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Friday
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WHO: The Office of the Federal Register.

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Reader Aids
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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 54, No. 32
Friday, February 17, 1989

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 687, Amdt. 1]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 687, Amendment 1, increases the quantity of California-Arizona navel oranges that may be shipped to market during the period February 10 through February 16, 1989. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 687, Amendment 1 (§ 907.987) is effective for the period February 10 through February 16, 1989.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528–S, P.O. Box 96456, Washington, DC 20090–6456. Telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This amendment is issued under Marketing Order 907 (7 CFR Part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatability.

There are approximately 125 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1988–89 adopted by the Navel Orange Administrative Committee (Committee). The Committee conducted a telephone vote on February 13, 1989, to consider the current and prospective conditions of supply and demand and recommended an increase in the quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that the market for navel oranges has improved significantly.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navel oranges.

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

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

1. The authority citation for 7 CFR Part 907 continues to read as follows:

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

2. Section 907.987 is revised to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 907.987 Navel Orange Regulation 687, Amendment 1.

The quantity of navel oranges grown in California and Arizona which may be handled during the period February 10, 1989 through February 16, 1989, are established as follows:

(a) District 1: 1,740,000 cartons;
(b) District 2: 260,000 cartons;
(c) District 3: unlimited cartons;
(d) District 4: unlimited cartons.

February 14, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–3808 Filed 2–16–89; 8:45 am]
BILLING CODE 3410–02–M

7 CFR Part 907

[Navel Orange Regulation 688]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 688 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period February 17 through February 23, 1989. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 688 (§ 907.988) is effective for the period February 17, 1989, through February 23, 1989.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 (7 CFR Part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 125 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1988–89 adopted by the Navel Orange Administrative Committee (Committee). The Committee met publicly on February 14, 1989, in Visalia, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that the demand for navel oranges exceeds supply for some sizes and the market is stronger.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navel oranges.

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

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

1. The authority citation for 7 CFR Part 907 continues to read as follows:

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

2. Section 907.988 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 907.988 Navel Orange Regulation 688.

The quantity of navel oranges grown in California and Arizona which may be handled during the period February 17, 1989, through February 23, 1989, are established as follows:

(a) District 1: 1,740,000 cartons;
(b) District 2: 260,000 cartons;
(c) District 3: unlimited cartons;
(d) District 4: unlimited cartons.

Dated: February 15, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–3928 Filed 2–16–89; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 910

[Lemon Regulation 653]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 653 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 350,000 cartons during the period February 19 through February 25, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 653 (§ 910.953) is effective for the period February 19 through February 25, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatability.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988–89. The Committee met publicly on February 14, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

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

2. Section 910.953 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.953 Lemon Regulation 653.

The quantity of lemons grown in California and Arizona which may be handled during the period February 19, 1989, through February 25, 1989, is established at 350,000 cartons.

Dated: February 15, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–3927 Filed 2–16–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 299 and 499

[INS Number: 1130–89]

Immigration and Nationality Forms; Display of Control Numbers

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule revises the listing of forms contained in 8 CFR 299.1, 299.5, and 499.1, by adding newly developed forms, revising edition dates for existing forms, and by adding those forms omitted from the previous revision. This revision is necessary to ensure that the Immigration and Naturalization Service uses and accepts only the current editions of forms listed in Parts 299 and 499 of this chapter.

EFFECTIVE DATE: February 17, 1989.

FOR FURTHER INFORMATION CONTACT: Thomas E. Cook, Senior Immigration Examiner, Immigration and Naturalization Service, 425 "I" Street NW., Washington, DC 20536, Telephone: (202) 633–3320.

SUPPLEMENTARY INFORMATION: Sections 299.1 and 499.1 list the prescribed forms to be used in compliance with subchapters A, B, and C of this chapter. This revision is necessary to ensure that the forms listings remain current. Section 299.5 is updated to maintain the centralized listing of current public use forms and their respective control numbers as issued by the Office of Management and Budget (OMB).

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary as this rule provides an up-to-date listing of approved Immigration and Nationality Forms to be used and accepted by the Immigration and Naturalization Service.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities.

This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment Analysis in accordance with E.O. 12612.

List of Subjects in 8 CFR Parts 299 and 499

Forms, Reporting and recordkeeping requirements.

Accordingly, Chapter I of Title 8, Code of Federal Regulations, is amended as follows:

PART 299—IMMIGRATION FORMS

1. The authority citation for Part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR Part 2.

2. Section 299.1 is amended by revising the entry for Form I–601 and by adding the following forms in numerical sequence, immediately before the entry ICAO.

§ 299.1 Prescribed forms.

* * * * *

I-291 (11-1-83)—Decision on Application for Status as Permanent Resident.
I-320B (9-1-75)—Agreement Between Employer of Alien Labor and the United States.
I-327 (10-1-82)—Permit to Reenter the United States.
I-488 (10-1-78)—Affidavit of Witness.
I-515 (8-2-83)—Notice to Student or Exchange Visitor Admitted Without I-20 or IAP-66.
I-516 (8-1-83)—Notice of Approval or Continuation of School Approval.
I-517 (8-1-83)—Review of School Approval.
I-541 (12-1-83)—Order of Denial of Application for Extension of Stay or Student Employment or Student Transfer.
I-543 (12-1-83)—Order of Denial of Application for Change of Nonimmigrant Status.
I-564 (10-1-82)—Form Letter—Reply to General Inquiries.
I-567 (9-21-79)—Approval of Application for Employment by G-4 Dependent.
I-594 (11-1-83)—Notice to Appear for Adjustment of Status.
I-601 (4-24-85)—Application for Waiver of Grounds of Excludability.
I-607 (2-1-72)—Order Re Waiver of Excludability Pursuant to Section 212 (h), (i) and Permission to Reapply.
I-644 (11-1-82)—Supplementary Statement for Graduate Medical Trainees.
I-762 (11-30-87)—Citation Pursuant to Section 274A of the Immigration and Nationality Act.
I-772 (7-7-87)—Declaration of Intending Citizen.
I-775 (5-26-88)—Visa Waiver Pilot Program Agreement.
I-777 (6-16-88)—Application for Issuance or Replacement of Northern Mariana Card.
I-791 (5-26-88)—Visa Waiver Pilot Program Information Form.

* * * * *

3. Section 299.5 is amended by adding Forms I-775, I-777, and I-791 immediately before the entry "User Fee", and adding Forms N-642 and N-643 immediately after the entry N-610 in numerical sequence to read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB control No.
I-775	Visa Waiver Pilot Program Agreement	1115-0149
I-777	Application for Issuance or Replacement of Northern Mariana Card	1115-0151
I-791	Visa Waiver Pilot Program Information Form	1115-0148
N-642	Data Sheet for Derivative Citizenship	1115-0153
N-643	Application for Certificate of Citizenship in behalf of an Adopted Child	1115-0152

* * * * *

PART 499—NATIONALITY FORMS

4. The authority citation for Part 499 is revised to read as follows:

Authority: 8 U.S.C. 1103; 8 CFR Part 2.

5. Section 499.1 is amended by adding Forms N-642 and N-643 as the last entry in numerical sequence to read as follows:

§ 499.1 Prescribed forms.

* * * * *

N-642 (4-14-88)—Data Sheet for Derivative Citizenship.
N-643 (4-14-88)—Application for Certificate of Citizenship in behalf of an Adopted Child.

Dated: February 2, 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 89-3826 Filed 2-16-89; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. 88-201]

Horse Protection Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: In this final rule, we are making permanent certain provisions of four interim rules that amended the Horse Protection Act regulations (referred to below as the regulations). Additionally, we are amending the regulations to reinstate a 1-inch heel/toe ratio for all horses, to remove a requirement that any artificial extension of the hoof length assume the slope of the front of the hoof wall, and to remove a provision that exempts a hoof from certain provisions of the regulations as long as its contralateral hoof meets those provisions. We are also clarifying the term "yearling" as used in the regulations. These amendments are necessary to better protect horses under the Horse Protection Act.

EFFECTIVE DATE: March 20, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Director, Animal Care Staff, Regulatory Enforcement and Animal Care, APHIS, USDA, Room 269, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8790.

SUPPLEMENTARY INFORMATION: In this document we are making final certain changes to 9 CFR Part 11, referred to below as the Horse Protection regulations (the regulations), that were made in four interim rules between April and October, 1988. In addition, based on comments from the public on those interim rules, we are amending the regulations to reestablish a heel/toe ratio for all horses, to remove a requirement that any artificial extension of toe length on horses assume the slope of the front of the hoof wall, and to remove a provision that exempts a hoof from pad height and heel/toe ratio requirements as long as its contralateral hoof meets those requirements. Additionally, we are clarifying the term "yearling" as used in the regulations.

Background Information

On April 26, 1988, we published in the **Federal Register** (53 FR 14778-14782, Docket No. 88-052) an interim rule that amended the regulations by expanding the list of devices and equipment prohibited for use on any horse at any horse show, exhibition, sale, or auction. Additionally, the interim rule prohibited the use of weights other than horseshoes on any horse, and prohibited the use of horseshoes weighing more than 16 ounces each. The interim rule also clarified which horses are subject to the scar rule.

On May 2, 1988, we published in the **Federal Register** (53 FR 15640-15641, Docket No. 88-079) an interim rule that removed certain restrictions on weights, horseshoes, and boots imposed by the April 26 interim rule, and that reinstated certain restrictions on the placement of lead and other weights on horses. Comments on both the April 26 and May 2 interim rules were required to be postmarked or received on or before June 27, 1988. However, those comment periods were extended until July 15, 1988, and then were subsequently reopened and extended again, as explained below.

On July 28, 1988, we published in the **Federal Register** (53 FR 28366-28373, Docket No. 88-125) a third interim rule that revised the list of devices or equipment prohibited for use on horses at any horse show, exhibition, sale, or auction. We removed provisions established by the April 26 interim rule that would have phased in a maximum pad height of 1 inch, and established, in their place, a prohibition on the use of pads that exceed 50 percent of the horse's natural foot length, or that fail to comply with other specified requirements. We prohibited packing materials between pad and hoof, except for certain approved materials, and expanded the restrictions on the use of weights on horses. We also amended

the regulations to allow the use of pliant plastic pads on horses. Additionally, in the July 28 interim rule, we reopened and extended the comment periods for the April 26 and May 2 interim rules by inviting comments on those two interim rules for the duration of the comment period established for the July 28 interim rule. Comments on all three interim rules were required to be postmarked or received on or before October 31, 1988.

Shortly before the comment periods closed, we received a request to extend the comment period on the July 28 interim rule until November 22, 1988. In response, we extended the comment periods on Docket No. 88–052, Docket No. 88–079, and Docket No. 88–125, so that we could consider all written comments postmarked or received on or before November 22, 1988.

On October 24, 1988, we published in the **Federal Register** (53 FR 41561–41562, Docket No. 88–160) a fourth interim rule that removed language that would have inadvertently terminated, after October 31, 1988, provisions that prohibit heel buildup in excess of 1 inch on yearling horses. Comments on that interim rule were due on or before November 23, 1988.

Comments Received

We received no comments on Docket No. 88–160, regarding heel buildup on yearling horses, and, except for a clarification we discuss below under the heading "Miscellaneous," we are making permanent the provisions of that interim rule without change.

In the third rule, Docket No. 88–125, published in the **Federal Register** July 28, 1988, we addressed all timely comments we received before that date regarding Docket No. 88–052 and Docket No. 88–079. After publication of Docket No. 88–125, we received slightly more than 300 comments that addressed either Docket No. 88–052, Docket No. 88–079, or Docket No. 88–125. Because the issues raised in those three dockets are interrelated, we discuss in this final rule all comments received since July 28 according to issues raised, rather than according to docket number.

Pads

In our July 28 interim rule, we amended the regulations, based in part upon our review and analysis of a joint recommendation of the American Horse Council (AHC) and the American Horse Protection Association (AHPA), to restrict pads used on horses to no longer than 50 percent of the length of the horse's natural hoof. Additionally, with respect to the use of pads less than 2 inches in length at the toe, we retained our existing regulations governing the heel/toe ratio, which provided that toe length must exceed the height of the heel by 1 inch or more. With respect to pads measuring 2 inches or more in length, we established provisions requiring that the height of such a pad at the heal be limited to no more than 1½ inches greater than the length of the pad at the toe.

Three commenters, including the American Morgan Horse Association, supported, without change, our July 28 interim rule with regard to pads.

Among the other comments we received regarding our July 28 interim rule was one that was jointly signed and submitted by the AHC, on behalf of its member organizations, and by the AHPA. The AHC represents over 150 horse industry associations, councils, establishments, and suppliers. Its membership represents a large majority of the major horse organizations in the country. The joint comment addressed the issue of pads on horses, with specific reference to hoof/pastern axis. According to the joint commenters, the recommendations in the comment were the result of extensive on-site observations they made at a number of horse shows that were held after the interim rule was published July 28.

The joint commenters stated that, based on their observations, one problem with the amended regulations is apparent. They stated that on some performance horses, the 1½-inch toe-length/heel-height differential for pads has produced excessive heel height and an abnormal hoof-pastern axis. The joint commenters noted that, in a few cases, the heel of a horse was so high that the coronary band was lower at the toe than at the heel—the reverse of normal.

According to the joint commenters, the problem seems to be due, at least in part, to the decision of some trainers to shoe their horses to the maximum toe-length/heel-height differential permitted by the regulations, without considering whether that would preserve the normal hoof/pastern axis. The commenters stated that the problem may also be a response to that provision in the regulations requiring that pads conform to the slope of the natural toe. According to the joint commenters, as overall toe length increases, breakover time slows because the length of the foot from toe to heel is greater. The joint commenters stated that raising the heel height, and thereby steepening the angle of the hoof, tends to shorten the overall length of the foot and increase breakover speed.

The joint commenters suggested that, because of the problems observed with hoof/pastern axis, the regulations be amended to help achieve or maintain a normal hoof/pastern axis, and to discourage shoeing practices that result in an abnormal axis. They stated that they believe that the Department's original heel/toe ratio, deleted in the July 28 interim rule, is an essential element of all shoeing practices incorporating pads. The joint commenters therefore suggested that the distinction in the regulations between artificial extensions less than and greater than 2 inches at the toe be abandoned. They stated that their measurements of a variety of show breeds that would be affected by the regulations indicated that, for nearly all horses, toe length exceeded heel height by 1 inch or more.

Our experience in enforcing the Horse Protection Act since issuance of the July 28 interim rule is consistent with the recommendation of the joint commenters. We believe that the recommendation presented in the AHC/AHPA joint comment would serve to maintain a normal hoof/pastern in animals governed by the regulations and better protect horses. Therefore, we are amending the regulations to remove the provision that states that the 1-inch heel/toe ratio applies only when pads are used that are less than 2 inches in length at the toe. We are also removing the provision that states that for pads that measure 2 inches or more in length, the height of the pad at the heel is limited to no more than 1½ inches greater than the length of the pad at the toe. In place of those provisions, we are requiring that overall toe length must exceed the total height of the heel by 1-inch or more.

With regard to heel/toe ratio, the joint commenters suggested that different heel/toe ratios be established for "full-sized" horses and for "ponies." They stated that their measurement of ponies, which they defined as animals 14 hands, 2 inches high or smaller at the withers, indicated that when properly trimmed and shod, short-hooved ponies may have a "normal" heel/toe ratio of only about ¾ inch. The joint commenters therefore suggested that different heel/toe ratios be established for "full-sized" horses and for "ponies." We are not making this suggested change in the regulations. Because the measurement difficulties in differentiating between different sizes of equines would make implementation of two different heel/toe ratios unworkable, and because the application of a 1-inch heel/toe ratio to ponies will not be harmful to animals of that size, and indeed will be beneficial to those animals, we are applying the 1-inch heel/toe ratio to all animals covered by the regulations.

Two commenters suggested that we require a 1½-inch heel/toe ratio for all horses. One of these commenters stated that a 1-inch heel/toe ratio has historically been insufficient to protect horses from being sored by "being stood straight up on their toe." We are making no changes based on this comment. Based on inspections we have conducted under the regulations, the evidence available to us at this time indicates that a 1-inch heel/toe ratio is sufficient to maintain a normal hoof/pastern axis in horses.

In our July 28 interim rule, we added a provision to the regulations requiring that any artificial extension of the toe length must assume the slope of the dorsum (front) of the hoof wall. As the basis for this provision, we explained that such a requirement would tend to limit the height of pads by increasing the length of the foot as more pads are added. This would cause the horse to "break over" more slowly as pad height increased. As noted in a comment submitted by the AHPA in response to our April 26 interim rule, a slowed breakover is undesirable in gaited horses, such as Walking Horses, because it allows the overstriding rear foot to interfere with the front foot as it leaves the ground.

However, a number of commenters, including APHIS veterinary medical officers responsible for administering and enforcing the Horse Protection Act, have submitted evidence indicating that such a requirement has been harmful, rather than beneficial to horses, and have recommended that we remove the "natural slope" requirement from the regulations. The commenters stated that many horses are striking the heel area of the front foot due to the increase in size of the pad at its base. The commenters also stated that many horses have developed swelling in their flexor tendons due to the extended toe, and are striking their elbow and rib area due to this increased length. As a result of these problems, we are removing the provision in the regulations that requires that pads on all horses subject to the regulations must assume the slope of the front of the hoof wall. Because pads will no longer be required to follow such a slope, we are also clarifying the regulations to indicate that the artificial extension of the toe length shall be measured from the distal portion of the hoof wall at the tip of the toe at a 90 degree angle to the proximal (foot/hoof) surface of the shoe. With regard to whether pad height can now be expected to be limited naturally under the amended regulations, we agree with the comment submitted by the AHPA in response to our April 26 interim rule, in which the commenter stated that, as a practical matter, those breeds of horses, including the Tennessee Walking Horse, that have historically used high pads, are not known for their ability to grow hoof and are not likely to be able to grow natural toe length in excess of 4 to 5 inches. As the AHPA correctly pointed out, beyond that length, the hoof wall will not support the weight of the pad assembly allowed by this rule, or the concussion of the horse's stride, without cracking or crumbling. We believe this natural limitation on hoof length will serve as a limiting factor on pad height.

Two commenters, who suggested that we remove the requirement that any artificial extension of toe length assume the slope of the front of the hoof, recommended that we not allow the pad assembly to be "chopped off" perpendicular from the toe of the natural hoof to the ground. The commenters suggested that in order to ensure an adequate foundation for the foot, the front of the pad assembly should be required to extend at least ½-inch in front of the horse's natural toe. We are making no changes based on this comment. Our experience in inspecting horses prior to the July 28 interim rule provided no evidence that horses were being sored because they were wearing pads that were cut off perpendicular from the horse's natural toe to the shoe.

Several commenters requested a specific maximum height on pads. The maximum heights recommended by the commenters ranged from ½ inch to 4 inches. Most of these commenters submitted no evidence to support their recommendations. One commenter, who recommended a maximum pad height of ½ inch, stated that a pad of that height would be adequate to meet the protective purposes of pads. The commenter stated that a ½ inch pad will protect a horse's hoof from hard or uneven surfaces, adequately cushion the hoof or limb, and permit the use of standard packing materials. Another commenter, who recommended a maximum pad height of 4 inches, stated that the "50-percent-of-hoof" formula may encourage the growth of an excessively long toe on the hoof. Two commenters suggested we retain the "50-percent-of-hoof" formula, but that we amend it to allow a maximum pad height of 2 inches at the toe. We do not agree with these suggestions and have concluded that the formula for pad height we established in the July 28 interim rule is appropriate. We also believe that the wide variety of breeds, ages, and uses of horses makes a maximum pad height based on the length of a horse's natural foot more appropriate than an absolute limit on pad height, and that such a formula will uniformly protect horses subject to the regulations. We are therefore making no changes to the regulations based on these comments.

Several commenters stated that pads of either 3 or 4 inches in height should be allowed until sufficient scientific evidence is gathered to support a "formula" for maximum pad height. We are making no changes based on these comments. The fact that no scientific research has determined precisely when a change in angulation becomes harmful makes it all the more appropriate to base maximum pad height on the foot configuration of each individual horse, rather than to impose an absolute limit on all horses.

One commenter stated that any pads, when left on for too long or without adequate care, can lead to maggot infestation and sole diseases. Another commenter stated that a prohibition of all pads would allow for frequent cleaning of a horse's foot, and for more frequent application of therapeutic medicine than is possible when pads are worn. As we stated in our July 28 interim rule, we agree that pads, improperly maintained, can cause foot problems in a horse. However, we believe that a horse with pathological problems is not necessarily a sore horse. We strongly agree that horse caretakers should strictly follow a maintenance regimen that protects each horse from the problems described above. If there is evidence that pathological conditions have resulted in a horse being sore, we will take appropriate action under the regulations.

Several commenters recommended a prohibition on all pads, because pads can hide objects inserted between the pad and the foot to cause soring. In our July 28 interim rule, we addressed similar comments. In that interim rule, we stated that we agreed with a joint comment of the AHC/AHPA, submitted in response to our April 26 interim rule, which stated that a thorough preshow inspection of a horse, including a visual inspection of the way it moves, is an effective means of detecting soreness in the horse. We noted at that time that APHIS officials and Designated Qualified Persons (DQPs) have the authority to direct that pads and shoes be removed to permit visual inspection of the bottom of the hoof, when there is, in their view, a reasonable basis to suspect the presence of pressure shoeing or foreign objects other than acceptable packing material on a particular horse. We continue to believe that the most

appropriate way of dealing with the insertion of objects is through enhanced enforcement, rather than through prohibition of all pads. Therefore, we are making no changes to the regulations based on this comment.

One commenter stated that we were incorrect in the July 28 interim rule to concur with the AHC/AHPA joint statement that pads can legitimately be used: (1) To maintain the natural angle of the foot and pastern; (2) to compensate for conformational abnormalities of the foot and limb; (3) to aid in keeping the shoes intact on those horses with thin-walled or brittle feet; (4) to increase or decrease support to the foot and limb as an aid in the treatment of lameness; and (5) to build up the proper matching length and angle of a foot that has been broken or damaged. The commenter stated that (1) maintaining a natural angle is done by a farrier and requires no pad; (2) adding pads to a horse with thin-walled or brittle feet will cause hooves to break; and (3) horses with conformational abnormalities, lameness, or a broken or damaged foot should not show. We continue to agree with the view of the joint commenters that pads may serve several legitimate purposes, including that of corrective shoeing. It is clear that in many cases corrective shoeing is an effective remedy to what would otherwise be a conformational abnormality or deficiency in a horse. Therefore, we are not prohibiting the use of pads on a horse because the pads are used for corrective purposes. However, we agree that a horse that needs corrective shoeing in violation of the regulations should not be allowed to compete in the show ring, or be exhibited or ridden at auction, and we believe that this prohibition should apply to horses that have one or more feet shod in violation of the regulations. Therefore, we are removing the provision in the regulations that exempts a hoof, for the purpose of corrective shoeing, from the provisions regarding pad height and heel/toe ratio as long as its contralateral hoof meets those provisions.

Action Devices

In our April 26 interim rule, we restricted the maximum weight of chains and rollers to 6 ounces, and subsequently made no changes to that provision. Several commenters supported that interim rule with regard to action devices without change. One commenter, the Walking Horse Trainers Association (WHTA), submitted results of a study the WHTA commissioned with regard to the use of action devices on horses. According to the WHTA, the study, which the WHTA stated did not include enough controls to be termed a "scientific" study, demonstrated that the use of action devices up to 9.87 ounces did not cause any sensitivity or inflammation to the pastern when used on a regular basis. The WHTA therefore recommended that the weight limit for action devices be no less than 6 ounces.

Many commenters, including the AHPA in a supplementary comment to its comment issued jointly with the AHC, recommended the prohibition of all action devices. In its supplementary comment, the AHPA stated that the issue that should be addressed is not the effect of a 6-ounce chain in itself, but rather the impact of a 6-ounce chain on a sore pastern. The AHPA, and many other commenters, stated that the use of action devices encourages the use of chemical substances on a horse's pasterns. According to the commenters, the objective of soring the pastern with chemical irritants is to make the horse more responsive to the action device through pain, and therefore more animated in its gait.

One commenter stated that the reduction in chain weight from 10 ounces to 6 ounces has led to deeper soring of horses' pasterns, to enable the lighter chains to produce the desired, gait-enhancing, irritation. Another commenter recommended a 3-ounce limit on chain weight, but included no evidence to support that recommendation.

