funded vehicles during weekday rush hour in non-mass transportation related operations. However, UMTA's revised charter regulation, which came into effect on May 13, 1987, prohibits subrecipients from providing charter service using UMTA-funded equipment. Since the issue of Command's noncompliance with the former charter regulation had become moot at the time of this decision, UMTA held that is was not in the public interest to impose a sanction upon Command.

Syracuse & Oswego Motor Lines, Inc., et al. v. *Central New York Regional Transportation Authority, 10/2/1987*

Syracuse & Oswego Motor Lines (S&O) alleged that the Central New

York Regional Transportation Authority (CNYRTA) violated the charter bus restrictions in the UMT Act, and the implementing regulations, 49 CFR Part 604.1. UMTA determined that the alleged violations regarding the incidential use provisions, operating beyond the urban area, and predatory pricing were not substantiated. However, UMTA found that CNYRTA has not supported its contention that all expenses were properly allocated for charter service, and UMTA could not conclude that charter revenues did exceed charter costs for the years in question. However, since the implementation of UMTA's revised charter regulation on May 13, 1987, CNYRTA is precluded from providing direct charter service. UMTA therefore held that it was not in the public interest to issue an order or guidance to CNYRTA regarding charter operations pre-dating the current regulation.

Kraftours Corporation v. *Harris County Metropolitan Transportation Authority, 8/13/1987*

Kraftours Corporation alleged that National Transit Services (NTS) was operating charter bus service without UMTA authority, while under contract with the Harris County Metropolitan Transportation Authority (MTA), an UMTA grantee. The complaint specifically alleged that NTS has used publicly-funded buses to provide interstate charter service from Houston, Texas, to Red Rock, Oklahoma. UMTA determined that the charter operations performed by NTS were outside the scope of its contract with MTA, and with the exception of signage displayed on NTS vehicles, the charter service in question was not performed using UMTA-funded equipment or operating assistance. UMTA concluded that there was no substantial violation of the charter restrictions in the UMT Act and the implementing regulations, on the part of either NTS or MTA.

Private Enterprise Participation Requirements

(UMT Act Sections 3(e) and 8(e))

Eagle Bus Inc. v. *New York City Transit Authority, 12/28/1987*

Eagle Bus Inc. (Eagle) alleged that the New York City Transit Authority (NYCTA) had violated the provisions of the UMT Act and the implementing policy, in its planning and provision of mass transportation service from Staten island to Manhattan. The focus of Eagle's complaint was that the NYCTA was in the process of planning service over the same routes served by Eagle, and that Eagle had not been given the opportunity to participate in the planning and provision of the service. UMTA determined that NYCTA violated Sections 3(e), 8(e), and 9(f) of the UMT Act and the implementing policy, by failing to involve the private sector in its planning process. However, given the modest level of the service actually implemented by the NYCTA, UMTA did not require the NYCTA to follow a private sector participation process with regard to this service. The NYCTA was nonetheless directed to follow UMTA's privatization guidelines in any future plans to provide new or restructured service.

Hudson Bus Lines, Inc. v. *Massachusetts Bay Transportation Authority, 11/6/87*

Hudson Bus Lines Inc. alleged that the Massachusetts Bay Transportation Authority (MBTA) had violated Section 3(e) of the UMT Act, by operating bus service on Route 326, in competition with Hudson. UMTA determined that Hudson had been adequately involved in the plan to transfer operating responsibilities along Rt. 326, and thus concluded that there was no violation of Section 3(e) with respect to Hudson. However, UMTA found that the MBTA had not followed UMTA Section 3(e) requirements with regard to other private operators. UMTA therefore directed the MBTA to follow its own private sector involvement procedures when planning or implementing new or restructured service.

Durango Transportation Inc. v. *City of Durango, Colorado, 2/24/1987*

Durango Transportation Inc. alleged that the City of Durango (Durango) violated Section 3(e) of the UMT Act, since it had not considered private transportation providers to the maximum extent feasible in the provision of transportation services funded by UMTA, and did not have the legal capacity under Section 3(a)(2)(A)(i) to carry out the financed projects. The service in question included the Opportunity Bus service provided to the elderly and handicapped persons funded under section 18 of the UMT Act, which provides formula grants to non-urbanized areas, and the general mass transit service to and from the La Plata City Airport and the Purgatory Ski Area funded under section 3 of the UMT Act, which provides discretionary capital grants. UMTA determined that Durango did comply with 3(e) of the UMT Act and the implementing policies in its grant applications for Section 18 grants. Further, UMTA found that given the evidence submitted, Durango had legal capacity under Colorado Law.

Issued on April 4, 1988.

Alfred A. DelliBovi,

Administrator.

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