We are making no changes to the regulations based on these comments. As we stated in our July 28 interim rule, we agree that the use of any action device on a pastern that is already sore will heighten a horse's discomfort. However, the best evidence available to us—including a study conducted by Auburn University (discussed in our April 26 interim rule), as well as a Department study conducted at the National Veterinary Services Laboratories in Ames, Iowa in 1975—indicates that while chains and other action devices weighing more than 6 ounces can sore horses, those weighing 6 ounces or less are not likely to sore horses. We continue to believe that properly conducted inspections are an effective means of detecting a horse with sore pasterns. Department inspectors will continue to carry out thorough inspections, and we will continue to emphasize that all individuals carrying out inspections under the DQP program must follow similar procedures.

One commenter stated that the lack of crippled, broken down, or maimed horses over the past 13 years proves that 10-ounce chains do not sore horses. We disagree with this conclusion. As we stated in our July 28 interim rule, a horse can be sore without becoming lame. Soring can be a temporary condition brought about for a particular show. A sored horse that is well cared for between shows may never become lame. Another commenter questioned the conclusiveness of Department evidence that showed that 10-ounce chains can cause soring, but submitted no evidence refuting the Department's conclusions.

Horseshoes and Other Weights

One commenter recommended that a 16-ounce limit be placed on horseshoes used on "medium" horses, and that heavier horseshoes be allowed on "draft or large-hoofed work horses." In our July 28 interim rule, we addressed the issue of a maximum horseshoe weight for all horses, stating that we agreed with the AHC/AHPA joint comment submitted in response to our April 26 interim rule that the variation among horses with regard to overall size, foot size, use, and hoof condition makes a specific size or weight limit on horseshoes inappropriate. We continue to hold this position, and believe that even a horseshoe weight limit that differentiates between "medium" and "large-hoofed" horses cannot adequately allow for the wide variety of shoeing needs among horses. We are therefore establishing no restrictions on the weight or size of horseshoes used on horses other than yearlings.

Two commenters addressed the issue of weights other than horseshoes used on horses. One of these commenters stated that adding weights of any kind to horseshoes is unnecessary, with the possible exception of borium for traction and skid resistance for horses ridden on cement and pavement. The other commenter suggested that we establish "weight restrictions," but included no specific recommendations. We agree that the use of weights on horses should be restricted, and have already established regulations restricting their use. We have not restricted the use of added weight between the bars of horseshoes, however, because this weight can be useful in corrective shoeing, and, based on our inspections at horse shows, exhibits, sales and auctions, has not contributed to the soring of horses.

One commenter recommended that the term "normal caulk," as used in the current regulations, be defined. The current regulations provide that "normal caulks at the rear of a horseshoe that do not exceed ¾ of inch in length" need not

be included when measuring the height of the horse's heel. Because "normal" caulks act as cleats and sink into the ground, there is no need to consider them when measuring heel height. However, according to the commenter, some horses are wearing caulks that are of excessive surface area, and that consequently cannot sink into the ground. The commenter recommended that, to prohibit such practices, a specific maximum surface size for "normal" caulks be established. We agree that the problem as alleged is worthy of further review. However, we believe that more evidence is needed regarding any such abuse of caulks—and regarding appropriate ways of dealing with such practices—before a change in the regulations is warranted. We therefore will review all information available to us regarding such practices, and will take whatever action is appropriate based on the evidence received.

Miscellaneous

A number of commenters addressed issues unrelated to the provisions of the interim rules. Among the topics discussed were two that also received considerable comment following publication of the April 26 interim rule—i.e., suggested improvements to the DQP inspection program and the practice of masking a horse's pain during inspection. We will carefully review the information we received and take whatever action we determine is appropriate.

In our October 24 interim rule, we removed language that would have terminated after October 31, 1988, provisions that prohibit heel build-up in excess of 1 inch on yearling horses. Until publication of that interim rule, § 11.2(b)(8) of the regulations, using a criterion that is standard to the horse industry, referred to yearling horses as those "up to 2 years old." However, in the October 24 interim rule, the language specifically referring to yearling horses as those "up to 2 years old" was omitted. Therefore, in this interim rule, we are once again clarifying the meaning of the term "yearling horses" in § 11.2(b)(8) by reinstating language that indicates that yearling horses are those up to 2 years old.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this final rule in conformance with Executive Order 12291 and Departmental Regulation 1512-1, and have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The changes to the regulations made by this rule will affect all horses equally, and will allow continued equitable competition among show horses.

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

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 11

Animal welfare, Horses, Humane animal handling, Soring of horses.

Accordingly, we are adopting as a final rule the interim rules amending 9 CFR Part 11 as published at 53 FR 14778–14782 on April 26, 1988; 53 FR 15640–15641 on May 2, 1988; 53 FR 28366–28373 on July 28, 1988; and 53 FR 41561–41562 on October 24, 1988; with the following changes:

PART 11—HORSE PROTECTION REGULATIONS

1. The authority citation for Part 11 continues to read as follows:

Authority: 15 U.S.C. 1823, 1824, 1825, and 1828; 44 U.S.C. 3506.

2. Section 11.2 is amended by redesignating paragraphs (b)(11) through (b)(18) as (b)(12) through (b)(19) respectively; by removing paragraphs (b)(8) and (b)(10); and by adding new paragraphs (b)(8), (b)(10) and (b)(11) to read as follows:

§ 11.2 Prohibitions concerning exhibitors.

* * * * *

(b) * * *

(8) Pads or other devices on yearling horses (horses up to 2 years old) that elevate or change the angle of such horses' hooves in excess of 1 inch at the heel.

* * * * *

(10) Artificial extension of the toe length, whether accomplsihed with pads, acrylics or any other material or combinations thereof, that exceeds 50 percent of the natural hoof length, as measured from the coronet band, at the center of the front pastern along the front of the hoof wall, to the distal portion of the hoof wall at the tip of the toe. The artificial extension shall be measured from the distal portion of the hoof wall at the tip of the toe at a 90 degree angle to the proximal (foot/hoof) surface of the shoe.

(11) Toe length that does not exceed the height of the heel by 1 inch or more. The length of the toe shall be measured from the coronet band, at the center of the front pastern along the front of the hoof wall to the ground. The heel shall be measured from the coronet band, at the most lateral portion of the rear pastern, at a 90 degree angle to the ground, not including normal caulks at the rear of a horseshoe that do not exceed ¾ inch in length. That portion of caulk at the rear of a horseshoe in excess of ¾ of an inch shall be added to the height of the heel in determining the heel/toe ratio.

* * * * *

Done in Washington, DC, this 14th day of February 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-3805 Filed 2-16-89; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Licensee Action During National Security Emergency

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to allow a licensee to take action that departs from approved technical specifications in a national security emergency. The amendment is necessary to specify in the regulations that for a national security emergency a licensee is permitted to take a needed action although it may deviate from technical specifications. This amendment will allow the licensee to implement national security objectives as designated by the national command authority through the NRC.

EFFECTIVE DATE: March 20, 1989.

FOR FURTHER INFORMATION CONTACT: Joan Aron, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492-9001.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 1983, the Commission published in the **Federal Register** (48 FR 13966), a final rule that set out § 50.54 of 10 CFR entitled, "Conditions of Licenses," that contains a provision permitting a license to take reasonable action that departs from a license condition or a technical specification (contained in a license issued under this part) in an emergency when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent. However, this provision does not apply to a national security emergency. The final rule in this notice allows a licensee to take action that departs from approved technical specifications in a national security emergency when this action is immediately needed to implement national security objectives as designated by the national command authority through the NRC and no action consistent with license conditions and technical specifications that can meet national security objectives is immediately apparent. The rule was published for comment on July 19, 1988 (53 FR 27174). A thirty-day comment period expired on August 18, 1988. Comments were received from four respondents.

Summary of Public Comments

A summary of the public comments follows:

(1) *Flexibility.* One commenter, writing on behalf of the nuclear power industry, supported the proposed amendment, stating that it provides licensees with desirable regulatory authority and operational flexibility to accommodate exigencies that may be associated with a declared national emergency.

(2) *Need for the amendment.* One commenter questioned the need for the proposed amendment, claiming that §§ 2.204, 50.54(x), and 50.103 offer more than enough authority to permit a licensee to deviate from technical specifications during a national emergency when such action is needed to implement national security objectives

The final rule does not duplicate existing requirements. Section 2.204 deals with the Commission's ability to issue an order for modification of a licensee and § 50.103 deals with the Commission's ability to suspend a license, recapture special nuclear material or order the operation of a facility during a state of war or national emergency. Paragraph (x) of § 50.54 grants authority to nuclear power plant licensees to take reasonable action that departs from a license condition or a technical specification in an emergency when such action is necessary to protect public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent. The amended rule provides the same flexibility to licensees but for the purpose of attaining national security objectives during a declared national security emergency.

(3) *Implementation.* One commenter questioned the lack of discussion relative to implementation requirements and suggested a delay in issuing the final rule until proper implementation guidance can be formulated.

The final rule provides a basis for the licensee to take action in accordance with governmental directives in a national security emergency, when this action is immediately needed to implement national security objectives as designated by the national command authority through the NRC and no action consistent with license conditions and technical specifications that can meet national security objectives is immediately apparent. Guidance concerning implementation will be formulated by the appropriate federal agencies and will be issued some time in the future.

(4) *Definition of a "national security emergency."* One commenter requested definition of a "national security emergency."

NRC Manual Chapter 0601, Continuity of Government Program, approved June 30, 1988, defines a national security emergency as "any occurrence, including nuclear attack, a national disaster, or other emergency, which seriously degrades or seriously threatens the national security of the United States or has been declared by the Congress." A national security emergency is established by a law enacted by the Congress or by an order or directive issued by the President pursuant to statutes or the Constitution of the United States.

(5) *Reporting requirements.* One commenter suggested that § 50.73(a)(2)(c) be revised to include the reporting requirements of the amended § 50.54(dd).

At present, there is no reporting requirement include in § 50.54(dd) and none is comtemplated for the immediate future. Thus, there is no need to revise 10 CFR 50.73(a)(2)(c).

Environmental Impact: Categorical Exclusion

The NRC has determined that this final regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget approval number 3150-0011.

Regulatory Analysis

The Commission previously has granted authority pursuant to 10 CFR 50.54(x) to nuclear power reactor licensees to take reasonable action that departs from a license condition or a technical specification in an emergency when the action is immediately necessary to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent. This final rule will provide the same flexibility to licensees for the purpose of attaining national security objectives in accordance with governmental directives during a declared national security emergency. The final rule does not significantly impact state and local governments and geographic locations; health, safety, and the environment; or costs to licensees, the NRC, or other Federal agencies. The final rule is in the interest of the common defense and security of the United States because it would facilitate operation of nuclear facilities in a national security emergency during which some deviation from facility technical specifications may be appropriate. This constitutes the regulatory analysis for this final rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact upon a substantial number of small entities. The final rule affects only

licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121. Because these companies are dominant in their service areas, this rule does not fall within purview of the Act.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule and, therefore, that a backfit analysis is not required for this rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 50

Antitrust, Classified Information, Fire Protection, Incorporation by Reference, Intergovernmental Relations, Nuclear power plants and reactor, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendment to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sec. 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13 and 50.54(dd) also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91 and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 through 50–81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.46(a) and (b), and 50.54(c) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.7(a), 50.10(a)-(c), 50.34 (a) and (e), 50.44(a)-(c), 50.46(a) and (b), 50.47(b), 50.48(a), (c),(d), and (e), 50.49(a), 50.54(a)(i), (i)(1), (l)-(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a(a), (c)-(e), (g), and (h), 50.59(c), 50.60(a), 50.62(c), 50.64(b), and 50.80(a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.49(d), (h), and (j), 50.54(w),(z),(bb),(cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(d), 50.70(a), 50.71(a)-(c) and (e), 50.72(a), 50.73(a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161(o), 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.54, a new paragraph (dd) is added to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(dd) A licensee may take reasonable action that departs from a license condition or a technical specification (contained in a license issued under this part) in a national security emergency:

(1) When this action is immediately needed to implement national security objectives as designated by the national command authority through the Commission, and

(2) No action consistent with license conditions and technical specifications that can meet national security objectives is immediately apparent.

A national security emergency is established by a law enacted by the Congress or by an order or directive issued by the President pursuant to statutes or the Constitution of the United States. The authority under this paragraph must be exercised in accordance with law, including section 57e of the Act, and is in addition to the authority granted under paragraph (x) of this section, which remains in effect unless otherwise directed by the Commission during a national security emergency.

Dated at Rockville, Maryland this 6th day of February 1989.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director of Operations.

[FR Doc. 89–3786 Filed 2–16–89; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H; Docket No. R–0660]

Membership of State Banking Institutions in the Federal Reserve System; Investment in Stock of Investment Companies

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interpretation.

SUMMARY: The Board of Governors has issued an interpretation of Regulation H, Membership of State Banking Institutions in the Federal Reserve System, 12 CFR Part 208, authorizing state member banks to purchase and hold for their own accounts stock of investment companies that are authorized to invest in certain securities that the banks may purchase directly and no others, but that may also enter into futures, forwards, options, repurchase agreements, and securities lending contracts relating to assets the banks may purchase directly. This action will expand the investment authority of state member banks, and will provide those institutions an opportunity to increase the diversity of their investments. Because this authority includes authority for state member banks to invest in stock of money market mutual funds (MMMFs), the Board has also rescinded 12 CFR 208.123. That interpretation authorized state member banks to invest in stock of MMMFs.

EFFECTIVE DATE: February 17, 1989.

FOR FURTHER INFORMATION CONTACT: Patrick J. McDivitt, Attorney (202/452–3818), Legal Division; Robert S. Plotkin, Assistant Director, Division of Banking Supervision and Regulation (202/452–2782); N. Edwin Demoney, Manager, Division of Banking Supervision and Regulation (202/452–2434); or for the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: The Board of Governors of the Federal Reserve System has determined that state member banks may purchase stock of investment companies when the investment companies are authorized, as stated in the investment objectives of their current prospectuses, to invest in the following securities and no others: United States Treasury and agency obligations, general obligations of states and municipalities, corporate debt securities, and any other securities

designated in 12 U.S.C. 24(7) as eligible for purchase by national banks that state member banks are authorized to purchase directly. This determination includes authority for state member banks to invest in investment company stock of the type described above when the investment companies have authority, as stated in the investment objectives of their current prospectuses, to enter into futures, forwards, and option contracts relating to the securities designated above, if the futures, forwards, and option contracts are to be used solely to reduce interest rate risk, and are not to be used for speculation. The determination also includes authority for state member banks to invest in investment company stock of the type described above when the investment companies have the authority, as stated in the investment objectives of their current prospectuses, to enter into repurchase agreements and securities lending contracts relating to the securities designated above if those contracts comply with policy statements adopted by the Federal Financial Institutions Examination Council. Because this interpretation does not restrict investments to stock of investment companies that are bought and sold at par as 12 CFR 208.123 did, state member banks may also invest in stock of MMMFs. For this reason 12 CFR 208.123 has been rescinded, and has been removed from the Code of Federal Regulations.

Administrative Issue

This action by the Board is an interpretative rule within the meaning of 5 U.S.C. 553. Accordingly, the Board has determined that no notice of proposed rulemaking is required.

List of Subjects in 12 CFR Part 208

Banks, banking, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

Pursuant to authority under section 9 of the Federal Reserve Act, 12 U.S.C. 321 *et seq.*, the Board is amending 12 CFR Part 208 as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

1. The authority citation for Part 208 continues to read as follows:

Authority: Sections 9, 11, and 21 of the Federal Reserve Act (12 U.S.C. 321–338, 248, and 486, respectively); sections 4 and 13(j) of the Federal Deposit Insurance Act (12 U.S.C. 1814 and 1823(j), respectively; section 7(a) of the International Banking Act of 1978 (12 U.S.C. 3105); sections 907–910 of the International Lending Supervision Act of 1983 (12 U.S.C. 3906–3909); sections 2, 12(b), 12(g), 12(i), 15B(c)(5), 17, 17A, and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c) (5), 78q, 78q–1, and 78w, respectively); and section 5155 of the Revised Statutes (12 U.S.C. 36) as amended by the McFadden Act of 1927.

§ 208.123 [Amended]

2. Section 208.123 is removed.

3. Part 208 is amended by adding § 208.124 to read as follows:

§ 208.124 Purchase of investment company stock by a state member bank.

(a) *Scope.* The Board of Governors has been asked whether a state member bank may purchase and hold for its own account stock of investment companies (mutual funds) whose portfolios consist entirely of securities that state member banks may purchase directly, and futures, forwards, options, repurchase agreements and securities lending contracts relating to those securities.

(b) *Investment authority.* The National Bank Act, 12 U.S.C. 24(7), provides that a national bank may purchase for its own account investment securities under such limits and restrictions as the Comptroller of the Currency may prescribe. The statute defines "investment securities" to mean marketable obligations evidencing indebtedness of any person, partnership, association, or corporation in the form of bonds, notes, and debentures. The Act further limits the holdings of securities of any one issuer to an amount equal to ten percent of the capital stock and surplus of the bank. These limits, however, do not apply to obligations issued by the United States, general obligations of any state or any political subdivision of any state, and to certain obligations of federal agencies. The restrictions of 12 U.S.C. 24(7) also apply to state member banks under (12 U.S.C. 335.

(c) *Authorization.* The Board has determined that a state member bank may purchase and hold for its own account stock of any investment company (including a money market mutual fund), subject to the following conditions:

(1) *Investment authority of the investment company.* The investment company may have authority, as stated in the investment objectives of its current prospectus, to invest in the following securities and no others: United States Treasury and agency obligations, general obligations of states and municipalities, corporate debt securities, and any other securities designated in 12 U.S.C. 24(7) as eligible for purchase by national banks that state member banks are authorized to purchase directly. The investment company may have authority, as stated in the investment objectives of its current prospectus, to enter into futures, forwards and option contracts relating to the above securities when those futures, forwards and option contracts are to be used solely to reduce interest rate risk and not for speculation. The investment company may also have authority, as stated in the investment objectives of its current prospectus, to enter into repurchase agreements and securities lending contracts relating to the securities designated above if those contracts comply with policy statements adopted by the Federal Financial Institutions Examination Council. *See* 45 F.R. 18,120 (March 20, 1980) and Fed. Res. Reg. Svc. ¶¶ 3–1535, 3–1579.1, and 3–1579.5.

(2) *Limits on investment.* (i) If the portfolio of the investment company in which a state member bank may invest consists solely of obligations that the bank could purchase without restriction as to amount, or solely of those obligations and futures, forwards, options, repurchase agreements and securities lending contracts relating solely to those obligations, no express limit is placed on investment.

(ii) If the portfolio of the investment company in which a state member bank may invest includes any securities that the bank could purchase subject to a restriction as to amount, the pro-rata share of holdings of such securities of an issuer indirectly held by a state member bank through its holdings of investment company stock (including money market mutual funds), when aggregated with the direct investment in securities of that issuer by the bank, must not exceed the investment limit.

(3) *Registration of publicly offered investment company stock.* Except as provided in section (c)(4), investment company stock purchased by a state member bank must be of an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and the Securities Act of 1933.

(4) *Privately offered fund.* The stock purchased may be of a privately offered fund if the sponsor of the fund is a subsidiary of a bank holding company, and if the stock of the fund is held solely by subsidiaries of the bank holding company.

(5) *Proportionate and undivided interest.* The stock purchased must represent an equitable, equal, and proportionate undivided interest in the underlying assets of the investment company.

(6) *Stockholders shielded from liability.* The stockholders must be shielded from personal liability for acts

and obligations of the investment company.

(7) *Bank investment policy and procedures.* (i) The investment policy of the bank, as formally approved by its board of directors, must specifically provide for investment in investment company stock. The investment policy must establish procedures, standards, and controls that relate specifically to investments in investment company stock.

(ii) Prior approval of the board of directors of the bank must be obtained for investment in a specific investment company and recorded in the official board minutes.

(iii) Unless the investment objectives of the investment companies, as stated in their current prospectuses, restrict investments to those obligations that the state member bank could purchase without restriction as to amount, the bank must review its holdings of investment company stock at least quarterly to ensure that investments have been made in accordance with established bank policies and legal requirements.

(8) *Reporting and accounting.* Reporting of holdings of investment company stock must be consistent with established standards for "marketable equity securities." Accordingly, the instructions for the quarterly Reports of Condition and Income and the requirements of the Financial Accounting Standards Board Statement No. 12 must be followed.

(i) Holdings of investment campany stock must be reported as "All other" securities on Schedule RC–B, Item 4(b) on the quarterly Reports of Condition, unless otherwise directed.

(ii) In no case may the carrying value of investment stock be increased above aggregate cost as a result of net unrealized gains. Holdings of investment company stock must be reported in the Reports of Condition at the lower of their aggregate cost or aggregate market value, determind as of the report date.

(iii) Sales fees, both "front end load" and "deferred contingency," must be deducted in calculating market value.

(iv) Any net unrealized loss or increase in a previously recorded net unrealized loss must be charged directly against "undivided profits and capital reserves." Subsequent reductions of any net unrealized loss must be credited directly to "undivided profits and capital reserves."

(v) A loss on an individual investment that is other than temporary, as that term is used for purposes of FASB Statement No. 12, must be charged to "noninterest expense" on Schedule RI of the Income Statement.

(d) *Evaluation of investment risk.* Investments in stock of investment companies and direct investments in debt securities are not treated the same for accounting, tax, and other purposes. Consequently, state member banks should evaluate investments in investment company stock in light of these differences and give special attention to the risks these differences impose.[1]

(e) *No effect on state law.* This interpretation shall not be construed as exempting a state member bank from any provision of state law.

By order of the Board of Governors of the Federal Reserve System, February 13, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–3714 Filed 2–16–89; 8:45 am]

BILLING CODE 6210–01–M

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12 CFR Part 208

[Regulation H; Docket No. R–0659]

Membership of State Banking Institutions in the Federal Reserve System; State Member Bank Call Report Publication Requirements

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting three technical amendments to its Regulation H. The first change makes it clear that, if a state member bank has filed its Report of Condition and Income ("Call Report") electronically, the signatures on the published copy of the Call Report must be the same as the signatures on the hard copy retained in the bank's files. The second change replaces the current requirement that a state member bank submit a certification of publication to its Reserve Bank with a requirement that it retain a copy of its published Call Report in its files and make it available to examiners upon request. The last change deletes outdated references in Regulation H to a report form concerning state member bank affiliates.

EFFECTIVE DATE: March 1, 1989.

FOR FURTHER INFORMATION CONTACT: Rhoger H. Pugh, Manager (202/728–5883), Division of Banking Supervision and Regulation; for users of the Telecommunications Device for the Deaf (TDD) only, Earnestine Hill or Dorothea Thompson (202/452–3544); Board of Governors of the Federal Reserve System, 20th and Constitution Avenue NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: In order to reduce processing time and expense as well as paperwork burdens, the federal banking regulations allow banks to file their Call Reports electronically provided the banks retain a signed hard copy of each Call Report submitted in electronic form. This policy has rendered certain Call Report publication requirements contained in the Board's Regulation H (12 CFR Part 208) contradictory or inappropriate. The Board is adjusting the publication requirements and related provisions in its Regulation H to account for electronic submission of the Call Report.

Currently, § 208.10(a)(3) of Regulation H requires that all signatures in the published copy of a state member bank's Call Report be the same as those on the original Report filed with its Federal Reserve Bank although the signatures on the printed staement may be typewritten or otherwise copied. Because the electronic copy of the Call Report does not have actual signatures, a state member bank filing electronically cannot technically satisfy this requirement. Therefore, the Board is amending § 208.10(a) to require that, in the case of a state member bank filing its Call Report electronically, the signatures in the published copy be the same as those on the hard copy of the Call Report retained by the state member bank.

Currently, § 208.10(a)(4) of Regulation H requires that each state member bank must submit to its Federal Reserve Bank a copy of the published Call Report attached to a certificate of publication. This submission is used to ensure that each state member bank publishes its Call Report as required. The published copy is in a form prescribed or endorsed by the Federal Reserve and duplicates the original copy (either in electronic copy or hard copy form) which each state member bank must submit to its Federal Reserve Bank. To reduce the burden caused by duplicative filings, both hard copy and electronic copy, the Board is deleting the requirement that banks must submit the published version of their Call Reports and to replace it with a requirement that each state member bank retain a copy of the published Call Report in its files to be made available to examiners upon request.

Currently, § 208.10(b)(2) and (3) of Regulation H specifies that published reports of affiliates should appear, when

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[1] The Board has issued a cautionary letter in conjunction with this interpretation. This letter recommends that a state member bank avoid undue concentration of investments in the stock of any fund or family of funds and apprises state member banks of the accounting and tax treatment of holding investment company stock. *See* Fed. Res. Reg. SVC. ¶ 3–416.16.

requested by the Board, on information collection forms that have expired. The Board is removing references to the obsolete forms.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 5 U.S.C. 601 *et seq.*), the Board certifies that the amendments would not have a significant economic impact on a substantial nubmer of small entities. The amendments simplify or reduce certain regulatory burdens for all depository institutions and have no particular effect on other small entities.

List of Subjects in 12 CFR Part 208

Membership, Banks, Accounting, Confidential business information, Federal Reserve System, Reporting and recordkeeping requirements, Securities, Disclosures of financial information.

Pursuant to the Board's authority under section 9 of the Federal Reserve Act, 12 U.S.C. 321 *et seq.*, the Board is amending 12 CFR Part 208 as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

1. The authority citation for 12 CFR Part 208 continues to read as follows:

Authority: Sections 9, 11(a), 11(c), 19, 21, 25, and 25(a) of the Federal Reserve Act, as amended (12 U.S.C. 321–338, 248(a), 248(c), 461, 481–486, 601, and 611, respectively); sections 4 and 13(j) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1814 and 1923(j), respectively); section 7(a) of the International Banking Act of 1978 (12 U.S.C. 3105); sections 907–910 of the International Lending Supervision Act of 1983 (12 U.S.C. 3906–3909); sections 2, 12(b), 12(g), 12(i), 15B(c)(5), 17, 17A, and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78b, 78*l*(b), 78*l*(g), 78*l*(i), 78o–4(c)(5), 78q, 78q–1, and 78w, respectively); and section 5155 of the Revised Statutes (12 U.S.C. 36) as amended by the McFadden Act of 1927.

2. Section 208.10(a)(3) is amended by changing the words "(Form FR 105a)" to read "(Forms FFIEC 031–034)" and by revising the last sentence to read as follows:

§ 208.10 [Amended]

(a) * * *

(3) * * * All signatures shall be the same in the published statement (although they may be typed or otherwise copied on the report for publication):

(i) As in the original report submitted to the Federal Reserve Bank if the bank does not submit its report of condition electronically, or

(ii) As retained in the bank's files in hard copy if the bank has filed its report of condition electronically. The hard copy retained in the bank's file must be made available to examiners upon request.

* * * * *

3. Section 208.10(a)(4) is revised to read as follows:

(a) * * *

(4) A copy of the printed report shall be retained in the bank's files and made available to examiners upon request.

* * * * *

4. Section 208.10(b) is amended by removing the first sentence in paragraph (2) and removing the words "attached to the certificate on Form FR 220a" at the end of paragraph (3).

By order of the Board of Governors of the Federal Reserve System, February 13, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-3713 Filed 2-16-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

14 CFR Parts 217 and 241

[Docket No. 44999; Amendment No. 217-2; 241-57]

RIN 2137-AA97, 2137-AB01

Aviation Economic Regulations; Report of Traffic and Capacity Statistics; Collection of Service Segment and Charter Data; the "T-100 System"; Correction

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects the final rule amending 14 CFR Parts 217 and 241 (Docket 44999) published in the **Federal Register** on November 16, 1988 (53 FR 46284). The rule established a new traffic reporting system known as the "T-100 System" for U.S. and foreign air carriers. This correction is not intended to address the pending petitions for reconsideration of the final rule (see notice published in the **Federal Register** on December 28, 1988 (53 FR 52404) suspending the effective date of the rule for all foreign air carriers.)

FOR FURTHER INFORMATION CONTACT: Donald Bright or Richard King, Office of Aviation Information Management, DAI-10, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-4384, or 366-4375, respectively.

SUPPLEMENTARY INFORMATION: In FR Doc. 88-26322 published in the **Federal Register** on Wednesday, November 16, 1988, corrections are made as follows:

1. On page 46291, the first column, the second full paragraph is corrected to read:

The Department has decided that it will not separately collect data behind a foreign carrier's homeland. Although not separately reported, these data will be included with the homeland data and reported as if the traffic enplaned or deplaned at the homeland. Except for the behind homeland data, the Department requires that traffic for any segment or market that includes a U.S. airport shall be duly reported. In its decision, the Department took into consideration the fact that other countries normally do not collect such information.

PART 217—[CORRECTED]

§ 217.5 [Corrected]

2. On page 46295, in the first column, § 217.5(b)(7), is corrected to read:

* * * * *

(b) * * *

(7) Revenue aircraft departures performed (Code 510). The number of revenue aircraft departures performed.

* * * * *

§ 217.10 [Corrected]

3. On page 46295, in the second column, in § 217.10 appendix, paragraph (a)(3), in the second line, "DAI-2" is corrected to "DAI-20."

4. On page 46299, in the second column, paragraph (g)(2)(ii) of § 217.10 appendix, is corrected by removing the last sentence.

PART 241—[CORRECTED]

Sec. 19–5—[Corrected]

5. On page 46307, section 19–5(c)(23), is correctly revised to read:

* * * * *

(c) * * *

(23) Revenue aircraft departures performed. The number of revenue aircraft departures performed.

* * * * *

§ 241.25 [Appendix corrected]

6. On page 46311, in the appendix to § 241.25, paragraph (j)(1), Field No. 18, positions 99–103, Mode 5N of the segement record layout in the description column is corrected to read: "Revenue aircraft departures scheduled (F, G520)"

7. Also in the appendix to § 241.25, the portion of Form 41 Schedule 100 appearing on page 46315 is corrected to read as follows:

BILLING CODE 4910-62-M

A-1. Air Carrier Name: _____ Code_____

A-2. Report Date: (Year) _____ (Month)_____

					C. ON-FLIGHT MARKET				
B-10 Revenue Freight Transp. (Pounds) F,L237 G,P237	B-11 Revenue Mail Transp. (Pounds) F,L239 G,P239	B-12 Revenue Acft. Dept. Sched. F520 6520	B-13 Revenue Aircraft Hours Ramp F,L630 G,P630	B-14 Revenue Aircraft Hours Airborne F,L610 G,P610	C-1 * Revenue Psgrs. Enplaned TOTAL/ First F,L110 F111	C-2 Revenue Psgrs. Enplaned Middle F113	C-3 Revenue Psgrs. Enplaned Coach F112	C-4 Revenue Freight Enplaned (Pounds) F,L217 G,P217	C-5 Revenue Mail Enplaned (Pounds) F,L219 G,P219
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BILLING CODE 4910-62-C

8. In the same appendix, Form 41 Schedule T–2 appearing on page 46317 is corrected as follows:

BILLING CODE 4910–62–M

(3) Form 41 Schedule T-2:

Provides data QUARTERLY to supplement detail T-100.

FORM 41 SCHEDULE T-2 U.S. AIR CARRIER TRAFFIC AND CAPACITY BY AIRCRAFT TYPE		Air Carrier Name:_____ Code:_____ Entity Code: _____ Report date: (Year)_____ (Month)_____			
		Aircraft Type Code:	Aircraft Type Code:	Aircraft Type Code:	Aircraft Type Code:
		_____	_____	_____	_____
SCHEDULED ALL-CARGO SERVICES:					
Revenue ton-miles	G240				
Available ton-miles	G280				
Revenue aircraft miles flown	G410				
Aircraft departures performed	G510				
NONSCHEDULED SERVICES:					
Aircraft departures performed	V510				
ALL SERVICES:					
Revenue passenger-miles (000)	Z140				
Available seat-miles (000)	Z320				
Revenue ton-miles	Z240				
Mail revenue ton-miles	Z249				
Freight revenue ton-miles	Z247				
Available ton-miles	Z280				
Revenue aircraft miles flown	Z410				
Aircraft departures performed	Z510				
Revenue aircraft hours (airborne)	Z610				
Revenue aircraft hours (ramp)	Z630				
Total aircraft hours (airborne)	Z650				
Aircraft days - equipment	Z810				
Aircraft days - routes	Z820				
Aircraft fuels issued	Z921				

RSPA Form 41 Schedule T-2

BILLING CODE 4910-62-C

Issued in Washington, DC, on February 7, 1989.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration, DOT.

[FR Doc. 89-3333 Filed 2-16-89; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 189

[Docket No. 87N-0055]

Substances Prohibited From Use in Human Food; Hydrogenated 4,4'-Isopropylidene-Diphenolphosphite Ester Resins

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations by adding hydrogenated 4,4'-isopropylidene-diphenolphosphite ester resins to the list of substances that are prohibited from use in human food. FDA is taking this action because there are no studies that establish safe conditions of use for this additive.

DATES: Effective March 20, 1989, except to any provisions that may be stayed by the filing of proper objections; written objections and requests for a hearing by March 20, 1989.

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

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

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 9, 1987 (52 FR 33952), FDA issued a proposal to add hydrogenated 4,4'-isopropylidene-diphenolphosphite ester resins to the list of substances that are prohibited from use in human food (21 CFR Part 189). In the same issue of the **Federal Register** (52 FR 33929), the agency issued a final rule that removed the listing for hydrogenated 4,4'-isopropylidene-diphenolphosphite ester resins from § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010). FDA took these actions because adverse neurological effects were observed in a study in which dogs were fed the additive, and because there are no studies that establish safe conditions of use for this additive.

FDA gave interested persons 60 days (until November 9, 1987) to file comments on the proposal to list hydrogenated 4,4'-isopropylidene-diphenolphosphite ester resins in 21 CFR Part 189 and 30 days (until October 9, 1987) to file objections to the revocation of its listing in the food additive regulations. No comments were received on the proposal (52 FR 33952), and no objections or requests for a hearing were received in response to the final rule (52 FR 33929) revoking the use of the additive. Therefore, FDA is listing hydrogenated 4,4' isopropylidene-diphenolphosphite ester resins as substances prohibited from use in food-contact surfaces, as proposed.

The agency has previously considered the environmental effects of this rule as announced in the proposed rule (52 FR 33952). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

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

In accordance with Executive Order 12291, FDA has previously evaluated the economic impact of this final rule. The agency has determined that the final rule is not a major rule as defined by Executive Order 12291. The agency's findings of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment displayed in the Dockets Management Branch (address above).

Any person who will be adversely affected by this regulation may at any time on or before March 20, 1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 189

Food ingredients, Food packaging, Prohibited food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 189 is amended as follows:

PART 189—SUBSTANCES PROHIBITED FROM USE IN HUMAN FOOD

1. The authority citation for 21 CFR Part 189 continues to read as follows:

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

2. New § 189.300 is added to Subpart C to read as follows:

§ 189.300 Hydrogenated 4,4'-isopropylidene-diphenolphosphite ester resins.

(a) Hydrogenated 4,4'-isopropylidene-diphenolphosphite ester resins are the condensation product of 1 mole of triphenyl phosphite and 1.5 moles of hydrogenated 4,4'-isopropylidene-diphenol such that the finished resins have a molecular weight in the range of 2,400 to 3,000. They are synthetic chemicals not found in natural products and have been used as antioxidants and as stabilizers in vinyl chloride polymer resins when such polymer resins are used in the manufacture of rigid vinyl chloride polymer bottles.

(b) Food containing any added or detectable levels of these substances is deemed to be adulterated and in violation of the Federal Food, Drug, and Cosmetic Act, based upon an order

published in the **Federal Register** of September 9, 1987 (52 FR 33929).

Dated: February 10, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-3730 Filed 2-16-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Bacitracin Methylene Disalicylate

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 supplemental new animal drug application (NADA) filed by A. L. Laboratories, Inc., providing for use of Type A medicated articles containing 25, 40, and 50 grams of bacitracin methylene disalicylate per pound to make Type C medicated feeds for the prevention of ulcerative enteritis in quail.

EFFECTIVE DATE: February 17, 1989.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: A. L. Laboratories, Inc., a subsidiary of A/S Apothekernes Laboratorium for Specialpraeparater, One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, has filed a supplement to NADA 46-592 for bacitracin methylene disalicylate. The supplement provides for the use of Type A medicated articles containing 25, 40, and 50 grams of bacitracin methylene disalicylate per pound for making Type C medicated feeds for growing quail, for the prevention of ulcerative enteritis due to *Clostridium colinum* susceptible to bacitracin methylene disalicylate. The supplemental NADA is approved and 21 CFR 558.76(d)(1)(x) is amended to reflect the approval.

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

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

2. Section 558.76 is amended in the table in paragraph (d)(1)(x) by adding a new entry for "Quail" under the "Indications for use", "Limitations", and "Sponsor" columns to read as follows:

§ 558.76 Bacitracin methylene disalicylate.

* * * * *

(d) * * *

(1) * * *

Bacitracin methylene disalicylate in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(x) * * *		* * *		* * *
		Quail; for the prevention of ulcerative enteritis in growing quail due to *Clostridium colinum* susceptible to bacitracin methylene disalicylate	From Type A medicated articles containing 25, 40, or 50 grams of bacitracin methylene disalicylate. Feed continuously as the sole ration.	046573

* * * * *

Dated: February 9, 1989.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 89-3731 Filed 2-16-89; 8:45am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Under Secretary of the Navy has (1) determined that USS ALBANY (SSN-753) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval submarine, and (2) has directed that certain corrections be made to the tables in the existing Part 706. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400. Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Under Secretary of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS ALBANY (SSN-753) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule

21(c), pertaining to the arc of visibility of the sternlight; Annex I, section 2(a)(i), pertaining to the height of the masthead light; Annex 1, section 2(k), pertaining to the height and relative positions of the anchor lights; and Annex I, section 3(b), pertaining to the location of the sidelights, without interfering with its special function as a Navy ship. The Under Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided that USS ALBANY (SSN-753) is a member of the SSN 688 class of vessels for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of section 706.3, are equally applicable to USS ALBANY (SSN-753).

Notice is also provided that the Under Secretary of the Navy has determined that the existing tables of 32 CFR 706.2 should be revised to correct certain errors contained therein.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on USS ALBANY (SSN-753) in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

Accordingly, 32 C.F.R. Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 C.F.R. Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table One of § 706.2 is amended by adding the following vessel:

Vessel	Number	Distance in meters of forward masthead light below minimum required height. Section 2(a)(i), Annex I
USS Albany	SSN-753	3.5

3. Table Three of § 706.2 is amended by removing the following vessels:

USS SAM HOUSTON SSBN-609
USS JOHN MARSHALL SSBN-611
USS RHODE ISLAND SSBN-730

4. Table Three of § 706.2 is amended by adding the following vessels:

Vessel	Number	Masthead lights, arc of visibility; Rule 21(a).	Side lights, arc of visibility; Rule 21(b)	Stern light, arc of visibility; Rule 21(c)	Side lights, distance inborad of ship's sides in meters; Section 3(b), Annex I	Stern light distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters; Section 2(k), Annex I	Anchor lights, relationship of aft light to forward light in meters; Section 2(k), Annex I
*	*	*	*	*	*	*	*	
USS SAM HOUSTON	SSN-609	.....	114°	252°	3.8	7.6	2.1	1.7 above.
USS JOHN MARSHALL	SSN-611	228°	113°	252°	3.8	7.6	2.1	0.9 above.
*	*	*	*	*	*	*	*	
USS ALBANY	SSN-753	225°	112.5°	209°	4.3	6.1	3.4	1.7 below.
*	*	*	*	*	*	*	*	
USS HENRY M. JACKSON	SSBN-730	.....	.....	209°	5.3	9.0	3.8	4.0 below.

Date: February 7, 1989.

Approved:

Lawrence Garrett, III

Under Secretary of the Navy.

[FR. Doc. 3728 Filed 2-16-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110, 162, and 165

[CGD 05-88-17]

Special Anchorage Areas, Anchorage Grounds, and Regulated Navigation Area, Hampton Roads, VA; Correction

AGENCY: Coast Guard, DOT.

ACTION: Notice of final rule; correction.

SUMMARY: The Coast Guard is correcting errors which appeared in the Federal Register on January 9, 1989 (54 FR 604) which revised the anchorage regulations in 33 CFR 110.168 and the regulated navigation area in 33 CFR 165.501 for Hampton Roads, VA.

FOR FURTHER INFORMATION CONTACT: Lieutenant D.T. Ormes, Port and Vessel Safety Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, VA 23704-5004 (804) 398-6388.

SUPPLEMENTARY INFORMATION: The Coast Guard published the final rule on January 9, 1989 (54 FR 604) which revised the anchorage regulations in 33 CFR 110.168 and the regulated navigation area in 33 CFR 165.501 for Hampton Roads, VA. The final rule contained errors which are corrected by this notice.

The following corrections are made:

§ 110.168 [Corrected]

1. On page 606, in the third column, in § 110.168(a)(4)(iii), Anchorage K, the first longitudinal position should read "76°20'20.1"W" vice "76°20'32.2"W".

2. On page 607, in the first column, in § 110.168(v), Anchorage T, the first longitudinal position should read "76°18'22.4"W" vice "76°19'18'22.4"W", the second longitudinal position should read "76°17'52.2"W" vice "76°17'52.2"22.4"W", and the sixth longitudinal position should read "76°18'07.8"W" vice "76°19'18'07.8"W".

3. On page 607, in the first column, in § 110.168(c), in the sixth line, "that" should read "this".

§ 165.501 [Corrected]

1. On page 608, in the third column, in § 165.501(a)(1), a clerical error omitted a portion of the described boundary. This paragraph should read: "A line drawn across the entrance to Chesapeake Bay between Wise Point and Cape Charles Light, and then continuing to Cape Henry Light."

2. On page 610, in the third column, in § 165.501(d)(12), in the tenth line, "yards" should read "feet".

§§ 165.505 and 165.506 [Removed]

1. A clerical error omitted this statement: "Sections 165.505 and 165.506 are removed".

Dated: February 6, 1989.

A.D. Breed,

Commander, Fifth Coast Guard District.

[FR Doc. 89-3645 Filed 2-16-89; 8:45 am]

BILLING CODE 4910-14-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket Nos. 3 RM89-2 and R87-1; Order No. 818]

Domestic Mail Classification Schedule; Postal Rate and Fee Changes, 1987 Effective Date of Changes in Second Class

Issued February 10, 1989.

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: In its March 22, 1988, adoption of the Postal Rate Commission's recommended Docket No. R87-1 decision, the Governors of the Postal Service set January 1, 1989, as the effective date for the change in the method for calculation of the 10% sample copy allowance. The Commission's April 29, 1988, **Federal Register** publication (page 15387) of the corresponding changes to be made in the Domestic Mail Classification Schedule (DMCS) included references to that effective date. As the change has now been implemented, it is appropriate to remove those references.

EFFECTIVE DATE: January 1, 1989.

ADDRESS: Correspondence should be sent to Charles L. Clapp, Secretary of the Commission, 1333 H. Street NW, Suite 300, Washington, DC 20268-0001 (telephone: 202/789-6840).

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, 1333 H Street NW, Suite 300, Washington, DC 20268-0001 (telephone: 202/789-6820).

SUPPLEMENTARY INFORMATION: As part of Docket No. R87-1 (*See* 52 FR 18498-18533), the Postal Service proposed that the method used in calculating the 10% sample copy allowance qualifying for second-class rates be changed from weight to number of pieces. In approving the Commission's recommended Docket No. R87-1 decision, the Governors of the Postal Service set January 1, 1989, as the effective date for this change. The Commission noted this date in its **Federal Register** publication listing the changes made in the DMCS as a result of Docket No. R87-1. 53 FR 15387. The reference was codified into the CFR at 39 CFR Part 3001, Subpt. C, App. A, section 200. As the change has now been implemented, it is appropriate to remove the reference to the effective date from the CFR.

The change to the DMCS which is published in this order reflect the Governors' March 22, 1988, decision. The Commission gave notice of this decision at 53 FR 15385-15393 (Apr. 29, 1988). Consistent with the Commission's explanation in the rulemaking (Docket No. RM85-1) which led to the publication of the DMCS in the **Federal Register**, this change is published as a final rule, since procedural safeguards and ample opportunities to have different viewpoints considered have already been afforded to all interested persons.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

List of Changes

PART 3001—RULES OF PRACTICE AND PROCEDURES

Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule

1. The authority citation for 39 CFR Part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622-3624, 3661, 3662, 84 Stat. 759-762, 764, 90 Stat. 1303; (5 U.S.C. 553), 80 Stat. 383.

2. The Domestic Mail Classification Schedule published as Appendix A to Subpart C (39 CFR 3001.61 through 3001.68) is amended by removing the "Editor's Note" and the references to it in sections 200.0107c, 200.020lb, 200.0216 and 200.093.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 89-3586 Filed 1-16-89; 8:45 am]

BILLING CODE 7715-01-M

DEPARTMENT OF DEFENSE

48 CFR Part 252

Department of Defense Federal Acquisition Regulation Supplement; Small Business Competitiveness Demonstration Program; Correction

AGENCY: Department of Defense (DoD).

ACTION: Interim rule and request for comments; correction.

SUMMARY: This document corrects an interim rule on Small Business Competitiveness Demonstration Program which was published in the **Federal Register** on Friday, January 27, 1989 (54 FR 4246), and corrected on February 3, 1989 (54 FR 5484). The action is necessary to add text which was inadvertently omitted from the rule.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7266.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Accordingly, the Department of Defense is correcting 48 CFR Part 252 as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. On page 4248, section 252.219-7012 is corrected by redesignating the existing paragraph (b) as paragraph (c), and adding a new paragraph (b) to the provisions, to read as follows:

252.219-7012 Small business concern representation for the Small Business Competitiveness Demonstration Program.

* * * * *

(b) (Complete only if Offeror has certified itself under the clause at FAR 52.219-1 as a small business concern under the size standards of this solicitation.)

The Offeror represents and certifies as part of its offer that it —— is, —— is not an emerging small business.

* * * * *

[FR Doc. 89-3723 Filed 2-16-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 385, 386, 390, 391, 392, 393, 394, 395, 396, 398, and 399

[FHWA Docket Nos. MC-113, 114, 117, 119, 123, 125, and 127]

Federal Motor Carrier Safety Regulations

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice regarding status of rulemakings.

SUMMARY: The FHWA is issuing this notice to provide information about the status of the rulemaking actions initiated because of the passage of the Motor Carrier Safety Act of 1984 (the Act). With publication of the rulemaking actions summarized in this notice, the FHWA hereby completes the

requirements contained in sections 206 and 215 of the Act to issue regulations pertaining to commercial motor vehicle safety.

DATE: This determination is issued as of February 9, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366-2981, or Mr. Paul L. Brennan, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The Motor Carrier Safety Act of 1984 (the Act), 49 U.S.C. app. 2501-2520 (Supp II 1984), was signed into law by the President on October 30, 1984.

Section 215 of the Act provides that the Secretary of Transportation, in cooperation with the Interstate Commerce Commission (ICC), shall by rule, after notice and opportunity for comment, establish a procedure to determine the safety fitness of owners and operators of commercial motor vehicles, including persons seeking new or additional operating authority on motor carriers. On June 25, 1986, the FHWA issued a notice of proposed rulemaking (NPRM) in the **Federal Register** (51 FR 23088), Docket No. MC-123. A final rule was published in the **Federal Register** on December 19, 1988 (53 FR 50961) revising 49 CFR Parts 385 and 386. It has been determined that no further action is necessary at this time.

Section 206 of the Act directed the Secretary to issue regulations, not later than 18 months from date of enactment, pertaining to commercial motor vehicle safety. On January 23, 1985, the FHWA published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** (50 FR 2998), Docket No. MC-114, seeking public comment concerning possible revisions to the Federal Motor Carrier Safety Regulations (FMCSRs). It was announced that the ANPRM was the first step in implementing Section 206 of the Act. Subsequently, it was decided that each Part of the FMCSRs should be addressed separately. Thus a public docket was established for each Part of the FMCSRs.

The following information will identify each rulemaking action that had been initiated as a result of the passage of the Act. Further, a brief summary of each rulemaking action is set forth and followed by the status of each.

Part 390—General

The proposed revision sought to assist the various segments of the truck and bus industries in their efforts to comply with the FMCSRs by (1) incorporating definitions from the Act; (2) clarifying and updating the regulations; (3) eliminating redundancy; (4) combining and locating in a single place the definitions of many general items presently located throughout the FMCSRs; and (5) addressing comments concerning the elimination of certain regulatory exemptions and, in particular, recission of the "exempt intracity operation." Also proposed were conforming amendments to 49 CFR Parts 391-397 and 399.

A notice of proposed rulemaking (NPRM) was published in the **Federal Register** on July 13, 1987 (52 FR 26278), Docket No. MC-114. The comment period closed September 11, 1987.

Status: A final rule was published in the **Federal Register** on May 19, 1988, (53 FR 18042). As noted in the final rule, a related issue, which is not a requirement of the Act, concerning FHWA's authority over private carriers of passengers, is to be the subject of a separate rulemaking.

Part 391—Qualifications of Drivers

On January 23, 1985, the FHWA proposed to require motor carriers to ensure that drivers who operate (1) commercial motor vehicles transporting certain classes of harzardous materials or (2) cargo tank (including portable tanks) commercial motor vehicles requiring placards meet additional or more stringent qualification requirements (50 FR 2998), Docket No. MC-120.

Status: The additional driver qualification requirements concerning a single driver's license and alcohol and drug disqualification have already been addressed in the final rule that created Part 383, Commercial Driver's License Standards; Requirements and Penalties, and amended 49 CFR 391.11, Qualifications of drivers. See 52 FR 20574, June 1, 1987, Docket No. MC-125. The Research and Special Programs Administration (RSPA) is presently developing a rulemaking action which will propose to establish minimum training requirements for persons involved in the transportation of hazardous materials cargo. Included in the RSPA's proposed regulations will be minimum training standards for drivers that relate to the proper location, distribution, and securement of hazardous materials cargo. Any additional driver qualification requirements concerning the use of controlled substances will be addressed in a comprehensive rulemaking that will be published as an NPRM in the near future. In view of the above, it has been determined that no further action is necessary at this time and Part 391 is considered to be reissued pursuant to the Act. Docket No. MC-120 is thereby closed.

Part 392—Driving of Motor Vehicles

In responding to the ANPRM, Docket No. MC-114 (50 FR 2998), only seven commenters offered comments relating to Part 392. Five commenters contended that § 392.3, Ill or fatigued operator, should be rewritten to protect the rights of drivers who refuse to drive when fatigued. The existing rule prohibits the driver from operating a commercial motor vehicle when fatigued and prohibits the motor carrier from requiring or permitting a driver to operate a commercial motor vehicle when fatigued. Section 405 of the Surface Transportation Assistance Act of 1982 (STAA) (Pub. L. 97-424, 96 Stat. 2097, 2157) established a mechanism to protect drivers who believe they have been discriminated against. We found no need to revise this section to accomplish the commenter's request. One commenter suggested repeal of the mandatory seat belt requirement contained in § 392.16, Use of seat belts. We believe that the use of seat belts saves lives and enhances the safety of all users of the highways. An analysis conducted by the National Highway Traffic Safety Administration's (NHTSA) National Center for Statistics and Analysis revealed that for 1985 more than 2,000 lives would have been saved if every State mandated the use of seat belts for that year. Therefore, we believe no change in this section is warranted. Another commenter suggested amending § 392.22, Emergency signals; stopped vehicles, by inserting the equivalent number of paces next to each distance prescribed for placement of emergency signals to give drivers a clearer understanding of the required distances. We do not believe such a change is necessary. The rule, as written, is clear. Measurement in feet is universally recognized. A pace is defined as 30 inches in the dictionary and as 36 inches when used in a military parlance.

Status: It has been determined that no further action is necessary at this time and Part 392 is considered to be reissued pursuant to the Act.

Part 393—Parts and Accessories Necessary for Safe Operation

The FHWA proposed amendments to the Federal Motor Carrier Safety Regulations (FMCSRs) relative to requirements affecting axles and attaching parts, brake systems, frame

and frame assemblies, lights, steering systems, suspension systems, wheels and rims, fuel tanks, fuel systems, and other vehicle parts and accessories. This action was taken to enhance the safe operation of commercial motor vehicles in interstate commerce.

An NPRM was published in the **Federal Register** on February 26, 1987 (52 FR 5892), Docket No. MC–127. The comment period closed June 29, 1987.

Status: A final rule was published in the **Federal Register** on December 7, 1988, (53 FR 49380). The effective date of the final rule will be March 7, 1989.

Part 394—Notification and Reporting of Accidents

The FHWA amended Part 394 of FMCSRs by revising those sections relating to the notification and reporting of accidents. This amendment raised the reporting threshold for property damage accidents from $2,000 to $4,200. Subsequently, on March 10, 1987, the reporting threshold was adjusted upward to $4,400. In addition, under the accident reporting criteria, the definition of "bodily injury" was clarified for reporting purposes. The FHWA further clarified the reporting requirements under Part 394 by addressing the instances when an accident report was not timely filed, because a motor carrier was unaware of the accident at the time or was unaware that it was reportable.

Status: A final rule was published in the **Federal Register** on February 20, 1986 (51 FR 6125), Docket No. MC–117. The effective date of the final rule was January 1, 1986. The second final rule was published in the **Federal Register** on March 10, 1987 (52 FR 7277) and was effective on the same date.

Part 395—Hours of Service of Drivers

The FHWA amended Part 395 of the FMCSRs to (1) eliminate four items currently required on the driver's record of duty status; (2) clarify the present exemption pertaining to the preparation of a driver's record of duty status within a 100 air-mile radius of the driver's work reporting location; (3) redefine the retail store delivery exemption (December 10 to December 25); (4) incorporate the current interpretation of both the 60-hour and 70-hour on-duty weekly limitation into the hours of service regulations; (5) revise the definition of on-duty time; and (6) revise the applicability section of this Part. These amendments will reduce the paperwork burden, provide more judicious accounting of time worked thereby reducing the possibility of accrued driver fatigue, and make the regulations more easily understood.

Status: A final rule was published in the **Federal Register** on October 30, 1987 (52 FR 41718), Docket No. MC–119. The effective date of the final rule was November 30, 1987.

Part 396—Inspection, Repair, and Maintenance

The FHWA proposed changes to the Federal motor carrier inspection standards contained in Part 396 of the FMCSRs. The proposed revisions would require motor carriers to comply with Federal inspection standards conducted through a State inspection program, commercial garages, or an authorized self-inspection program.

An NPRM was published in the **Federal Register** on February 26, 1987 (52 FR 5913), Docket No. MC–113. The comment period closed June 29, 1987.

Status: A final rule was published in the **Federal Register** on December 7, 1988, (53 FR 49402). The final rule will be effective on December 7, 1989.

Part 398—Transportation of Migrant Workers

There were no comments received concerning this Part of the FMCSRs. The FHWA sees no need to amend these regulations at this time.

Status: It has been determined that no further action is necessary at this time and Part 398 is considered to be reissued pursuant to the Act.

Part 399—Employee Safety and Health Standards

The ANPRM of January 23, 1985, requested comments on the possibility of requiring additional, more stringent employee safety and health standards governing activities by employees of commerical motor carriers (50 FR 2998). Activities include those that are customarily performed in, on, or about commerical motor vehicles, including but not limited to the operation, maintenance, loading and unloading of those motor vehicles.

Sixteen commenters wrote concerning employee safety and health standards. Comments were received from 8 associations connected with the interstate motor carrier industry, 2 State agencies, 5 motor carriers, and 1 safety consulting firm.

Two commenters believe that additional employee safety and health requirements are not needed. One association emphasized that there should be a difference in the standards for large and small motor carriers. A large motor carrier emphasized that any safety standards for freight handlers and mechanics should be different from the ones for drivers. A labor union indicated that the employee safety and health standards should be expanded and should include exposure limits for toxic gases, and noise protection equal to that of the Occupational Safety and Health Administration's (OSHA) Hearing Conservation Amendment, and standards on whole-body vibration.

Four commenters objected to the definition of employee as found in the ANPRM. These commenters want it emphasized that independent contractors are included in the definition of employee for the purposes of the FMCSRs only. The commenters believe that it is important to retain the distinction between independent contractors and employees for purposes of Federal regulation. Another association objects to the definition of "employer" because it includes any person engaged in a business affecting interstate commerce. The association believes that this goes against Congress' intent that intrastate motor carrier operations not be subject to the Act.

Four commenters wrote in support of the FHWA being the lead agency in the promulgation and administration of employee safety and health standards for motor carrier operations. They want jurisdiction in this area to be entirely in the hands of the Department of Transportation and not the OSHA. A labor union and a large motor carrier believe that the FHWA should have jurisdiction for employee safety and health in the area of the driver and vehicle, and the OSHA should have this jurisdiction in the motor carrier workplace.

In the Act, Congress expressed an interest in the health and safety of individuals engaged in the operation of commercial motor vehicles. Section 220 of the Act requires the Secretary, in consultation with the Director of the National Institute for Occupational Safety and Health (NIOSH) and the Secretary of Labor, to undertake a study of significant health hazards to which employees engaged in the operation of commercial motor vehicles are exposed. The study was to include findings regarding the most appropriate method for regulating and protecting the health of operators of commercial motor vehicles.

The report to Congress, entitled "Occupational Health Hazards Significantly Affecting Employees Engaged in the Operation of Commercial Motor Vehicles Pursuant to section 220, Motor Carrier Safety Act of 1984," was prepared by the Department of Transportation's Federal Highway Administration in consultation with the National Institute for Occupational Safety and Health (NIOSH) and the

Occupational Safety and Health Administration (OSHA). The report was forwarded to the Congress on May 19, 1988. In this report, the DOT focused on safety issues, i.e., accidents and NIOSH concentrated on health hazards. The OSHA's contribution consisted of an analysis of data gathered during the inspection program administered by that agency.

The major findings emerging from the safety portion of the study are grouped according to whether they are traffic or nontraffic related accidents and injuries. First, the chief findings for traffic accidents are: (1) Traffic accidents are the leading occupational cause of serious injury and death for commercial vehicle operators, although they are not the most frequent safety hazard faced by these drivers; (2) the fatality rate per mile of travel for medium and heavy truck occupants is less than the fatality rate for automobile occupants; (3) truck drivers have a higher fatality rate than other major industries except mining and quarrying; (4) although most accidents involving medium and heavy trucks are multiple vehicle accidents, most drivers are killed in single vehicle accidents; (5) for occupants of combination unit vehicles, overturns and collisions with a fixed object are the most frequently cited event in fatal accidents; and (6) total or partial ejection from the vehicle is involved in over one-third of all combination unit truck occupant fatalities.

The major findings for nontraffic related accidents and injuries are: (1) Over 75 percent of all injuries are caused by either overexertion, being struck by an object, falls, or being caught in or under some object; and (2) most of these kinds of accidents occur during loading or unloading operations or while getting in or out of a vehicle.

In terms of mitigating or eliminating these safety hazards, the conclusion reached in the DOT analysis is that most of the safety problems encountered in the motor carrier industry are either already regulated by the Federal Highway Administration's Office of Motor Carriers or the National Highway Traffic Safety Administration (NHTSA), or they are not amenable to regulatory solutions within the authority of the DOT. In the past few years, the DOT has launched several new programs aimed at reducing accidents. Regarding health hazards, the NIOSH input to the report is concerned almost exclusively with defining and identifying the major health hazards faced by operators of commerical vehicles, and the potential health problems associated with these hazards. Truck and bus drivers appear to be subject to an excessive risk of developing stomach, back, and respiratory problems as well as an overrepresentation of deaths and disabilities caused by certain types of cancer. The NIOSH goes on to identify areas where research has commenced and indicates where more research is needed.

Status: It has been determined that no further action is necessary at this time and Part 399 is considered to be reissued pursuant to the Act.

(49 U.S.C. app. 2505; 49 U.S.C. 3102; 49 CFR 1.48)

List of Subjects in 49 CFR Parts 385, 386, 390 through 396, 398, and 399

Motor carriers, Driver requirements, Driving motor vehicles, Parts and accessories, Accident reporting, Hours of service, Inspection, repair, and maintenance, Migrant workers, Employee safety and health.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: February 9, 1989.

Robert E. Farris,

Federal Highway Administrator.

[FR Doc. 89-3648 Filed 2-16-89; 8:45 am]

BILLING CODE 4910-22-M

Proposed Rules

Federal Register
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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

Animal and Plant Health Inspection Service

7 CFR Part 354

9 CFR Part 97

[Docket No. 88-097]

Overtime Work at Laboratories, Border Ports, Ocean Ports, and Airports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations that establish charges for Sunday, holiday, or overtime work performed by inspectors of the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture at laboratories, border ports, ocean ports, and airports. We are proposing to amend the regulations by: (1) Requiring the name, address, and telephone number of principals when they request Sunday, holiday, or overtime inspection services through authorized agents or brokers; (2) requiring certain delinquent debtors to pay immediately when Sunday, holiday, or overtime inspection services are provided; and (3) suspending Sunday, holiday, or overtime inspection services for those debtors with prolonged delinquencies. These changes would assist us in collecting debts, and would reduce the financial loss we are incurring because of unpaid debts.

DATE: Consideration will be given only to comments postmarked or received on or before April 18, 1989.

ADDRESSES: Send an original and two copies of written comments to Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 88-097. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT:

Mr. Paul R. Eggert, Director, Resource Management Staff, PPQ, APHIS, USDA, Room 623, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7648, or

Louise Rakestraw Lothery, Acting Director, Resource Management Staff, VS, APHIS, USDA, Room 857, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8513.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 354.1 and 9 CFR 97.1 (referred to below as "the regulations") provide a system for obtaining inspection, laboratory testing, certification, and quarantine services pertaining to the importation and exportation of plants, plant products, animals, animal byproducts, or other commodities during Sundays, holidays, or other times outside the established hours of service.

Each person requesting these services is required to complete and submit APHIS Form 192 (formerly PPQ Form 192), "Request for Reimbursable Overtime Services," providing his or her name, business concern, address, and telephone number. By executing APHIS Form 192, the requesting party agrees to reimburse us, on demand, at the rate provided in the regulations.

We have found that in most instances, an agent or broker executes the form on behalf of another party, commonly referred to as the principal, who actually receives our services. The principal's identity, however, or the fact that a principal even exists, may or may not be disclosed to us on the form.

We seek payment for services from the agent or broker who has signed the form, thereby agreeing to reimburse us. Typically, the principal pays the agent or broker, who then pays us. However, if the principal is delinquent in paying the agent or broker, the agent or broker in turn is delinquent in paying us for our services. The agent or broker who executes APHIS Form 192 is liable to us for the cost of Sunday, holiday, or overtime services. The principal is liable as well, but it is costly and time-consuming for us to pursue collection from an undisclosed principal.

We are currently handling approximately 2,000 accounts, about half of which are delinquent. Because of these late payments, or failure to pay at all, we have approximately $500,000 in delinquent debts outstanding at all times. To correct this situation, we are proposing to introduce a debt management program that would enable us to seek payment directly from the party who actually receives our services. The agent or broker would remain liable, alternatively, for payment.

Our new debt management program would also require certain delinquent debtors to pay us immediately when Sunday, holiday, or overtime services are provided, and would suspend those services to debtors with prolonged delinquencies. We feel these measures are necessary to discourage delinquent payments, and to protect ourselves from further financial loss.

Our debt management program would consist of three new procedures.

1. Each agent or broker would be required to disclose the identity of his or her principal, including the name, address, and telephone number of the person, firm, or corporation for whom services are provided when the request for reimbursable Sunday, holiday, or overtime services is made. This would provide information necessary for pursuing delinquent debts, and for denying future requests for Sunday, holiday, or overtime services due to failure to pay us on demand. In addition, 7 U.S.C. 2260 authorizes the Secretary of Agriculture to accept reimbursement from persons for whom these services are performed. This action would therefore bring our regulations into agreement with the statute by identifying the party who receives our services.

2. Those debtors with bills over 60 days delinquent would be placed on a Collect-on-Delivery basis, meaning that payment must be received at the time service is given. We would require payment to be in some guaranteed form, such as a money order, certified check, or cash. Our transactions with these debtors would remain on a Collect-on-Delivery basis until the delinquent debt is paid. We are using the term "Collect-on-Delivery" instead of "Cash-on-Delivery" to emphasize that payment

would not necessarily need to be in cash.

3. All reimbursable Sunday, holiday, or overtime services would be denied any debtor whose bill becomes 90 days delinquent. Services would be resumed when the delinquent debt is paid.

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 would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule would have no economic impact on small entities, since it would not increase or decrease the amount of money they owe us. It would, however, require these entities to pay us promptly. We do not believe that making prompt payments would pose a financial burden on these small entities.

In addition, paying us for debts already accumulated should pose no financial burden on the small entities who request Sunday, holiday, or overtime inspection services from us. The entities currently in debt to us owe only small amounts—on the average, less than $1,000 each.

Under these circumstances, the Administrator of APHIS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 0579–0055.

Executive Order 12372

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

List of Subjects

7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants, (Agriculture), Quarantine, Transportation.

9 CFR Part 97

Exports, Government employees, Imports, Livestock and livestock products, Poultry and poultry products, Transportation.

Accordingly, 7 CFR Part 354 and 9 CFR Part 97 would be amended as follows:

Title 7—[Amended]

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for 7 CFR Part 354 would continue to read as follows:

Authority: 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.1 would be amended by adding paragraphs (d), (e), and (f) to read as follows:

§ 354.1 Overtime work at border ports, sea ports, and airports.

* * * * *

(d) Any person, firm, or corporation acting as an agent or broker by requesting Sunday, holiday, or overtime services of a Plant Protection and Quarantine inspector on behalf of any other person, firm, or corporation (principal) must provide the name, address, and telephone number of the principal at the time the request for service is made.

(e) Any person, firm, or corporation requesting Sunday, holiday, or overtime services of a Plant Protection and Quarantine inspector—either directly, or indirectly through an agent or broker—and who has a debt to the Animal and Plant Health Inspection Service more than 60 days delinquent, must pay the inspector at the time service is provided. Payment must be in some guaranteed form, such as money order, certified check, or cash, that is acceptable to the Animal and Plant Health Inspection Service. This method of payment, called Collect-on-Delivery, will continue until the debtor pays the delinquent debt.

(f) Reimbursable Sunday, holiday, or overtime services will be denied to any person, firm, or corporation who has a debt to the Animal and Plant Health Inspection Service more than 90 days delinquent. Services will be denied until the delinquent debt is paid.

Title 9—[Amended]

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

3. The authority citation for 9 CFR Part 97 would continue to read as follows:

Authority: 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(d).

4. Section 97.1 would be amended by adding paragraphs (d), (e), and (f) to read as follows:

§ 97.1 Overtime work at laboratories, border ports, ocean ports, and airports.

* * * * *

(d) Any person, firm, or corporation acting as an agent or broker by requesting Sunday, holiday, or overtime services of a Veterinary Services inspector on behalf of any other person, firm, or corporation (principal) must provide the name, address, and telephone number of the principal at the time the request for service is made.

(e) Any person, firm, or corporation requesting Sunday, holiday, or overtime services of a Veterinary Services inspector—either directly, or indirectly through an agent or broker—and who has a debt to the Animal and Plant Health Inspection Service more than 60 days delinquent, must pay the inspector at the time service is provided. Payment must be in some guaranteed form, such as money order, certified check, or cash, that is acceptable to the Animal and Plant Health Inspection Service. This method of payment, called Collect-on-Delivery, will continue until the debtor pays the delinquent debt.

(f) Reimbursable Sunday, holiday, or overtime services will be denied to any person, firm, or corporation who has a debt to the Animal and Plant Health Inspection Service more than 90 days delinquent. Services will be denied until the delinquent debt is paid.

Done in Washington, DC, this 14th day of February 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–3803 Filed 2–16–89; 8:45 am]

BILLING CODE 3410–04–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 891 0013]

KKR Associates, et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a food producer and distributor to divest either Beatrice or RJR assets used in the production and sale of packaged nuts, ketchup and Oriental food, following its acquisition of RJR Nabisco, Inc. Respondent would also be required to hold RJR's assets and operations separate and apart from other entities owned by KKR.

DATE: Comments must be received on or before April 18, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Marc G. Schildkraut, FTC/S–3302, Washington, DC 20580. (202) 326–2622.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

List of Subjects in 16 CFR Part 13

Food companies, Trade practices.

Agreement Containing Consent Order To Cease and Desist

In the matter of KKR Associates, a limited partnership; Kohlberg Kravis Roberts & Co. L.P., a limited partnership; RJR Acquisition Corporation, a corporation; RJR Associates, L.P., a limited partnership; RJR Holdings Group, Inc., a corporation; RJR Holdings Corp., a corporation; Henry R. Kravis, a natural person; Robert I. MacDonnell, a natural person; Michael W. Michelson, a natural person; Paul E. Raether, a natural person; and George R. Roberts, a natural person.

The Federal Trade Commission (the "Commission"), having initiated an investigation of the proposed acquisition (the "Acquisition") of the voting securities of RJR Nabisco, Inc. ("RJR") by RJR Holdings Corp. ("RJR Holdings"), all of whose voting securities are currently held by RJR Associates, L.P., through the tender offer by, and subsequent merger with and into RJR of, RJR Acquisition Corporation ("RJR Acquisition"), a wholly-owned subsidiary of RJR Holdings, and KKR Associates, a New York limited partnership, the general partners of KKR Associates, Kohlberg Kravis Roberts & Co. L.P., ("KKR & Co."), a Delaware limited partnership, the general partners of KKR & Co., RJR Associates, L.P. ("RJR Associates"), a Delaware limited partnership, RJR Holdings, a Delaware corporation, RJR Acquisition Corporation, ("RJR Acquisition"), a Delaware corporation, RJR Holdings Group, Inc. ("RJR Group"), a Delaware corporation, (collectively, "the Proposed Respondents"), having been furnished with a copy of a draft complaint that the Bureau of Competition has presented to the Commission for its consideration and which, if issued by the Commission, would charge the Proposed Respondents and RJR with violations of the Clayton Act and Federal Trade Commission Act, and it now appearing that the Proposed Respondents are willing to enter into an agreement containing an Order to divest certain assets and to cease and desist from certain acts:

It is hereby agreed by and among the Proposed Respondents by their duly authorized officers and their attorneys, and counsel for the Commission that:

1. Proposed respondent KKR Associates is a New York limited partnership with its office and principal place of business at 9 West 57th Street, New York, New York 10019.

2. Proposed respondent KKR & Co. is a Delaware limited partnership with its office and principal place of business at 9 West 57th Street, New York, New York 10019.

3. Proposed respondent RJR is a corporation organized under the laws of the State of Delaware with its office and principal place of business at 300 Galleria Parkway, Atlanta, Georgia 30039.

4. Proposed respondent RJR Holdings is a corporation organized under the laws of the State of Delaware with its office and principal place of business at 9 West 57th Street, New York, New York 10019.

5. Proposed respondent RJR Associates is a Delaware limited partnership with its office and principal place of business at 9 West 57th Street, New York, New York 10019.

6. Proposed respondent RJR Acquisition is a corporation organized under the laws of the State of Delaware with its office and principal place of business at 9 West 57th Street, New York, New York 10019.

7. Proposed respondent RJR Group is a corporation organized under the laws of the State of Delaware with its office and principal place of business located at 9 West 57th Street, New York, New York 10019.

8. Proposed respondent Henry R. Kravis is a general partner in KKR Associates and KKR & Co. and is President of RJR Holdings, RJR Acquisition, and RJR Group with his office and principal place of business at 9 West 57th Street, New York, New York 10019.

9. Proposed respondent George R. Roberts is a general partner in KKR Associates and KKR & Co. with his office and principal place of business at 101 California Street, San Francisco, California 94111.

10. Proposed respondent Robert I. MacDonnell is a general partner in KKR Associates and KKR & Co. with his office and principal place of business at 101 California Street, San Francisco, California 94111.

11. Proposed respondent Paul E. Raether is a general partner in KKR Associates and KKR & Co. with his office and principal place of business at 9 West 57th Street, New York, New York 10019.

12. Proposed respondent Michael W. Michelson is a general partner in KKR Associates and KKR & Co. with his office and principal place of business at 101 California Street, San Francisco, California 94111.

13. The Proposed Respondents admit all jurisdictional facts set forth in the attached draft of complaint.

14. The Proposed Respondents waive:

a. Any further procedural steps;
b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;
c. All rights to seek judicial review or otherwise challenge or contest the validity of the Order entered pursuant to this agreement; and
d. All rights under the Equal Access to Justice Act.

15. This agreement shall not become a part of the public record of the proceeding unless and until it is

accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

16. This agreement is for settlement purposes only and does not constitute an admission by the Proposed Respondents that the law has been violated as alleged in the draft of complaint attached hereto.

17. This agreement contemplates that if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the Proposed Respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint attached hereto and its decision containing the following Order to divest and to cease and desist in disposition of the proceeding and, (2) make information public with respect thereto. When so entered, the Order to divest and to cease and desist shall have the same force and effect, and may be altered, modified, or set aside in the same manner and within the same time provided, by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to a Proposed Respondent's address as stated in this agreement shall constitute service on that Proposed Respondent. The Proposed Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

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

Order

I

As used in this Order, the following definitions shall apply:

a. "Respondents" means KKR Associates, KKR & Co., RJR Acquisition, RJR Associates, RJR Group, and RJR Holdings, their predecessors and successors, and any corporations, partnerships, joint ventures, companies, subsidiaries, divisions, groups or affiliates that any Respondent controls directly or indirectly, and their respective directors, officers, employees, agents, representatives, and their respective successors and assigns, as well as Henry R. Kravis, George R. Roberts, Robert I. MacDonnell, Paul E. Raether and Michael W. Michelson, and any partnerships that they individually or collectively control.

b. "Acquisition" means any of the Respondents' acquisitions of outstanding shares of RJR Nabisco, Inc.

c. "Beatrice/Hunt-Wesson, Inc." is a Delaware corporation, with its principal place of business at 1645 W. Valencia Drive, Fullerton, California 92634 and its predecessors and successors, and any corporations, partnerships, joint ventures, companies, subsidiaries, divisions, groups or affiliates that Beatrice/Hunt-Wesson, Inc. controls directly or indirectly, and their respective directors, officers, employees, agents, representatives, and their respective successors and assigns.

d. "Beatrice Parties" means BCI Associates, L.P., BCI Associates II, L.P., KKR Partners II L.P., BCI Equity Associates, L.P., BCI Securities, L.P. and Beatrice Company and their predecessors and successors, and any corporations, partnerships, joint ventures, companies, subsidiaries, divisions, groups or affiliates that any Beatrice Party controls directly or indirectly, and their respective directors, officers, employees, agents, representatives, and their respective successors and assigns.

e. "Branded" products as used herein includes all products other than products offered as generic products or with a retail establishment's private label.

f. "Chun King" means the Chun King business of Nabisco Foods Company and includes all of RJR's assets and businesses associated with the development, production, distribution and sale of shelf-stable oriental entrees, shelf-stable oriental noodles, shelf-stable oriental vegetables, and soy sauce. Associated assets and businesses are further delineated in the subparagraphs of Schedule A.

g. "Commission" means the Federal Trade Commission.

h. "Control" includes any situation in which any Respondent or any of its principals, partners, directors, officers, employees, agents, representatives, or any of their respective successors or assigns constitutes a majority of a board of directors.

i. "Food Assets and Businesses" means Chun King, Del Monte Foods USA, the Planters LifeSavers Company and any other assets or businesses used in the product development, manufacture, distribution or sale of any edible products by Chun King, Del Monte Foods USA, or the Planters LifeSavers Company.

j. "Henry R. Kravis" means Henry R. Kravis, a natural person, general partner in KKR & Co. and KKR Associates, and President of RJR Holdings, RJR Acquisition, and RJR Group.

k. "KKR Associates" means KKR Associates, a New York limited partnership.

l. "KKR & Co." means Kohlberg Kravis Roberts & Co. L.P., a Delaware limited partnership.

m. "Robert I. MacDonnell" means Robert I. MacDonnell, a natural person and general partner in KKR & Co. and KKR Associates.

n. "Michael W. Michelson" means Michael W. Michelson, a natural person and general partner in KKR & Co. and KKR Associates.

o. "Paul E. Raether" means Paul E. Raether, a natural person and general partner in KKR & Co. and KKR Associates.

p. "Relevant Products" means branded: catsup/ketchup, shelf-stable oriental entrees, shelf-stable oriental noodles, shelf-stable oriental vegetables, soy sauce and packaged nuts.

q. "RJR" means RJR Nabisco, Inc., its predecessors and successors, and any corporations, partnerships, joint ventures, companies, subsidiaries, divisions, groups or affiliates that RJR controls directly or indirectly, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

r. "RJR Acquisition" means RJR Acquisition Corporation, a Delaware corporation and subsidiary of RJR Holdings.

s. "RJR Associates" means RJR Associates, L.P., a Delaware limited partnership of which KKR Associates is the general partner.

t. "RJR Group" means RJR Holdings Group, Inc., a Delaware corporation and subsidiary of RJR Holdings.

u. "RJR Holdings" means RJR Holdings Corp., a Delaware corporation.

v. "George R. Roberts" means George R. Roberts a natural person, and a general partner in KKR & Co. and KKR Associates.

w. "Schedule A Properties" means the assets and businesses listed in Schedule A.

x. "Schedule A–1 Properties" means the assets and businesses listed in Schedule A–1.

y. "Schedule B Properties" means the assets and businesses listed in Schedule B.

z. "Successors" includes any partnership in which two or more of the general partners in KKR Associates or KKR & Co. are partners.

II

It is ordered That:

(A) The Respondents shall divest, absolutely and in good faith, within twelve (12) months of the date this Order becomes final, either the Schedule A Properties or the Schedule A–1 properties, as well as any additional Food Assets and Businesses that (i) the Respondents may at their discretion include as a part of the assets to be divested and are acceptable to the acquiring entity and the Commission, or (ii) the Commission shall require to be divested to ensure the divestiture of the Schedule A Properties or the Schedule A–1 Properties as ongoing, viable enterprises, engaged in the businesses in which the Properties are presently employed.

(B) The Agreement to Hold Separate, attached hereto and made a part hereof as Appendix I, shall continue in effect until such time as the Respondents have completed all of the Commission-approved divestitures of the Schedule A Properties or the Schedule A–1 Properties, or until such other time as the Agreement to Hold Separate provides, and the Respondents shall comply with all terms of said Agreement.

(C) Divestiture of the Schedule A Properties or the Schedule A–1 Properties shall be made only to a buyer or buyers that receive the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Schedule A Properties or the Schedule A–1 Properties is to ensure the continuation of the assets as ongoing, viable enterprises engaged in the same businesses in which the Properties are presently employed, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

(D) The Respondents shall take such action as is necessary to maintain the viability and marketability of the Schedule A Properties, and to prevent the destruction, removal or impairment of any assets or businesses to be divested except in the ordinary course of business and except for ordinary wear and tear.

(E) The individual Respondents shall take no action that diminishes the viability or marketability of the Schedule A–1 Properties, or permits the destruction, removal or impairment of any assets or businesses to be divested except in the ordinary course of business and except for ordinary wear and tear. To the extent any individual Respondent has any direct or indirect responsibility or fiduciary duty with regard to the A–1 Properties, that Respondent shall take such action as is necessary to maintain the viability and marketability of the Schedule A–1 Properties.

III

It is further ordered That:

(A) If the Respondents have not divested the Schedule A Properties or the Schedule A–1 Properties within the twelve-month period, the Respondents shall consent to the appointment by the Commission of a trustee to divest the Schedule B Properties. In the event that the Commission brings an action pursuant to section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, the Respondents shall consent to the appointment of a trustee in such action. The appointment of a trustee shall not preclude the Commission from seeking civil penalties or any other relief available to it for any failure by Respondents to comply with this Order.

(B) If a trustee is appointed by the Commission or a court pursuant to Part III(A) of this Order, the Respondents shall consent to the following terms and conditions regarding the trustee's duties and responsibilities:

(1) The Commission shall select the trustee, subject to the consent of the Respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

(2) The trustee shall have the power and authority to divest the Schedule B Properties. Provided, however, the trustee shall not have the power to divest the Planters Lifesavers Company if the Commission has approved and the Respondents have divested, pursuant to this Order, either (i) the assets and businesses associated with the development, production, distribution and sale of all Relevant Products within the Planters Lifesavers Company or (ii) the assets and businesses associated with the development, production, distribution and sale of all Relevant Products within Beatrice/Hunt-Wesson that develop, produce, distribute or sell the same Relevant Products as the Planters Lifesavers Company. Provided, further, the trustee shall not have the power to divest Del Monte Foods USA if the Commission has approved and the Respondents have divested, pursuant to this Order, (a) either (i) Chun King or (ii) the assets and businesses associated with the development, production, distribution and sale of all Relevant Products within Beatrice/Hunt-Wesson that develop, produce, distribute or sell the same Relevant Products as Chun King, and (b) either (i) the assets and businesses associated with the development, production, distribution and sale of all Relevant Products within Del Monte Foods USA or (ii) the assets and businesses associated with the development, production, distribution and sale of all Relevant Products within Beatrice/Hunt-Wesson that develop, produce, distribute or sell the same Relevant Products as Del Monte Foods USA. Provided, further, the trustee shall not have the power to divest Chun King if the Commission has approved and the Respondents have divested, pursuant to this Order, the assets and businesses associated with the development, production, distribution and sale of all Relevant Products within Beatrice/Hunt-Wesson that develop, produce, distribute or sell the same Relevant Products as Chun King.

(3) The trustee shall have eighteen (18) months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission and, if the trustee is appointed by a court, subject also to the prior approval of the court. If, however, at the end of the eighteen-month period the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or by the court for a court-appointed trustee. Provided, however, that the Commission or court may only extend the divestiture period two (2) times.

(4) The trustee shall have full and complete access to the personnel, books, records and facilities of any businesses that the trustee has the duty to divest.

The Respondents shall develop such financial or other information as such

trustee may reasonably request and shall cooperate with the trustee. The Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestitures.

(5) The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to the Respondents, absolute and unconditional obligation to divest at no minimum price and the purpose of the divestitures as stated in Paragraph II C.

(6) The trustee shall serve at the cost and expense of the Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set, including the employment of accountants, attorneys or other persons reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the appropriate Respondent and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Schedule B Properties.

(7) Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, the Respondents shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture.

(8) If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Part III (A) of this Order.

(9) The trustee shall report in writing to the Respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV

It is further ordered That, within sixty (60) days after the date this Order becomes final, and every sixty (60) days thereafter until the Respondents have fully complied with the provisions of paragraph II of this Order, each Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying with, or has complied with that provision. The Respondents shall include in compliance reports, among other things that are required from time to time, a full description of the contracts or negotiations for the divestiture of properties specified in paragraph II of this Order, including the identity of all parties contacted. The Respondents also shall include in their compliance reports copies of all material written communications to and from such parties, and all internal memoranda, reports and recommendations concerning the required divestitures.

V

It is further ordered That, for a ten (10) year period commencing on the date this Order becomes final, each Respondent (but in the case of an individual Respondent, only so long as he remains a general partner, officer, director, or employee of a nonindividual Respondent) shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries, partnerships or otherwise, assets used or previously used in (and still suitable for use in), or any interest in, or the whole or any part of the stock or share capital of, any company that is engaged in the production of any Relevant Product, or that owns or licenses a branded trademark used in connection with the sale of any Relevant Product. Provided, however, that the corporate Respondents may, in the ordinary course of business, make purchases of used equipment for not more than $500,000. Provided further, that the individual and partnership Respondents, and each pension, benefit or welfare plan or trust controlled by the corporate Respondents may acquire, for investment purposes only, an interest of not more than five (5) percent of the stock or share capital of any concern. For the purposes of this proviso, any purchase by any such pension, benefit or welfare plan or trust made at the direction or suggestion of any individual or partnership Respondent shall be included in the five (5) percent of the stock or share capital that the individual or partnership Respondents may acquire.

VI

It is further ordered That, one (1) year from the date this Order becomes final and for each of nine (9) years thereafter, each Respondent shall file with the Commission a verified written report of its compliance with paragraph V.

VII

It is further ordered That, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to any Respondent made to its offices, the Respondent shall permit any duly authorized representative of the Commission:

(1) Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the Respondents relating to any matters contained in this Order; and

(2) Upon five (5) days, notice to any Respondent and without restraint or interference from it, to interview officers, partners or employees of the Respondent who may have counsel present regarding such matters.

VIII

It is further ordered That the Respondents notify the Commission at least thirty (30) days prior to any change in the structure of any of the Respondent companies or partnerships such as dissolution, assignment or sale resulting in the emergence of a successor, the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of the Order.

Schedule A

Unless the Beatrice Parties divest the Schedule A–1 Properties pursuant to the terms of this Order, the Respondents shall divest all of RJR's assets and businesses associated with the development, production, distribution and sale of the Relevant Products. The divestiture shall include all of RJR's assets, properties, business and goodwill, tangible and intangible, utilized in the manufacture or sale of such Relevant Products, including, without limitation, the following:

(a) All machinery, fixtures, equipment, vehicles, furniture, tools and all other tangible personal property;

(b) All customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, management information systems, software, inventions, trade secrets, technology, know-how, specifications, designs, drawings, processes and quality control data;

(c) Inventory;

(d) Accounts and notes receivable;

(e) Intellectual property rights, patents, copyrights, trademarks and trade names, excluding the trademark or trade name "Nabisco;"

(f) All right, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits;

(g) All right, title and interest in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

(h) All rights under warranties and guarantees, express or implied;

(i) All books, records and files;

(j) All items of prepaid expense; and

(k) All known or unknown, liquidated or unliquidated, contingent or fixed, rights or causes of action which RJR has or may have against any third party, and all such rights that RJR has or may have in or to any asset or property relating primarily to the particular assets divested, excluding, however, all known or unknown, liquidated or unliquidated, contingent or fixed, causes of action that RJR has or may have to the extent they arise out of or are related to any liability, obligation or claim not to be assumed by the purchaser of such asset divested.

With respect to a class of similar assets (such as trucks) a fraction of the use of which has been devoted to the assets divested, such fraction of such class (or as close an approximation to such fraction as can be separately transferred) shall be included within the assets divested.

Provided, however, if the Beatrice Parties divest the Schedule A–1 Properties pursuant to the terms of this Order associated with the development, production, distribution and sale of a particular Relevant Product, the Respondents shall not be required to divest RJR's assets and businesses associated with the development, production, distribution and sale of that Relevant Product, unless such assets and businesses are also assets and businesses associated with the development, production, distribution or sale of another Relevant Product.

Schedule A–1

Unless the Respondents divest the Schedule A Properties pursuant to the terms of this Order, the Beatrice Parties shall divest all of the Beatrice/Hunt-Wesson, Inc. assets and businesses associated with the development, production, distribution and sale of the Relevant Products. The divestiture shall include all of Beatrice/Hunt-Wesson, Inc. assets, properties, business and goodwill, tangible and intangible, utilized in the manufacture or sale of such Relevant Products, including, without limitation, the following:

(a) All machinery, fixtures, equipment, vehicles, furniture, tools and all other tangible personal property;

(b) All customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, management information systems, software, inventions, trade secrets, technology, know-how, specifications, designs, drawings, processes and quality control data;

(c) Inventory;

(d) Accounts and notes receivable;

(e) Intellectual property rights, patents, copyrights, trademarks and trade names, excluding the trademark or trade name "Beatrice;"

(f) All right, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits;

(g) All right, title and interest in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

(h) All rights under warranties and guarantees, express or implied;

(i) All books, records and files;

(j) All items of prepaid expense; and

(k) All known or unknown, liquidated or unliquidated, contingent or fixed, rights or causes of action which Beatrice/Hunt-Wesson, Inc. has or may have against any third party, and all such rights that Beatrice/Hunt-Wesson, Inc. has or may have in or to any asset or property relating primarily to the particular assets divested, excluding, however, all known or unknown, liquidated or unliquidated, contingent or fixed, causes of action that Beatrice/Hunt-Wesson, Inc. has or may have to the extent they arise out of or are related to any liability, obligation or claim not to be assumed by the purchaser of such asset divested.

With respect to a class of similar assets (such as trucks) a fraction of the use of which has been devoted to the assets divested, such fraction of such class (or as close an approximation to such fraction as can be separately transferred) shall be included within the assets divested.

Provided, however, if the Respondents divest the Schedule A Properties pursuant to the terms of this Order associated with the development production, distribution and sale of a particular Relevant Product, the Beatrice Parties shall not be required to divest the Beatrice/Hunt-Wesson, Inc. assets and businesses associated with the development, production, distribution and sale of that Relevant Product, unless such assets and businesses are also assets and businesses associated with the development production, distribution or sale of another Relevant Product.

Schedule B

The trustee shall divest the following divisions, businesses, or subsidiaries of RJR:

1. Del Monte Foods USA,
2. Planters Lifesavers Company,
3. Chun King.

The trustee shall also divest any additional Food Assets and Businesses that the Commission shall require to be divested to ensure the divestiture of the Schedule B Properties as ongoing, viable enterprises, engaged in the businesses in which the Properties are presently employed. Notwithstanding the last paragraph of Schedule A and Schedule A–1, the trustee shall have the power and authority to divest all the Schedule B Properties, except as provided in paragraph III(B)(2) of this Order.

Agreement to Hold Separate

This Agreement to Hold Separate (the "Agreement") is by and among KKR Associates, a New York limited partnership, the general partners of KKR Associates ("KKR Partners"), Kohlberg Kravis Roberts & Co. L.P. ("KKR & Co."), a Delaware limited partnership, the general partners of Kohlberg Kravis Roberts & Co., L.P. ("KKR & Co. Partners"), RJR Associates, L.P. ("RJR Associates"), a Delaware limited partnership, RJR Holdings Corp. ("RJR Holdings"), a Delaware corporation, RJR Acquisition Corporation ("RJR Acquisition"), a Delaware corporation and RJR Holdings Group, Inc. ("RJR Group"), a Delaware corporation, (collectively, "the Acquiring Parties"), and the Federal Trade Commission ("the Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41 *et seq.* (collectively, "the Parties").

Premises

Whereas, RJR Acquisition, a wholly-owned subsidiary of RJR Holdings, all of whose voting securities are currently held by RJR Associates, commenced a tender offer on October 27, 1988, as amended, for up to 165,509,015 of the outstanding shares of RJR Nabisco, Inc. ("RJR"), with the intent of effecting a merger of RJR Acquisition into RJR, pursuant to which RJR would become a

subsidiary of RJR Holdings (the "Acquisition"), all as contemplated by and provided for in that certain Merger Agreement entered into among RJR Holdings, RJR Acquisition, RJR Group and RJR dated as of November 30, 1988; and

Whereas, the Commission is now investigating the transaction to determine if the Acquisition would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order"), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of § 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the status quo ante of certain of RJR's food assets and businesses during the period prior to the final acceptance of the Consent Order by the Commission (after the 60-day public notice period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of properties described in Schedule A, Schedule A–1 and Schedule B to the Consent Order (the "Schedule A Properties," "Schedule A–1 Properties," and "Schedule B Properties," respectively) and the Commission's right to seek to restore RJR as a viable competitor; and

Whereas, the purpose of this Agreement and the Consent Order is to preserve the Chun King business of Nabisco Foods Company as that business is defined in the Consent Order ("Chun King"), Del Monte Foods USA and the Planters LifeSavers Company as viable food companies pending the divestiture of the Schedule A Properties as viable, on-going enterprises, in order to remedy any anticompetitive effects of the Acquisition and to preserve the assets and businesses as viable food companies in the event that divestiture is not achieved; and

Whereas, the Acquiring Parties' entering into this Agreement shall in no way be construed as an admission by them that the Acquisition is illegal; and

Whereas, the Acquiring Parties understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the Parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from the Acquiring Parties with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, and in the event the required divestitures are not accomplished, to seek divestiture of such assets as are held separate pursuant to this Agreement, as follows:

1. The Acquiring Parties agree to execute and be bound by the attached Consent Order.

2. The Acquiring Parties agree that, until the first to occur of (i) three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of § 2.34 of the Commission's Rules; or (ii) if the Commission issues the Consent Order finally, until all of the divestitures required by the Consent Order have been completed, the Acquiring Parties shall hold all of RJR's assets and business operations separate and apart on the following terms and conditions:

a. All of RJR's assets and businesses shall be operated independently of the Acquiring Parties and independently of any other Parties owned in whole or in part by any of the Acquiring Parties.

b. Except as permitted to the Acquiring Parties sitting on the "New Board" (as defined in subparagraph (h)), and as is necessary to assure compliance with this Agreement, the Acquiring Parties shall not exercise direction or control over, or influence directly or indirectly, any of RJR's assets and businesses.

c. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or litigation, preventing a default under the terms of the Credit Agreement among RJR Holdings and certain banks entered into in connection with the Acquisition (the "Credit Agreement") or negotiating an agreement to dispose of assets, the Acquiring Parties shall not receive or have access to, or the use of, any "material confidential information" relating to RJR's "Food Assets and Businesses" not in the public domain, except as such information would be available to the Acquiring Parties in the normal course of business if the Acquisition had not taken place. Any such information that is obtained pursuant to this subparagraph shall only be used for the purposes set out in this subparagraph. "Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to the Acquiring Parties from sources other than RJR, and includes but is not limited to customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets. "Food Assets and Businesses" as used herein, means any assets and businesses used in the product development, manufacture, distribution or sale of any "Relevant Product" as the Consent Order defines that term. Provided, however, that assets and businesses associated with a particular Relevant Product shall not continue to be Food Assets and Businesses for the purposes of this Agreement to Hold Separate when the trustee loses the power to divest such assets and businesses, pursuant to paragraph III(B)(2) of the Consent Order.

d. The Acquiring Parties shall not change the composition of the management of RJR's assets and businesses except that the directors serving on the "New Board" (as defined in subparagraph (h)), excluding directors who are officers, partners, employees or agents of KKR & Co. or KKR Associates, shall have the power to remove employees for cause, and the New Board shall have the power to remove any RJR employees not employed by or assigned to Chun King, Del Monte Foods USA, and the Planters LifeSavers Company.

e. The Acquiring Parties shall do nothing to diminish the viability and marketability of Chun King, Del Monte Foods USA, and the Planters LifeSavers Company, and shall not sell, transfer, encumber, or otherwise impair the marketability or viability of their assets (other than in the normal course of business).

f. The Acquiring Parties shall do nothing to diminish the normal working capital of the Food Assets and Businesses.

g. All material transactions out of the ordinary course of business and not otherwise precluded shall be subject to a majority vote of the New Board (as defined in subparagraph (h)).

h. The Acquiring Parties may adopt new Articles of Incorporation and By-laws, provided that they are not inconsistent with other provisions of this Agreement, and may cause the

election of a new board of directors of RJR ("New Board") once they are majority shareholders of RJR. The Acquiring Parties may elect the directors to the New Board. Except as permitted by this Agreement, the directors of RJR who are also partners, officers, employees or agents of KKR & Co. or KKR Associates shall not receive in their capacity as directors of RJR material confidential information relating to RJR's Food Assets and Businesses, and shall not disclose any such information received under this Agreement to the Acquiring Parties or to any company owned in whole or in part by any of the Acquiring Parties. Nor shall such directors use such information to obtain any advantage for the Acquiring Parties or for any company owned in whole or in part by the Acquiring Parties. Said directors shall also not disclose to RJR any material confidential information relating to the Food Assets and Businesses of any company owned in whole or in part by any of the Acquiring Parties. Said directors of RJR shall enter into a confidentiality agreement prohibiting disclosure of confidential information. Such directors may participate in matters that come before the New Board that do not concern Chun King, Del Monte Foods USA, and the Planters LifeSavers Company. Such directors may participate in matters that come before the New Board concerning Chun King, Del Monte Foods USA, and the Planters LifeSavers Company only for the limited purpose of considering: (i) Capital expenditures in excess of $5,000,000; (ii) sale of any capital assets for more than $5,000,000; (iii) any decision relating to financing, restructuring or the issuance of indebtedness in the aggregate sum of more than $5,000,000; (iv) preventing a default under the terms of the Credit Agreement; (v) negotiating incentive compensation arrangements for key managers solely for the purpose of facilitating the divestitures; or (vi) carrying out the Acquiring Parties, and RJR's responsibility to assure that the Schedule A and Schedule B Properties and such other properties as the Commission may elect to add under paragraph II of the Consent Order are maintained in such manner as will permit their divestiture as on-going, viable assets. Except as permitted by this Agreement, such director shall not participate in, or attempt to influence the vote of any other director with respect, to any matters that would involve a conflict of interest if the Acquiring Parties and RJR were separate and independent entities. Meetings of the Board during the term of this Agreement shall be stenographically transcribed and the transcripts shall be retained for two (2) years after the termination of this Agreement.

i. Nothing herein shall prevent the New Board from negotiating or entering into agreements to dispose of RJR's assets, provided that any such disposition with respect to properties potentially subject to the divestiture of the trustee under the Consent Order shall be made only to a buyer or buyers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

j. The Board of RJR Holdings, RJR Group, or RJR Acquisition shall neither declare any cash dividend on any class of its stock nor permit the repayment of the principal of any loan from any Acquiring Party, other than RJR Holdings, RJR Group or RJR Acquisition, until the divestitures required pursuant to the Consent Order have been completed. The Acquiring Parties shall not borrow funds or issue dividends if the result would be to impair the Food Assets' and Businesses' viability, marketability, or ability to operate at their previously budgeted 1989 levels of expenditure on an annualized basis.

k. Should the Commission seek in any proceeding to compel the Acquiring Parties to divest themselves of the shares of RJR stock they shall acquire, or to compel the Acquiring Parties to divest any assets or businesses they may hold, or to seek any other injunctive or equitable relief, the Acquiring Parties shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted RJR stock to be acquired. The Acquiring Parties also waive all rights to contest the validity of this Agreement.

3. In the event the Commission has not finally approved and issued the Consent Order within one hundred twenty (120) days of its publication in the Federal Register, the Acquiring Parties may, at their option, terminate this Agreement to Hold Separate by delivering written notice of termination to the Commission, which termination shall be effective ten (10) days after the Commission's receipt of such notice, and this Agreement shall thereafter be of no further force and effect. If this Agreement is so terminated, the Commission may take such action as it deems appropriate, including but not limited to an action pursuant to section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b). Termination of this Agreement to Hold Separate shall in no way operate to terminate the Agreement Containing Consent Order to Cease and Desist that the Acquiring Parties have entered into in this matter.

4. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to the Acquiring Parties made to their offices, the Acquiring Parties shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of the Acquiring Parties and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the Acquiring Parties relating to compliance with this Agreement; and

b. Upon five (5) days notice to the Acquiring Parties, and without restraint or interference from them, to interview partners, officers, directors or employees of the Acquiring Parties, who may have counsel present, regarding any such matters.

No information or documents obtained by the Commission pursuant to this Agreement shall be divulged by any representative of the Commission to anyone outside the Commission, except in the case of legal proceedings, in the case of a request from Congress, a Congressional Committee, or Congressional Subcommittee, for the purpose of securing compliance with this Agreement or as otherwise required by law. Upon the termination of this Agreement, all such information and documents shall, at the request of the Acquiring Parties, be returned to the Acquiring Parties or destroyed.

If, at any time, information or documents are furnished by the Acquiring Parties and the Acquiring Parties identify such documents as "Confidential," then the Commission shall provide to the Acquiring Parties ten (10) days notice or, if ten (10) days is not possible, as many days notice as possible prior to divulging such material.

5. This agreement shall not be binding until approved by the Commission.

Analysis To Aid Public Comment on Consent Order Accepted Subject to Final Approval

The Federal Trade Commission ("Commission") has accepted for public comment from KKR Associates, Kohlberg Kravis Roberts & Co. L.P., RJR Acquisition Corporation, RJR Associates, L.P., RJR Holdings Group.

Inc., RJR Holdings Corp., Henry R. Kravis, Robert I. MacDonnell, Michael W. Michelson, Paul E. Raether, and George R. Roberts (collectively "KKR") an agreement containing consent order. The Commission is placing the agreement on the public record for sixty (60) days for reception of comments from interested persons.

Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's investigation of this matter concerned the proposed acquisition by KKR of RJR Nabisco, Inc. ("RJR"). RJR is a food and cigarette manufacturing conglomerate. KKR representatives hold the majority of the seats on the board of directors of Beatrice Company, another food manufacturing conglomerate that competes with RJR.

The Commission has reason to believe that KKR's acquisition of RJR would substantially lessen competition in three branded markets: packaged nuts, shelf-stable oriental foods, and catsup, in the United States, in violation of section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act.

The Agreement containing Consent Order ("Order") would, if issued by the Commission, settle the complaint that alleges anticompetitive effects in the branded packaged nuts market, the shelf-stable oriental foods market, and the catsup market.

Under the terms of the proposed Order, KKR must divest either: (1) RJR's assets and businesses associated with the development, production, distribution and sale of packaged nuts, shelf-stable oriental foods, and catsup; or (2) all of the Beatrice/Hunt-Wesson, Inc. assets and businesses associated with the development, production, distribution and sale of packaged nuts, shelf-stable oriental foods, and catsup. If KKR fails to complete the required divestitures within the twelve-month period, the Commission may authorize a trustee to divest the following divisions, businesses, or subsidiaries of RJR: Del Monte Foods USA, Planters Lifesavers Company, and Chun King.

The Order also requires that, until all divestitures required by the Order are approved by the Commission, KKR must hold RJR's assets and operations separate and apart from other entities owned in whole or in part by KKR.

For a period of ten (10) years from its effective date, the proposed Order prohibits KKR from making substantive acquisitions, without prior Commission approval, of assets or businesses that produce packaged nuts, shelf-stable oriental foods, or catsup.

It is anticipated that the Order would resolve the competitive problems alleged in the Complaint. The purpose of this analysis is to invite public comment concerning the Order, in order to aid the Commission in its determination of whether it should make final the Order contained in the agreement.

This analysis is not intended to constitute an official interpretation of the agreement and Order, nor is it intended to modify the terms of the agreement and Order in any way.

Donald S. Clark,

Secretary.

[FR Doc. 89-3770 Filed 02-16-89; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[Docket Nos. 8956 and 8880]

Prohibited Trade Practices; Reliable Mortgage Corp. et al. (Dkt. 8956) and Seekonk Freezer Meats, Inc., et al. (Dkt. 8880)

AGENCY: Federal Trade Commission.

ACTION: Notice of period for public comment on proposed reopening of proceedings and modification of prior decisions.

SUMMARY: The Commission has issued an order against respondents Reliable Mortgage Corp., *et al.* (Dkt. 8956), to show cause why the proceeding against them should not be reopened and the decision therein modified to clarify that respondents' credit advertising practices that violated the Truth in Lending Act are also unfair and deceptive acts or practices, in violation of section 5(a) of the Federal Trade Commission Act. The Commission has also issued an order against respondents Seekonk Freezer Meats, Inc., *et al.* (Dkt. 8880), to show cause why the proceeding against them should not be reopened and the decision therein modified to clarify that respondents' credit advertising practices that violated the Truth in Lending Act are either unfair or unfair and deceptive acts or practices, in violation of section 5(a) of the Federal Trade Commission Act. This document announces the public comment period on the proposed reopenings and modifications.

DATE: The deadline for filing comments in this matter is March 20, 1989.

ADDRESS: Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. Requests for copies of the show cause order should be sent to Public Reference Branch, Room 130.

FOR FURTHER INFORMATION CONTACT: Carole L. Reynolds or Jonathan D. Jerison, Attorneys, Division of Credit Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326-3230 or 326-3223.

SUPPLEMENTARY INFORMATION: The order against Reliable Mortgage Corp., *et al.*, in Docket No. 8956 was dated January 8, 1975, and published at 85 F.T.C. 21. The order against Seekonk Freezer Meats, Inc., *et al.*, in Docket No. 8880 was dated March 15, 1973, and published at 82 F.T.C. 1025. In *Reliable*, the Commission determined that respondents had violated the Truth in Lending Act (TILA), Pub. L. 90-321, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR Part 226, by stating an interest rate in an advertisement promoting their mortgage plans without stating the annual percentage rate as required. In *Seekonk*, the Commission determined that respondents had violated the TILA and Regulation Z by stating one or more of the major credit terms identified in Regulation Z in an advertisement promoting their installment credit plans without stating the other credit terms required to be disclosed. The Commission's longstanding view has been that the credit advertising practices found to violate the TILA in *Reliable* and *Seekonk* also constitute unfair or deceptive acts or practices in violation of section 5(a) of the Federal Trade Commission Act (FTC Act), even though such a finding is not stated expressly in the decisions. In *United States* v. *Hopkins Dodge, Inc.*, 849 F.2d 311 (8th Cir. 1988), the United States Court of Appeals for the Eighth Circuit held that the failure of the Commission in *Reliable* and *Seekonk* to state expressly that credit advertising violations of the TILA and Regulation Z are unfair or deceptive acts or practices precluded the use of those determinations in a civil penalty enforcement action pursuant to section 5(m)(1)(B) of the FTC Act. The Commission now proposes to reopen the proceedings and consider modifying the decisions in *Reliable* and *Seekonk* to clarify its view that the credit advertising practices addressed in *Reliable* constitute unfair and deceptive acts or practices in violation of section 5(a) of the FTC Act, and that the credit advertising practices addressed in *Seekonk* constitute either unfair or

unfair and deceptive acts or practices, in violation of section 5(a) of the FTC Act. The Commission's show cause orders to the respondents were issued on January 31, 1989.

List of Subjects in 16 CFR Part 13

Truth in Lending Act.

By the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-3769 Filed 2-16-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

Texas Permanent Regulatory Program; Reopening and Extension of Public Comment Period on Proposed Amendments

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

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: OSMRE is announcing receipt of revisions pertaining to a previously proposed amendment along with proposed new rule additions to the Texas permanent regulatory program (hereinafter, the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions pertain to general provisions; lands unsuitable for mining; surface coal mining and reclamation operations permits and coal exploration procedures systems; bond and insurance requirements for surface coal mining and reclamation operations; permanent program performance standards for coal exploration; and permanent program inspection and enforcement procedures. Texas proposes to add a new Part 846 for individual civil penalties and a new Part 850, for the training, examination, and certification of blasters. In addition, Texas proposes to renumber all regulations in the Texas program. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards.

This notice sets forth the times and locations that the Texas program and proposed amendment to that program are available for public inspection, and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4:00 p.m., c.s.t. March 20, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. James Moncrief, at the address listed below.

Copies of the Texas program, the proposed amendment, and all written comments received in response to this notice will be available for pubic review at the addresses listed below, during normal business hours, Monday through Friday, excluding holidays. Each requester may receive free of charge, one copy of the proposed amendment by contacting OSMRE's Tulsa Field Office:

Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 550, Tulsa, OK 74135, Telephone: (918) 581-6430.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5215, 1100 L Street NW., Washington, DC, 20240, Telephone: (202) 343-5492.

Railroad Commission of Texas, Surface Mining and Reclamation Division, Capitol Station, P.O. Drawer 12967, Austin, TX 78711, Telephone: (512) 463-6900.

FOR FURTHER INFORMATION CONTACT: Mr. James Moncrief, Director, Tulsa Field Office, at the address or telephone number listed in "ADDRESSES."

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

On February 16, 1980 the Secretary of the Interior conditionally approved the Texas program. Information regarding general background on the Texas program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Texas program can be found in the February 27, 1980 **Federal Register** [45 FR 12998]. Subsequent actions concerning the Texas program and program amendments can be found at 30 CFR 943.15 and 943.16.

II. Proposed Amendments

By letter dated July 31, 1987 (administrative record No. TX-393), Texas submitted a proposed amendment to its program under SMCRA. The proposed amendment was in response to the required program amendment at 30 CFR 943.16(a) and letters dated May 20, 1985, and June 9, 1987, that OSMRE sent in accordance with 30 CFR 732.17(d). The regulations that Texas proposed to amend were: Subchapter A, General, Parts 700 and 701; Subchapter F, Lands Unsuitable for Mining, Parts 762 and 764; Subchapter G, Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Procedures System, Parts 770, 771, 776, 778, 779, 780, 783, 784, 785, 786, and 795; Subchapter J, Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations, Parts 800, 806, and 807; Subchapter K, Permanent Program Performance Standards—Coal Exploration, Parts 815, 816, 817, and 819; Subchapter L, Permanent Program Inspection and Enforcement Procedures, Parts 840, 843, and 845. In addition, Texas proposed to add new Part 850, for the training, examination, and certification of blasters, and renumber all regulations in the Texas program.

In an initial review of the amendment, OSMRE identified concerns relating to: Subchapter G, Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Procedures Systems, Part 779; Subchapter J, Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations, Parts 800, 806, and 807; Subchapter K, Permanent Program Performance Standards, Parts 816 and 817, and Subchapter L, Permanent Program Inspection and Enforcement Procedures, Part 840. OSMRE notified Texas of the concerns by letter dated November 12, 1987 (administrative record No. TX-423).

By a letter dated February 1, 1988 (administrative record No. TX-404), Texas responded to some of the initial concerns raised by OSMRE in its November 12, 1987 letter. OSMRE then published a notice in the February 17, 1988, **Federal Register** [53 FR 4646] announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment. The public comment period ended March 18, 1988.

On January 10, 1989, Texas then responded to the remaining concerns of the OSMRE November 12, 1987 letter and transmitted a revised amendment package (administrative record No. TX-426). This revised package additionally incorporated newly proposed State rules in response to an October 20, 1988 OSMRE letter written pursuant to 30 CFR 732.17(d) in which OSMRE notified the State of newly published Federal regulations that require further changes to the Texas program in order to make it no less effective than the newly published Federal regulations.

Texas' January 10, 1989, revised amendment package contains proposed changes to Subchapter A, General, Part 705 and adds a new Part 846, Individual Civil Penalties to Subchapter L, Permanent Program Inspection and

Enforcement Procedures; all of these proposals address required changes stated in OSMRE's October 20, 1988 letter.

III. Public Comment Procedures

OSMRE is reopening the comment period on the proposed Texas program amendment to provide the public an opportunity to reconsider the adequacy of the amendments in light of the additional materials submitted on February 1, 1988 (administrative record No. TX–404), and January 10, 1989 (administrative record No. TX–426). In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Texas program.

Written comments should be specific, pertain only to the changes proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 943

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

Date: February 9, 1989.

Allen D. Klein,

Acting Assistant Director, Western Field Operations.

[FR Doc. 89–3750 Filed 2–16–89; 8:45 am]

BILLING CODE 4310–05–M

VETERANS ADMINISTRATION

38 CFR Part 21

Determining Entitlement Usage Under the Vocational Rehabilitation Program

AGENCY: Veterans Administration.

ACTION: Proposed regulation.

SUMMARY: The Veterans Administration (VA) is publishing for public comment a proposed rule to facilitate the determination of entitlement usage under the vocational rehabilitation program. There is no single reference point in existing rules for determinations of entitlement usage under the vocational rehabilitation program. The VA proposes to codify existing policy by incorporating current provisions regarding entitlement usage into the proposed rule and to add additional provisions to provide a complete guide to entitlement usage under the vocational rehabilitation program.

DATES: Comments must be received on or before March 20, 1989. Comments will be available for public inspection until March 29, 1989. It is proposed to make this amendment effective the date of final publication in the **Federal Register.**

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection in the Veterans Services Unit, Room 132, at the above address only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until March 29, 1989.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, 202–233–5449.

SUPPLEMENTARY INFORMATION: The VA is proposing to establish rules to determine entitlement usage under Chapter 31. The vocational rehabilitation program has generally followed the principles for charging entitlement used under other VA education programs. In addition, certain already existing limited provisions governing the determination of entitlement usage for types of training furnished only under Chapter 31 are included in the proposed rules. Program administration would be enhanced by consolidating provisions for charging entitlement in a single rule. The proposed rule codifies current practice and is consistent with general policy followed under other education programs administered by the VA.

This proposed regulation does not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulation.

The proposed regulation will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

The Administrator certifies that this proposed regulation will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this proposed regulation is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reasons for this certification are that the proposed regulation only affects the rights of individual VA beneficiaries under Chapter 31. No new regulatory burdens are imposed on small entities by these amendments.

(The Catalog of Federal Domestic Assistance Number is 64.116)

List of Subjects in 38 CFR Part 2l

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: January 27, 1989.

Thomas E. Harvey,

Acting Administrator.

PART 21—[AMENDED]

38 CFR Part 21, Vocational Rehabilitation and Education, is proposed to be amended by adding § 21.79 to read as follows:

§ 21.79 Determining entitlement usage under Chapter 31.

(a) *General.* The determination of entitlement usage for Chapter 31 participants is made under the provisions of this section except as provided in paragraph (f) of this section. Charges for entitlement usage shall be based upon the principle that a veteran who pursues a rehabilitation program for 1 day should be charged 1 day of entitlement. The determination of entitlement is based upon the rate at which the veteran pursues his or her rehabilitation program. The rate of pursuit is determined under the provisions of § 21.310 of this part.

(Authority: 38 U.S.C. 1508(d))

(b) *No charge against Chapter 31 entitlement.* No charge will be made against Chapter 31 entitlement under any of the following circumstances:

(1) The veteran is receiving employment services under an Individualized Employment Assistance Plan (IEAP);

(2) The veteran is receiving an employment adjustment allowance; or

(3) The veteran is on leave from his or her program, but leave is not authorized by the Veterans Administration.

(Authority: 38 U.S.C. 1508(g))

(c) *Periods during which entitlement may be charged.* Charges for usage of Chapter 31 entitlement may only be made for program participants in one of the following case statuses:

(1) Rehabilitation to the point of employability;

(2) Extended evaluation; or

(3) Independent living.

(Authority: 38 U.S.C. 1506, 1509)

(d) Method of charging entitlement under Chapter 31. The Veterans Administration will make a charge against entitlement:

(1) On the basis of total elapsed time (1 day of entitlement for each day of pursuit) if the veteran is being provided a rehabilitation program on a full-time basis;

(2) On the basis of a proportionate rate of elapsed time if the veteran is being provided a rehabilitation program on a three-quarter, one-half or less than one-half time basis. Entitlement is charged at a:

(i) Three-quarter time rate if pursuit is three-quarters or more, but less than full-time;

(ii) One-half time rate if pursuit is half-time or more, but less than three-quarter time;

(iii) One-quarter time rate if pursuit is less than halftime. Measurement of pursuit on a one-quarter time basis is limited to veterans in independent living or extended evalution programs.

(Authority: 38 U.S.C. 1508(d), 1780(g))

(e) *Computing entitlement.* (1) The computation of entitlement is based upon the rate of program pursuit, as determined under § 21.310 of this part, over the elapsed time during which training and rehabilitation services were furnished;

(2) The Veterans Administration will compute elapsed time from the commencing date of the rehabilitation program as determined under § 21.322 of this part to the date of termination as determined under § 21.324 of this part. This includes the period during which veterans not receiving subsistence allowance because of a statutory bar; e.g, certain incarcerated veterans or servicepersons in a military hospital, nevertheless, received other Chapter 31 services and assistance. Elapsed time includes the total period from the commencing date until the termination date, except for any period of unauthorized leave;

(3) If the veteran's rate of pursuit changes after the commencing date of the rehabilitation program, the Veterans Administration will:

(i) Separate the period of rehabilitation program services into the actual periods of time during which the veteran's rate of pursuit was different; and

(ii) Compute entitlement based on the rate of pursuit for each separate elapsed time period.

(Authority: 38 U.S.C. 1508(f))

(f) *Special situations.* (1) When a Chapter 31 participant elects benefits of the kind provided under Chapter 30 or Chapter 34 as a part of his or her rehabilitation program under Chapter 31, the veteran's entitlement usage will be determined by using the entitlement provisions of those programs. Entitlement charges shall be in accordance with § 21.7076 for Chapter 30 and § 21.1045 under Chapter 34. The entitlement usage computed under these provisions is deducted from the veteran's Chapter 31 entitlement. No entitlement charges are made against either Chapter 30 or Chapter 34.

(Authority: 38 U.S.C. 1508(f))

(2) When a veteran is pursuing on-job training or work experience in a Federal agency on a nonpay or nominal pay basis, the amount of entitlement used is determined in the following manner:

(i) Entitlement used in on-job training in a Federal agency on a nonpay or nominal pay basis is determined in the same manner as other training;

(ii) Entitlement used in pursuing work experience will be computed in the same manner as for veterans in on-job training except that work experience may be pursued on a less than fulltime basis. If the veteran is receiving work experience on a less than full-time basis, entitlement charges are based upon a proportionate amount of the workweek. For example, if the workweek is 40 hours, three-quarter time is at least 30 hours, but less than 40 hours, and half-time is at least 20 hours but less than 30 hours.

(Authority: 38 U.S.C. 1508(c)).

(3) Entitlement is charged on a full-time basis for a veteran found to have a reduced work tolerance.

(Authority: 38 U.S.C. 1508(d), 1780(g))

(g) *Overpayment.* The Veterans Administration will make a charge against entitlement for an overpayment of subsistence allowance under the conditions described in § 21.1045(h) of this part.

(Authority: 38 U.S.C. 1780(g))

[FR Doc. 89-3751 Filed 02-16-89; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3522-9]

Approval and Promulgation of Implementation Plans; Ohio; Extension of Comment Period

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of extension of the public comment period.

SUMMARY: USEPA is giving notice that the public comment period for a notice of proposed rulemaking published January 3, 1989 (54 FR 41), has been extended 30 days from date of publication. This notice proposed to disapprove a revision to the Ohio State Implementation Plan, which would allow an alternative emission control plan (bubble) with monthly averaging, for two air cleaner spray booths and a dip tank at the Ford Motor Company. This source is located in Erie County, Sandusky Ohio. USEPA is taking this action based on an extension request by a commentor.

DATE: Comments are now due on or before March 6, 1989.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6031.

Date: February 9, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89-3813 Filed 2-16-89; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 228

[FRL-3521-7]

Ocean Dumping; Proposed Designation of Site

AGENCY: Environmental Protection Agency (EPA), Region IX.

ACTION: Proposed rule.

SUMMARY: EPA Region IX proposes to designate an ocean disposal site located southeast of Tutuila Island, American Samoa for the disposal of fish processing wastes. The center of the site is 5.45 nautical miles from land (14° 24.00' South latitude by 170° 38.20' West longitude), located in 1,502 fathoms of water, with a radius of 1.5 nautical miles. The fish processing wastes are generated by Star-Kist Samoa,

Incorporated and Samoa Packing, Incorporated located in Pago Pago. These are subsidiaries of Star-Kist Foods, Incorporated and Van Camp Seafood Company, Incorporated, respectively. This action is necessary to provide an acceptable ocean dumping site for the disposal of fish processing wastes from the American Samoa facilities. This proposed site designation is for an indefinite period of time, but the site is subject to periodic monitoring to insure that unacceptable adverse environmental impacts do not occur. The interim Fish Cannery Wastes Site-Region IX will be removed from the list of interim sites at 40 CFR 228.12(a)(3).

DATE: Comments must be received on or before March 20, 1989.

ADDRESSES: Send comments to: Mr. Patrick Cotter, Ocean Dumping Coordinator (W-7-1), U.S. Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, California 94105.

Information for this proposed designation is available for public inspection at the following locations:

1. EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street, SW., Washington, D.C.
2. EPA Region IX, Library, 215 Fremont Street, San Francisco, California.
3. EPA Pacific Islands Coordination Office, 300 Ala Moana Boulevard, Room 1302, Honolulu, Hawaii.
4. American Samoa Environmental Quality Commission, Pago Pago, American Samoa.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick Cotter at the above address, or by telephone at (415) 974-0257.

SUPPLEMENTARY INFORMATION

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.* gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986 EPA's Administrator delegated the authority to designate ocean disposal sites for fish processing wastes to the Administrator of the Region which received a request for an ocean dumping permit. This site designation is being made according to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter 1, Subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2462 *et seq.*). A fish cannery waste disposal site was designated for American Samoa on November 24, 1980 (45 FR 77435). This site designation was restricted to a three year period which ended on November 24, 1983. Before the site expired, EPA Region IX issued a letter on August 8, 1983 authorizing the canneries to dispose of the fish processing wastes at the site until a suitable site designation environmental impact statement was prepared by the Agency. After publication and acceptance of the final rule for the fish processing waste disposal site, the previous Fish Cannery Wastes Site-Region IX will be deleted from 40 CFR 228.12(a)(3).

A series of MPRSA section 102 research permits (OD 86-01, OD 87-01, OD 88-01 and OD 88-02) were issued to the canners. The special conditions and monitoring requirements in these permits have been used to characterize the current disposal site (900 fathom site) during actual disposal operations. Research permits were issued because EPA Region IX determined that there was a need to collect scientific information about the impact of this fish processing waste disposal in the environment near American Samoa. Results of the site monitoring program revealed that unacceptable environmental impacts did not occur at the designated ocean disposal site.

On November 18, 1988, President Reagan signed the Ocean Dumping Ban Act of 1988 (Pub. L. 100-688). This law excludes waste from the tuna canneries in American Samoa (amended MPRSA section 104B(k)(3)(B)) from the prohibition of ocean dumping of industrial wastes after December 31, 1991. The proposed designation of an ocean dumping site corresponds to the intent of Congress to provide an acceptable means of disposing of fish cannery wastes in the most environmentally sound manner.

Interested persons may participate in this proposed rulemaking by submitting written comments within 30 days of the date of this publication to the address given above.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, (NEPA) requires that Federal agencies prepare an environmental impact statement (EIS) on proposals for major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision making process careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations (39 FR 37419, October 21, 1974).

EPA Region IX prepared a Draft EIS entitled "The Designation of an Ocean Disposal Site off Tutuila Island, American Samoa for Fish Processing Wastes." A notice of availability of the DEIS for public review and comment was published in the **Federal Register** (53 FR 38118, September 16, 1988). The public comment period on this DEIS closed on October 31, 1988 after receipt of 11 comment letters.

The following substantive comments were discussed in the 11 comment letters:

Comment 1: The no action, land-based and shallow water alternatives should be eliminated from consideration for disposal of fish processing wastes in American Samoa. Ocean dumping at an acceptable site is a good solution for disposal of fish processing wastes.

Response 1: EPA Region IX has established the need for ocean dumping and has selected the 1,500 fathom site as the preferred alternative.

Comment 2: Reports by local fishermen and government officials suggest that the waste plume may be affecting nearshore coral reef areas off Tafuna Airport, the village of Nu'uuli, Coconut Point, and fish aggregation device near Steps Point.

Response 2: To ensure protection of sensitive marine ecosystems and human health, EPA Region IX has taken the most conservative approach to designation of an appropriate site and selected a site 5.45 nautical miles offshore. The center of the 1,500 fathom site is approximately 2.75 nautical miles farther offshore than the 900 fathom site.

Comment 3: Select the 1,500 fathom site for the preferred alternative. This alternative would reduce the potential for the plume to affect the nearshore areas, and it would better accommodate possible increases in waste disposal that have been contemplated by the two canneries.

Response 3: As stated above, a site 5.45 nautical miles from shore has been selected as the preferred alternative in response to environmental concerns.

Comment 4: The 1,500 fathom and 900 fathom sites are similar and both locations may provide beneficial uses to ocean. Therefore, EPA should designate the 900 fathom site because no major environmental impacts have been shown and the additional distance would increase the cost of the disposal operations and exposure to more severe ocean conditions may prevent safe disposal at the 1,500 fathom site.

Response 4: EPA Region IX has selected the 1,500 fathom site as the preferred alternative to minimize environmental impacts. After discussions with the canners, the Agency has been assured that this site will not cause significant problems for waste disposal or monitoring.

Comment 5: The American Samoa Government requested that EPA Region IX obtain a water quality certification under section 401 of the Clean Water Act (CWA) and a coastal zone consistency determination under section 307(c) of the Coastal Zone Management Act (CZMA) for site designation. The American Samoa Government also stated that they have the authority to issue ocean dumping permits without consulting the U.S. EPA.

Response 5: The disposal site has been moved outside the 3-mile State territorial limit. A consistency determination and a Section 401 Clean Water Act water quality certification is not applicable to the proposed designation under section 102 of MPRSA. In addition, all material transported to the ocean for the purpose of disposal must be permitted by EPA as specified in Title I of MPRSA.

Comment 6: Discuss the application of the American Samoa Water Quality Standards to the proposed disposal site.

Response 6: The 1,500 fathom site has been located outside of State territorial waters; therefore, American Samoa Water Quality Standards are not directly applicable at the disposal site. Water quality at the boundary of the site will meet the definition of the limiting permissible concentration after allowance for initial mixing as specified in 40 CFR 227.27 and 227.29.

Comment 7: One request was received for a public hearing in American Samoa.

Response 7: Disposal of fish cannery wastes has been permitted off American Samoa since 1980. No comments have been received which dispute the selection of ocean dumping as an option for the two tuna canneries. Many comments were received from American Samoa concerning selection of the 900 fathom site. In response to these comments, the 1,500 fathom site has been selected as the preferred alternative. Public comments will still be accepted by EPA Region IX on this proposed rule and the Final Environmental Impact Statement (FEIS). Therefore, a public hearing on the proposed action is not warranted based on the public comments.

Summary: EPA's proposal to designate the 1,500 fathom site and the supporting information for the preferred alternative are described in the FEIS to be issued by the end of January 1989. Anyone desiring to comment on the FEIS should contact the Regional Office listed above for a copy of the document. The deadline for submitting comments on the FEIS will be published in the **Federal Register** as a Notice of Availability.

C. FEIS Alternatives Analysis

The proposed action discussed in the FEIS is designation of an acceptable fish processing waste disposal site for continuing use. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal as specified in 40 CFR Part 228 of EPA's Ocean Dumping Regulations. Use of the site will be regulated through the issuance of MPRSA Section 102 special permits in compliance with the criteria defined in 40 CFR Part 227. Each special permit will last for a maximum of 3 years.

Application for each permit will be evaluated individually to determine whether the permittees have provided adequate information to characterize the waste. All monitoring data will be reviewed to determine whether any environmental impacts have occurred as a result of disposal of fish processing wastes at the designated site. If EPA Region IX determines that significant unacceptable impacts have occurred at the site, then the Regional Administrator may require that a new site be designated.

The FEIS discusses the need for the action and examines ocean disposal sites and alternatives to the proposed action. The following alternatives were evaluated in this FEIS:

1. No Action—This alternative would prohibit ocean disposal of fish processing wastes. No action would force the canneries to consider one of the following alternatives: (1) discharge of the wastes into Pago Pago Harbor, (2) disposal on land, or (3) closure of the fish processing plants. The options listed for the No Action alternative were determined to be unacceptable solutions because environmental risks were unacceptable and land disposal has been banned by the American Samoa Government.

2. Other Technological Alternatives—These alternatives include: centrifuging, belt presses, vacuum filter presses, anaerobic treatment and digestion, production of animal feed, oil recovery, incineration, pulse jet drying, ultrafiltration, and composting. All of these alternatives were examined in the DEIS and found to be unacceptable for disposal of fish processing wastes.

3. Current Disposal Site (900 fathom site)—This site has been used for ocean disposal of fish processing wastes since a research ocean dumping permit (OD 86–01) was issued in 1987. The center of the site was located 2.25 nautical miles from land (14° 22.18′ South latitude by 170°40.87′ West longitude) in 910 fathoms of water. This site has been monitored extensively for two years, during 4 research permits.

4. Shallow Water Site—This site is located 2.3 nautical miles seaward of the entrance to Pago Pago Harbor (14°20.00′ South latitude by 170°39.30′ West longitude) in 120 fathoms of water. The site is very close to the Taema Bank fishing area, and not considered as a viable alternative for ocean disposal of fish processing wastes.

5. Deeper Water Site (1,500 fathom site)—The center of the deeper water site defined in the DEIS was moved 0.5 nautical miles farther offshore in the FEIS. Water depth at the center of the site is 1,502 fathoms. This proposal was made by EPA Region IX as a result of comments received on the DEIS. The center of the 1,500 fathom site in the FEIS (14°24.00′ South latitude by 170°38.20′ West longitude) is located approximately 5.45 nautical miles from land. Major considerations include: the area of the disposal site, containment of the dumping plume within the site given the initial mixing calculations, the proximity of the site to American Samoa territorial waters, the feasibility of monitoring and surveillance, and other specific criteria defined at 40 CFR 228.6(a).

The FEIS presents the information needed to evaluate the suitability of ocean disposal alternatives for final designation which is based on site monitoring studies. The site monitoring studies, waste stream monitoring and final designation are being conducted under MPRSA, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

D. Proposed Site Designation

The site proposed by EPA Region IX for designation is the 1,500 fathom site, located approximately 5.45 nautical miles offshore. The site occupies an area of about 7.07 square nautical miles. Water depths within the area are approximately 1,502 fathoms (2,746 meters). The coordinates of the site are as follows: 14° 24.00′ South latitude by 170° 38.20′ West longitude with a radius of 1.5 nautical miles. If at any time during the monitoring program required by the MPRSA Section 102 permit, EPA Region IX determines that disposal operations at the site are causing unacceptable adverse impacts, further use of the site will be restricted or ended. The anticipated use of the site

will not cause significant unacceptable environmental impacts as a result of disposal of fish processing wastes. The environmental impact of the disposal operations will be evaluated on a quarterly basis when the permit monitoring data is provided to EPA Region IX.

E. Regulatory Requirements

Selection and approval of ocean disposal sites for continuing use is evaluated first for compliance with 5 general site selection criteria. A site is selected to minimize interference with other marine activities, to keep any temporary dumping perturbations from causing impacts outside the disposal site, and to permit effective monitoring for detection of any adverse impacts at an early stage. Where feasible, locations off the continental shelf and sites with historical use are chosen. If disposal operations at an interim site cause unacceptable adverse impacts, the use of that site will be ended as soon as a suitable alternate disposal site can be designated. The 5 general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6(a) lists 11 specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

The proposed site, as discussed below under the 11 specific factors, meets the 5 general criteria. Historical use at the 900 fathom site has not resulted in substantially adverse effects to living resources of the ocean or to other uses of the marine environment. The 1,500 fathom site is expected to have similar effects on marine resources approximately 2.75 nautical miles southeast of the 900 fathom site.

The characteristics of the proposed site are reviewed below for the 11 factors.

1. Geographical position, depth of water, bottom topography and distance from the coast (40 CFR § 228.6(a)(1)). The 1,500 fathom site is located approximately 5.45 nautical miles (9.2 kilometers) from shore at a depth of approximately 1,502 fathoms (2,746 meters). The bottom topography of the dump site slopes sharply from 1,200 fathoms in the northwest quadrant to depths more than 1,502 fathoms (NOAA, Chart 83434). Since the fish processing waste disposal plume is buoyant, no sediment samples have been taken because benthic impacts are not expected at the site.

2. Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases (40 CFR 228.6(a)(2)). There are no known breeding, spawning or nursery uses of the 1,500 fathom site. The species in the vicinity of the site are pelagic fish species that are harvested commercially, and species of marine birds and cetaceans that are seen infrequently near the site.

3. Location in relation to beaches and other amenity areas (40 CFR 228.6(a)(3)). The 1,500 fathom site is 5.45 nautical miles from the nearest shoreline. EPA Region IX has determined that visual impacts of plumes, transport of dredged material to any shoreline and alteration of any habitat of special biological significance or marine sanctuary will not occur if this site is designated.

Comments received on the DEIS indicate that the plume from the 900 fathom site may have moved close to shore on rare occasions. These reports included sightings and detection of odors associated with the waste. As a result of these reports, EPA Region IX has moved the center of the proposed site farther offshore and increased the radius of the site to contain the plume as shown by mathematical model runs in the FEIS.

4. Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste if any (40 CFR 228.6(a)(4)). The canners propose to dispose of the following fish processing wastes at the disposal site: 200,000 gallons/day of dissolved air flotation (DAF) sludge, 56,900 gallons/day of precooker water, and 256,900 gallons/day of presswater. These amounts are proposed for disposal on a daily basis in the event that delays in daily disposal operations occur. Actual disposal of DAF sludge has been approximately 48,000 gallons per day. The average monthly disposal of authorized wastes from both canneries has been under 660,000 gallons from 1980 to 1987. The need for this in the MPRSA Section 102 permit is to allow the canners to dump precooker water and press water when National Pollutant Discharge Elimination System (NPDES) permits with stricter limits take effect in the future.

The wastes will be transported via a dumping vessel with 24,000 gallon tanks. After modifications, the vessel could carry up to 100,000 gallons of waste per trip for disposal at the site. The vessel will be required to discharge the wastes at a rate of less than or equal to 1400 gallons per minute at a maximum speed of 10 knots within a 0.2 nautical mile circle in the upcurrent quadrant of the disposal site.

5. Feasibility of surveillance and monitoring (40 CFR 228.6(a)(5)). The U.S. Coast Guard (USCG) may conduct spot surveillance of disposal activities at the site and they may inspect the disposal vessel for compliance with USCG regulations. EPA Region IX and the American Samoa Environmental Protection Agency will assist the USCG within the limits of their jurisdiction.

Waste stream and plume monitoring will be key factors in the site monitoring program. The monitoring program will be established to answer several questions including: composition of wastes disposed at the site during the term of the permit, the area affected by the disposal plume, movement of the disposal plume toward land and areas of special biological significance, disposal model verification, and potential impacts on commercial and recreational fisheries. If significantly adverse impacts are detected at the site, the site management plan will be flexible enough to allow for appropriate action.

6. Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any (40 CFR 228.6(a)(6)). Water currents in the vicinity of the 1,500 fathom site are variable but move parallel to shore in a west southwest direction. Surface current speeds average between 0.16 and 0.67 knots. During storm events, surface greater current speeds occur. Vertical mixing to a depth of approximately 20 meters has been documented at the disposal site; however, the surface waters off American Samoa are strongly stratified and deeper mixing is not expected below the permanent thermocline.

The prevailing winds, oceanic currents, shoaling effects of the reefs and the configuration of the island contribute to a persistent longshore current between Pago Pago Harbor and the southeastern point of the island. This current minimizes the possibility of the waste plume affecting nearshore reef areas. To further reduce the possibility of nearshore impacts, EPA Region IX has selected the 1,500 fathom site which is 5.45 nautical miles from shore.

7. Existence and effects of current and previous discharges and dumping in the area (including cumulative effects) (40 CFR 228.6(a)(7)). Disposal of fish processing wastes has been permitted at two locations near the 1,500 fathom site since September 1980. An average of approximately 660,000 gallons per month has been discharged at these sites since the first permit was issued. Detailed field monitoring at the 900 fathom site, under 4 research permits, has not shown any unacceptable or cumulative environmental impacts since February 1987. Impacts on the water column

during disposal operations are considered to be minimal and temporary. The potential for cumulative effects, also considered to be minimal at the 1,500 fathom site, will be assessed in the monitoring program as a major requirement of the MPRSA Section 102 permit.

8. Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean (40 CFR 228.6(a)(8)). Interference with shipping and fishing is minimal because vessel traffic in the vicinity of the disposal site is extremely low. In an effort to minimize effects on nearshore habitats and fish aggregation devices placed near the island, EPA Region IX has selected the 1,500 fathom site as the preferred alternative. There are no other uses of the ocean that could be affected by disposal of wastes at the 1,500 fathom 1 site.

9. The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys (40 CFR 228.6(a)(9)). The oceanic water quality is considered to be excellent in terms of concentration of nutrients and other compounds at the 1,500 fathom site. The size of the site has been enlarged to a radius of 1.5 nautical miles to contain any discharge plume within the boundaries. Water quality outside the site boundary is not expected to be affected by disposal of fish processing wastes.

The community of pelagic invertebrates in the vicinity of the 1,500 fathom site is dominated by large cephalopod mollusks of the genus *Nautilus*. Recent studies have shown that they may be food for large carnivores. Impacts on these highly motile invertebrates are expected to be very small.

Pelagic fish caught in the vicinity of the 1,500 fathom site include skipjack (*Katsuwonus pelamis*) and yellowfin tuna (*Thunnus albacares*) which are fished commercially throughout the tropical South Pacific Ocean. Other important sport and commercial fish species are marlin (*Istiophorus platyperus*), sailfish (*Makaira* spp.), dolphin fish (*Coryphaena* spp.), wahoo (*Acanthocypium solandri*) and kawakawa (*Euthynnus affinis*). These species are migratory and they avoid areas of turbid water. No impacts are expected on these fish species. No impacts are expected on coastal birds, cetaceans or any endangered species in the vicinity of the 1,500 fathom site.

10. Potentiality for the development or recruitment of nuisance species in the disposal site (40 CFR 228.6(a)(10)). Recruitment of nuisance species, such as sharks, in the vicinity of the disposal site is not expected. Sharks have been observed near the fish attractant device south of the island and in Pago Pago Harbor feeding on small fish. If a school of small prey fish were attracted to the waste plume, the sharks may pursue them. However, disposal of fish processing wastes at the current site has not caused an increase in the offshore shark population.

11. Existence at or in close proximity to the site of any significant natural or cultural feature of historical importance (40 CFR 228.6(a)(11)). There are no known shipwrecks or any known aboriginal artifacts in the vicinity of the 1,500 fathom site.

F. Proposed Action

EPA Region IX has concluded that the proposed 1,500 fathom site, evaluated in the FEIS, may be designated for continued use. The 1,500 fathom site is compatible with the 5 general criteria and 11 specific criteria used by EPA for site evaluation. Designation of the 1,500 fathom site as an EPA-approved ocean dumping site is being published as proposed rulemaking. Management of this site will be the responsibility of the Regional Administrator of EPA Region IX. The monitoring program, required as part of the MPRSA section 102 permit, will be conducted by the permittees.

If the 1,502 fathom ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual ocean disposal of materials. Before ocean dumping of fish processing waste begins, EPA Region IX must evaluate each permit application according to the ocean dumping criteria. EPA Region IX has the right to disapprove the actual dumping, if environmental concerns under MPRSA have not been met.

G. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal site for fish processing wastes generated in Pago Pago, American Samoa. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a major rule. Consequently, this proposed rule does not necessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any requirements to collect information that are subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water Pollution Control.

Dated: February 3, 1989.

John Wise,

Acting Regional Administrator for Region IX.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) the entry "Fish Cannery Wastes Site-Region IX, and adding paragraph (b)(74) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(74) American Samoa Fish Processing Waste Disposal Site-Region IX.

Location: 14° 24.00' South latitude by 170° 38.20' West longitude (1.5 nautical mile radius).

Size: 7.07 square nautical miles.

Depth: 1,502 fathoms (2,746 meters).

Primary Use: Disposal of fish processing wastes.

Period of Use: Continuing use.

Restrictions: Disposal shall be limited to dissolved air flotation (DAF) sludge, presswater, and precooker water produced as a result of fish processing operations at fish canneries generated in American Samoa authorized for disposal under a MPRSA Section 102 permit.

[FR Doc. 89-3816 Filed 2-16-89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 228

[FRL-3522-7]

Ocean Dumping; Proposed Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate an existing dredged material disposal site located in the Gulf of Mexico near the Mississippi River Gulf Outlet (MRGO) Canal for the continued disposal of dredged material removed

from the MRGO. This proposed site designation is for an indefinite period of time. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of this material.

DATE: Comments must be received on or before April 3, 1989.

ADDRESSES: Send comments to: Norm Thomas, Chief, Federal Activities Branch (6E–F), U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733.

Information supporting this proposed designation is available for public inspection at the following locations:

EPA, Region 6 (E–FF), 1445 Ross Avenue, 9th Floor, Dallas, Texas 75202

Corps of Engineers, New Orleans District, Foot of Prytania Street, Room 296, New Orleans, Louisiana 70160.

FOR FURTHER INFORMATION CONTACT: Norm Thomas 214/655–2260.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Securities Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This proposed site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*). That list established the MRGO site for the disposal of material dredged from the MRGO. In January 1980, the interim status of the MRGO site was extended indefinitely. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the EPA Region 6 address given above.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare Environmental Impact Statements (EISs) on proposals for major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations such as this (39 FR 16186, May 7, 1974).

EPA and the New Orleans District Corps of Engineers (COE) have jointly prepared a Draft Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Mississipi River Gulf Outlet Ocean Dredged Material Disposal Site Designation." On January 19, 1989, a notice of availability of the Draft EIS for public review and comment was published in the **Federal Register.** The public comment period on this Draft EIS closes on March 6, 1989. Limited copies of the Draft EIS are available from the EPA address given above.

The proposed action discussed in the EIS is designation for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis. Pror to each use the Corps will comply with 40 CFR Part 227 by providing EPA a letter containing all the necessary information.

The EIS discusses the need for the action and examines ocean disposal sites and alternatives to the proposed action. Land based disposal alternatives were examined in a previously published EIS and the analysis was updated in the Draft EIS based on information from the COE. A land disposal area does exist about 25 miles west of the disposal site. However, use of this upland site for material which has traditionally been dumped at sea would quickly decrease the lifetime of the site. Additionally, because of the distance involved, the cost would increase considerably. Accordingly, this alternative was not considered feasible. Marsh creation and beach nourishment with MRGO material were also evaluated. Because of increased transportation costs, these alternatives were also determined not practicable.

Four ocean disposal alternatives—two shallow water areas (including the proposed site), a mid-shelf area and a deepwater area—were evaluated. Use of the mid-shelf and deepwater sites would involve: 1) increased transportation costs without any corresponding environmental benefits; 2) the removal of sediments from the nearshore environment making them unavailable for movement and deposition by longshore currents; and 3) increased safety hazards resulting from transporting dredged material greater distances through areas of active oil and gas development. Because of these reasons, the mid-shelf area and the deepwater area were eliminated from further consideration. An alternate shallow-water site located immediately north of the existing site was also evaluated. However, no environmental benefits would be gained by its selection.

In accordance with the requirements of the Endangered Species Act, EPA and the COE have completed a biological assessment. The COE has coordinated a no adverse effect determination with the National Marine Fisheries Service (NMFS) and NMFS has concurred with this determination. EPA is also coordinating with the State of Louisiana under requirements of the Coastal Zone Management Act.

C. Site Designation

The southern side of the existing site is located about twelve miles north of the Plaquemines Parish mainland. The northwest end of the site is about 2.2 miles from the Breton Islands to the northwest and 2.3 miles from the Grand Gossier Islands to the northeast. The site extends approximately sixteen miles offshore. Water depths at the site range from 20 to 40 feet. The coordinates of the site are as follows: 29° 32′ 35″ N, 89° 12′ 38″ W; 29° 29′ 21″ N, 89° 08′ 00″ W; 29° 24′ 51″ N, 88° 59′ 23″ W; 29° 24′ 28″ N, 88° 59′ 39″ W; 29° 28′ 59″ N, 89° 08′ 19″ W; 29° 32′ 15″ N, 89° 12′ 57″ W; thence to the point of beginning.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, further use of the site may be terminated or limitations placed on the use of the site to reduce the impacts to acceptable levels. The general criteria are given in Section 228.5 of the EPA Ocean Dumping Regulations; Section 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

EPA has determined, based on information presented in the Draft EIS, that the existing site is acceptable under the five general criteria. The Continental Shelf location is not feasible and no environmental benefit would be obtained by selecting such a site.

Historical use of the existing site has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment. The characteristics of the proposed site are reviewed below in terms of the eleven specific factors.

1. Geographical Position, Depth of Water, Bottom Topography and Distance from Coast (40 CFR 228.6(a)(1))

Geographical position, average water depth, and distance from the coast for the disposal site are given above. Bottom topography gently slopes to the southeast (8.0 feet per mile).

2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2))

The northern Gulf of Mexico is a breeding, spawning, nursery and feeding area for shrimp, menhaden and bottomfish. Migration of fish and shellfish through the area is heaviest during spring and fall. The MRGO ocean disposal site represents a small area of the total range of the fisheries resource.

2. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3))

The MRGO ocean disposal site is about 2.2 miles from the nearest beaches on the barrier islands. These beaches are sparsely used because they are small and accessible only by boat. The turbidity plume would be diluted to ambient levels well before reaching these beaches.

4. Types and Quantities of Wastes Proposed To Be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Wastes, If Any (40 CFR 228.6(a)(4))

The dredged material to be disposed is from the adjacent area of the MRGO and consists of various mixtures of sand, silt and clay. Sediment grain size generally increases in the offshore direction, with sands being predominant throughout the disposal site. Approximately three million cubic yards of material are disposed of in the site annually. The material is removed with a hopper dredge and released in the disposal site. The material is not packaged in anyway. The Corps of Engineers would likely be the only user of the site.

5. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5))

Surveillance is possible by shore-based radar, aircraft, or day-use boats. No surveillance is currently performed by the U.S. Coast Guard. Monitoring would be facilitated by the fact that the disposal site is nearshore, in shallow waters, and has baseline data available. The primary purpose of monitoring is to determine whether disposal at the site is significantly affecting areas outside the disposal area and to detect any unacceptable adverse effects occurring in or around the site. Based on historic data, an intense monitoring program is not warranted. However, in order to provide adequate warning of environmental harm, EPA will develop a monitoring plan in coordination with the COE. The plan would concentrate on periodic depth soundings and sediment and water quality testing.

6. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, If Any (40 CFR 228.6(a)(6))

Mixing processes, current characteristics, and sediment transport in the nearshore region off Breton Islands are influenced by tidal currents, winds, and storms. Chemical and physical parameters generally indicate a fairly homogenous water column in the area. Density stratification can occur seasonally with fresher water from the Mississippi River on the surface. In the summer, bottom waters on the Louisiana shelf are occasionally oxygen depleted, which causes mass mortalities of benthic organisms. During a site study in December 1980 and June 1981, waters were supersaturated with oxygen at all depths. During June 1981, waters were nearly saturated or supersaturated with oxygen down to about twenty-one feet. Velocities of 3 to 4 knots may occur during storm events. It appears that the predominant current near the west side of the barrier islands in Breton Sound is toward the north. Data on currents along the Gulf side are lacking.

7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) (40 CFR 228.6(a)(7))

Dredged materials from the construction and maintenance of the MRGO have been disposed of at the site since 1958, and no significant adverse impacts have resulted. Previous disposals have caused minor effects, such as temporary increases in suspended sediment concentrations, temporary turbidity, sediment mounding, smothering of some benthic organisms, release of nutrients, possible minor releases of trace metals, and a temporary change in sediment grain size.

8. Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8))

In the vicinity of the disposal site the majority of shipping traffic is confined to the MRGO. Dredging facilitates shipping; periodic use of the disposal site has some potential for interfering with ship movement in the MRGO during dredging and disposal operations.

Nearshore areas contain a productive "high-use" fishing ground for a number of commercial and recreational species. The MRGO site represents a very small portion of the total nearshore fishing grounds in the Deltaic Plain. Adverse impacts from disposal would be temporary and minor. Interferences with fishing may occur if any shoals are created by dredged material disposal, since this could cause groundings of shrimp boats within disposal site boundaries. If the material is spread evenly, it will raise bottom elevations within the site by 0.4 feet, which should not result in vessel groundings.

The nearest oyster lease is in the Jack Bay estuarine area about 15 miles southwest of the site. Designation of the disposal site would not impact this or any other lease areas. Desalination areas do not occur in the vicinity of the disposal site. The site is located within the Breton National Wildlife Refuge, which is a major wintering area for redhead ducks. There has been no apparent impact to the refuge from use of the disposal site.

Petroleum and mineral-extracting activities occur offshore within 3.5 miles of the site and are not impacted by use of the site. Also there are pipelines that occur throughout the area that have not been impacted by the deposition of dredged material. Intermittent dumping does not interfere with the exploration or production phases of resource development, or with other legitimate uses of the ocean.

9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys (40 CFR 228.6(a)(9))

Water column concentrations of trace metals and chlorinated hydrocarbons (CHC) were below EPA's water quality criteria during the 1980–1981 study. Concentrations in sediment were strongly related to grain size, with highest levels in silts and clays within Breton Sound. Concentrations of heavy metals and CHC's were comparable

inside and outside the disposal site for similar sediment types.

Nutrient concentrations, turbidity, and suspended solids, are controlled in large part by Mississippi River discharge, and are generally low in the summer/fall and increase in the winter/spring.

The benthos at the site was found to exhibit a patchy distribution, spatially and temporally and was dominated by polychaete worms, lancelets worms, and the little surf clam. Several of the dominant organisms, inside and outside the site, were well adapted to the transitional area between Breton Sound and the shallow shelf eat of the islands. There was a high variance between dominant species inside and outside of the site. No affects of previous dredged material disposal on benthic organisms could be identified at the disposal site and the macrofauna were characteristic of shallow areas offshore from the eastern Mississppi delta. Although there was a minor accumulation of mercury in oysters exposed to disposal site sediment, oysters do not occur in the disposal area.

10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10))

Past disposal of dredged material at the existing site has not resulted in the development or recruitment of nuisance species. Considering the similarity of the dredged material with the existing sediments, it is not expected that continued disposal of dredged material will result in the development of such species.

11. Existence at or in Close Proximity to the Site of Any Significant Natural or Cultural Features of Historical Importance (40 CFR 228.6(a)(11))

There are no known features of historical or cultural significance on the barrier islands to either side of the site. No known shipwrecks are located within site boundaries.

E. Proposed Action

Based on the Draft EIS, EPA proposes to designate the Mississippi River Gulf Outlet ocean dredged material disposal site. The existing site is compatible with the general criteria and specific factors used for site evaluation. While the Corps does not administratively issue itself a permit, the requirements that must be met before dredged material derived from Federal projects can be discharged into ocean waters are the same as where a permit would be required. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: February 10, 1989.

Robert E. Layton Jr.,

Regional Administrator of Region 6.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is proposed to be amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) under "Dredged Material Sites" the entry for Mississppi River Gulf Outlet, Louisiana - Breton Sound and Bar Channel and adding paragraph b(75) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(75) Mississippi River Gulf Outlet, Louisiana - Region 6.

Location: 29°32'35" N., 89°12'38" W.; 29°29'21" N., 89°08'00" W.; 29°24"51" N., 88°59'23" W.; 29°24'28" N., 88°59'39" W.; 29°28'59" N., 89°08'19" W.; 29°32'15" N., 89°12'57" W.; thence to the point of beginning.

Size: 6.03 square nautical miles.

Depth: Ranges from 20–40 feet.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to dredged material from the vicinity of Mississppi River Gulf Outlet.

[FR Doc. 89–3815 Filed 2–16–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Parts 260, 261, 262, 264, 265, 270, 271, and 302

[FRL–3522–8]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities; Requirements for Authorization of State Hazardous Waste Programs; and Designation, Reportable Quantities, and Notification; Correction

AGENCY: Environmental Protection Agency.

ACTION: Notice of corrections and Notice of extension of comment period.

SUMMARY: The purpose of this notice is to correct several errors in the Agency's Notice of Proposed Rulemaking (NPRM) published on December 30, 1988 (53 FR 53282) and to extend the public comment period on that notice. The NPRM proposed to list as hazardous three additional wastes from wood preserving operations that use chlorophenolic, creosote, and/or inorganic (arsenical and chromium) preservatives, and list as hazardous one waste from surface protection processes that use chlorophenolics.

The corrections contained in this notice pertain to three areas of the December 30, 1988 NPRM: (1) Section IV of the preamble, which discusses the impact of the proposed rule on the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); (2) the Appendix to the Preamble, which presents examples of environmental contamination from wood preserving and surface protection wastes; and (3) the table of proposed amendments to the CERCLA regulations contained in 40 CFR Part 302.

Corrections

The corrections to the December 30, 1988 preamble are as follows:

Correction to Section IV of the Preamble

Section IV of the preamble, "CERCLA Designation and Reportable Quantities Adjustment," includes a "Table 16" (see

FR 53314, second column) that contains errors. As a result, both Table 16 and the paragraph that describes Table 16 (see 53 FR 53314, bottom of first column) must be revised. The paragraph is revised to read as follows:

"Table 16 lists the proposed RQs for the hazardous waste streams that will become CERCLA hazardous substances when this rulemaking is finalized, as well as the RQs for each hazardous constituent of the hazardous waste streams. If a particular hazardous constituent is a CERCLA hazardous substance, its proposed or final adjusted RQ is listed (along with its statutory RQ) in Table 16; if the hazardous constituent is not a CERCLA hazardous substance, its RQ as shown in Table 16 is a 'tentative RQ,' assigned solely for the purpose of determining the proposed RQ adjustment for the overall waste stream. The proposed RQ adjustment for a waste stream is the lowest of all the hazardous constituent RQs (final adjusted, proposed adjusted, or tentative) for that waste stream. As Table 16 shows, the lowest hazardous constituent RQ for each of the hazardous waste streams F032, F033, F034, and F035 is one pound. Therefore, the proposed RQ for each of these hazardous wastes streams is one pound. Materials supporting the proposed RQs for these waste streams are available in the public docket."

Table 16 is revised to read as follows:

TABLE 16.—RQs FOR CERCLA HAZARDOUS SUBSTANCES AND THEIR CONSTITUENTS

Hazardous substance	Constituent	Tentative RQ(lbs)	Statutory RQ(lbs)	Proposed or final RQ(lbs)
Waste No. F032			1	1
	Arsenic		1	1
	Benz(a)anthracene		1	10
	Benzo(a)pyrene		1	1
	Chromium		1	1
	Dibenz(a,h)anthracene		1	1
	Indeno(1,2,3-cd)pyrene		1	100
	Lead		1	100
	Naphthalene		5,000	[2] 100
	Pentachlorophenol		10	10
	Phenol		1,000	[2] 1,000
	Tetrachlorodibenzo-p-dioxins	1		
	2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)		1	1
	Pentachlorodibenzo-p-dioxins	[3]		
	Hexachlorodibenzo-p-dioxins	1		
	1,2,3,7,8,9-Hexachlorodibenzo-p-dioxin	1		
	1,2,3,4,7,8-Hexachlorodibenzo-p-dioxin	1		
	Heptachlorodibenzo-p-dioxins	[3]		
	Tetrachlorodibenzofurans	1		
	2,3,7,8-Tetrachlorodibenzofuran	1		
	Pentachlorodibenzofurans	[3]		
	Hexachlorodibenzofurans	[3]		
	Heptachlorodibenzofurans	[3]		
Waste No. F033			1	1
	Pentachlorophenol		10	10
	2,3,4,6-Tetrachlorophenol		1	[2] 10
	2,4,6-Trichlorophenol		10	10
	Tetrachlorodibenzo-p-dioxins	1		
	2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)		1	1
	Pentachlorodibenzo-p-dioxins	[3]		
	Hexachlorodibenzo-p-dioxins	1		
	1,2,3,7,8,9-Hexachlorodibenzo-p-dioxin	1		
	1,2,3,4,7,8-Hexachlorodibenzo-p-dioxin	1		
	Heptachlorodibenzo-p-dioxins	[3]		
	Tetrachlorodibenzofurans	1		
	2,3,7,8-Tetrachlorodibenzofuran	1		
	Pentachlorodibenzofurans	[3]		
	Hexachlorodibenzofurans	[3]		
	Heptachlorodibenzofurans	[3]		
Waste No. F034		1	1	1
	Arsenic		1	1
	Benz(a)anthracene		1	10
	Benzo(k)fluoranthene		1	5,000
	Benzo(a)pyrene		1	1
	Biphenyls	1		
	Polychlorinated biphenyls (PCBs)		10	1
	Chromium		1	1
	Dibenz(a,h)anthracene		1	1
	Indeno(1,2,3-cd)pyrene		1	100
	Lead		1	100
	Naphthalene		5,000	[2] 100
Waste No. F035			1	1
	Arsenic		1	1
	Chromium		1	1
	Lead		1	100

[1] A tentative RQ is an RQ derived for a constituent of a waste stream (e.g., tetrachlorodibenzo-p-dioxins) which is not a CERCLA hazardous substance itself but describes a broad generic category of hazardous substances and contains one or more CERCLA hazardous substances. Additionally, tentative RQs have been derived for certain substances, where data are available, that are not CERCLA hazardous substances (e.g., 2,3,7,8-tetrachlorodibenzofuran).

[2] This symbol indicates that the RQ is a final RQ. RQs listed without the double asterisk are proposed RQs.

[3] Indicates that no RQ is being assigned to the broad generic class because data have not been located for any members of the class.

Correction to Appendix A of the Preamble

On the fifth line of the Appendix to the December 30th NPRM, the reader is referred to Table 20 (see 53 FR 53323, 2nd column). Table 20 was inadvertantly omitted. Table 20 is included below:

TABLE 20.—WOOD PRESERVING AND SURFACE PROTECTION FACILITIES ON THE NATIONAL PRIORITY LIST (1988)

NPL No.	Site Name	State	Preservatives used
699	Midland Products	AR	P,C
257	Mid-South Wood Products.	AR	P,C,I
275	Coast Wood Preserving	CA	I
599	Koppers Co., Inc. (Oroville Plant).	CA	P,C,I
600	Louisiana-Pacific Corp.	CA	NaCP
195	Selma Treating Co.	CA	P
534	Broderick Wood Products.	CO	P,C
50	American Creosote (Pensacola Pit).	FL	P,C
261	Brown Wood Preserving.	FL	P,C
478	Cabot/Koppers	FL	C
245	Coleman-Evans Wood Preserving Co..	FL	P
124	Union Pacific Railroad Co..	ID	P,C
546	Galesburg/Koppers Co..	IL	P,C
329	Mid-Atlantic Wood Preservers, Inc..	MD	I
566	Southern Maryland Wood Treating.	MD	P,C
231	Burlington Northern (Grainerd).	MN	C
202	MacGillis & Gibbs/Bell Lumber.	MN	P,C,I
43	Reilly Tar (St. Louis Park Plant).	MN	C
730	Ritari Post & Pole	MN	P
425	Idaho Pole Co.	MT	P
452	Libby Ground Water Contamination.	MT	P,C
624	Montana Pole and Treating.	MT	P
573	Cape Fear Wood Preserving.	NC	P,C,I
161	Koppers Co., Inc. (Florence Plant).	SC	P,C
420	Palmetto Wood Preserving.	SC	I
533	American Creosote (Jackson Plant).	TN	P,C
677	Koppers Co., Inc. (Texarkana Pit).	TX	P,C,I
415	South Cavalcade Street.	TX	C,I
384	Texarkana Wood Preserving Co..	TX	P,C
462	United Creosoting Co.	TX	P,C
564	L.A. Clarke & Son	VA	C
635	Wyckoff Co./Eagle Harbor.	WA	P,C
641	Moss-American (Kerr-McGee Oil Co.).	WI	C
464	Baxter/Union Pacific Tie Treating.	WY	P,C
135	St. Regis Paper Co	MN	C,I
467	North Cavalcade Street	TX	C,I
731	Bayou Bonfouca	LA	C

P—pentachlorophenol.
C—creosote.
I—inorganics.
NaCP—sodium pentachlorophenate (surface protection).

Correction to the Proposed Amendments to CERCLA Regulations

§ 302.4 [Corrected]

"Table 302.4—List of Hazardous Substances and Reportable Quantities" (see 53 FR 53330) contains proposed amendments to Table 302.4 of 40 CFR Part 302. This table in the December 30, 1988 NPRM contains errors, and is revised to read as follows:

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Proposed RQ	
			RQ	Code	RCRA waste number	Category	Pounds (Kg)
F032 Wastewaters, process residuals, preservative drippage and discarded spent formulations from wood preserving processes at facilities that currently use or have previously used chlorophenolic formulations (except waste from processes that have complied with the cleaning or replacement procedures set forth in § 261.35 and do not resume or initiate use of chlorophenolic formulations). This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol			1*	4	F032	X	1 (0.454)
F033 Wastewaters, process residuals, protectant drippage, and discarded spent formulations for wood surface protection processes at facilities that currently use or have previously used chlorophenolic formulations (except wastes from processes that have complied with the cleaning or replacement procedures set forth in § 261.35 and do not resume or initiate use of chlorophenolic formulations)			1*	4	F033	X	(0.454)
F034 Wastewaters, process residuals, preservative drippage, and discarded spent formulations from wood preserving processes that currently use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol			1*	4	F034	X	1 (0.454)
F035			1*	4	F035	X	1 (0.454)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Proposed RQ	
			RQ	Code	RCRA waste number	Category	Pounds (Kg)
Wastewaters, process residuals, preservative drippage, and discarded spent formulations from wood preserving processes using inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol							

1* Indicates that the 1-pound RQ is a CERCLA statutory RQ.
4 Indicates that the statutory source for designation of the hazardous substance under CERCLA is RCRA Section 3001.
X The letter "X" is associated with a reportable quantity of 1 pound.

Extension of Comment Period

EPA has received requests from the American Wood Preservers Institute (AWPI) and several other organizations for a 60-day extension of the public comment period on this NPRM. The reasons for this request were (1) the industry needs additional time to review existing data and to collect additional data to support its comments and alternative proposals and (2) industry-wide briefings are to be held the week of February 6 in Oregon, Georgia, and Pennsylvania to describe the requirements of the rule to the industry.

EPA is aware that most of the wood preserving industry's facilities are small businesses without corporate environmental and regulatory analysis support staff. It is through these briefings that AWPI intends to obtain firsthand feedback on the proposed rule from industry members and to define the scope and direction of AWPI's comments on behalf of its members and non-members in the industry.

Therefore, to ensure that commentors have adequate time to understand the proposed rule and prepare their comments, we are taking this opportunity to lengthen the comment period by 60 days, from February 28, 1989 to April 30, 1989. It should be noted, however, that this is the maximum possible extension of time to the public comment period because the Agency is obligated by a consent decree filed July 27, 1988, which settled several elements of a civil action filed on March 25, 1985 in U.S. District Court for the District of Columbia (Environmental Defense Fund and National Wildlife Federation v. Thomas et al. No. 85–0974). (See 53 FR 53283.)

DATES: The deadline for submitting written comments on the December 30, 1988 notice is entended by 60 days, from February 28, 1989 to April 30, 1989.

ADDRESSES: Comments on the RCRA proposal should be marked "Docket Number F–88–WPWP–FFFFF" and sent in triplicate to EPA RCRA Docket Clerk (OS–332), 401 M Street SW., Room S–205, Washington, DC 20460.

Comments on the CERCLA proposal should be sent in triplicate to: Emergency Response Division, Docket Clerk, ATTN: Docket No. RQ–WP, Room M–2427, U.S. EPA, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The RCRA/CERCLA Hotline at (800) 424–9346 or, in the Washington, DC area, (202) 382–3000. For technical information on the RCRA portion of the proposal, contact Mr. Edwin F Abrams, Listing Section, Office of Solid Waste (OS–333) at (202) 382–4787. For technical information on the CERCLA portion of the proposal, contact Ms. Ivette Vega, Response Standards and Criteria Branch, Emergency Response Division (OS–210) at (202) 475–7369. Both of these people are available at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Jonathan Cannon,

Acting Assistant Administrator.

[FR Doc. 89–3812 Filed 2–16–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 372

[OPTS–400022; FRL–3523–4]

Sodium Sulfate; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is granting a petition by proposing to delete sodium sulfate (solution) from the list of toxic chemicals under section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986. The proposal to delete sodium sulfate is based on EPA's conclusion that there is not evidence that sodium sulfate causes or can reasonably be anticipated to cause adverse human health or environmental effects as specified under section 313(d). EPA proposes to amend 40 CFR Part 372.

DATES: Written comments must be submitted on or before April 18, 1989.

ADDRESSES: Written comments should be submitted in triplicate to: OTS Docket Clerk, TSCA Public Docket Office (TS– 793), Environmental Protection Agency, Rm. NE–G004, 401 M Street SW., Washington, DC 20460, Attention: Docket Control Number OPTS–400022.

FOR FURTHER INFORMATION CONTACT: Robert Israel, Acting Petition Coordinator, Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Stop OS–120, 401 M Street, SW., Washington, DC 20460, Toll free: 800–535–0202, In Washington, DC and Alaska, 202–479–2449.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

The proposed deletion is issued under section 313(d) and (e)(1) of Title III of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499, "SARA"). Title III of SARA is also referred to as the Emergency Planning and Community Right-to-Know Act of 1986.

B. Background

Section 313 of SARA Title III requires certain facilities manufacturing, processing or using toxic chemicals to report annually their environmental releases of such chemicals. Section 313 establishes an initial list of toxic chemicals that is composed of more than 300 chemicals and chemical categories. Any person may petition EPA to add

chemicals to or delete chemicals from the list.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for submitting petitions. EPA must respond to petitions within 180 days either by initiating a rulemaking or by publishing an explanation of why the petition is denied.

II. Description of Petition

On August 9, 1988, EPA received a petition from the Hoechst Celanese Corporation to delete sodium sulfate (solution) from the list of toxic chemicals. EPA has also received letters of support for this petition from nine other chemical companies which manufacture, process, or use sodium sulfate. While sodium sulfate (Na_2SO_4) is a solid substance, only solution forms of the chemical are listed under section 313. The statutory deadline for EPA's response is February 5, 1989.

III. EPA's Review of Sodium Sulfate

A. Toxicity Evaluation

EPA's health and environmental review of (Na_2SO_4) included the assessment of metabolism and absorption, acute toxicity, chronic toxicity, carcinogenicity, mutagenicity, developmental effects, neurotoxic effects, reproductive toxicity, and environmental toxicity. All readily available data including those provided in the petition, studies retrieved from literature searches, and documents prepared by EPA were considered in the health and environmental assessment.

1. *Absorption/metabolism.* The most significant route of exposure with respect to Na_2SO_4 (solution) is via ingestion. Sodium sulfate can be used as a saline cathartic in humans where the usual therapeutic dose is 15 grams. This is the equivalent of 214 mg/kg for a 70 kg person.

Na_2SO_4 readily dissociates in water into sodium and sulfate ions. These ions are normal constituents of tissue in the human body.

2. *Acute toxicity.* The oral LD_{50} of Na_2SO_4 in the mouse is 5,989 mg/kg, and this can be classified as essentially non-toxic.

3. *Chronic toxicity.* Data from two studies (mice and chickens) show that Na_2SO_4 does not pose a significant hazard of chronic toxicity except at high doses (i.e. doses greater than 10,000 ppm in chickens) where dehydration may occur due to the cathartic effect.

4. *Carcinogenicity.* There are no epidemiological data and no animal studies with which to evaluate the carcinogenic potential of Na_2SO_4.

5. *Mutagenicity.* Available data are not sufficient to determine whether Na_2SO_4 is capable of causing heritable genetic mutations in humans.

No mutagenic activity was observed in Ames tests when biscuit components were extracted with an aqueous solution of Na_2SO_4.

6. *Developmental toxicity.* Available data are not sufficient to determine whether Na_2SO_4 is capable of causing developmental toxicity effects in humans.

In a developmental toxicity screen, 2.8 g/kg/day of Na_2SO_4 by gavage to mice caused no maternal toxicity or significant adverse effect on neonatal survival. There was a significant increase in the birthweight of mouse pups. The significance of this finding is unknown.

Egg production by Single Comb Leghorn White pullets was adversely affected by 12,000 ppm of Na_2SO_4 in drinking water. The relevance of this observation to mammalian reproduction or development is unknown.

7. *Neurotoxicity.* No information was found in the available literature with which to evaluate the potential of Na_2SO_4 to cause neurotoxic effects.

8. *Reproductive toxicity.* No information was found in the available literature with which to evaluate the potential of Na_2SO_4 to cause reproductive system effects.

9. *Ecotoxicity.* Acute toxicity testing of Na_2SO_4 with 15 species showed the chemical to be practically nontoxic to aquatic species. The most sensitive species is striped Bass, whose larvae have a 96-hour LC_{50} of 250 mg/L.

There were no available data from chronic toxicity testing of Na_2SO_4 for aquatic species. Thus a measured maximum acceptable toxicant concentration (MATC) from chronic exposures cannot be reported. However, an MATC has been estimated from the acute LC_{50} for stripped Bass larvae. The estimated MATC would be no lower than 2.5 mg/L.

10. *Bioaccumulation.* There are no available data from studies of Na_2SO_4 bioconcentration or bioaccumulation. However, Na_2SO_4 is not expected to bioaccumulate or bioconcentrate to an appreciable amount in organisms. This is due to the appreciable water solubility of Na_2SO_4 and its high rate of dissociation to form sodium and sulfate ions which are nontoxic at physiologic concentrations. Nearly all organisms have mechanisms which maintain physiologic levels of both sodium and sulfate ions.

B. Production, Release, and Exposure

1. *Production and use.* In 1987, U.S. production of Na_2SO_4 was 1.5 billion pounds. Approximately 300 million pounds of Na_2SO_4 was imported in 1987 while exports totaled 240 million pounds.

There are three U.S. producers, Great Salt Lake Minerals, Kerr McGee, and Ozark-Mahoning Company, which provide Na_2SO_4 from natural deposits.

2. *Exposure and release.* Since Na_2SO_4 is widely manufactured as a byproduct from many processes and released into the environment by many industries, release and exposure estimates have relied on data received from section 313 reporting. A total of 1,362 reports were filed for Na_2SO_4 solution for the first reporting year (1987).

Na_2SO_4 releases occur primarily to water. Air and land releases were not totaled but are very small compared to water releases of Na_2SO_4. Water releases of Na_2SO_4 were evaluated from 125 section 313 reports.

The largest release of Na_2SO_4 results from use in kraft pulp mills. Typical releases of Na_2SO_4 range from 10 to 30 million kg/yr/site. The resulting drinking water concentration from this release is estimated to be as high as 38.6 mg/L using the mean streamflow concentration from a representative pulp mill. Comparatively, this concentration is far below the National Secondary Drinking Water Standard of 250 mg/L for sulfate.

C. Summary of the Technical Review

Based on the available literature, EPA's health and environmental assessment of Na_2SO_4 yielded no areas of concern. Na_2SO_4 is essentially non-toxic in acute toxicity studies. It does not pose any significant chronic health hazards except at very high doses where dehydration may occur. There are no data from which to evaluate the carcinogenicity, neurotoxicity, and reproductive toxicity potential of Na_2SO_4. Data are insufficient to establish whether it is capable of causing mutagenicity or developmental toxicity. There is only a low concern for aquatic toxicity of Na_2SO_4.

While releases of Na_2SO_4 to the environmental are relatively large, the largest release of Na_2SO_4 results in drinking water concentrations far below the national drinking water standard of 250 mg/L.

IV. Explanation for Proposed Action to Delete

EPA is granting the petition submitted by Hoechst Celanese Corporation by proposing to delete Na_2SO_4 from the

section 313 list of toxic chemicals. The decision to grant the petition is based on EPA's toxicity evaluation. EPA believes that there is no evidence which suggests that Na_2SO_4 is known to cause or can reasonably be anticipated to cause health or environmental effects as described in section 313(d)(2).

V. Rulemaking Record

The record supporting this proposed rule is contained in docket control number OPTS–400022. All documents, including an index of the docket, are available to the public in the TSCA Public Docket Office from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Rm. NE–G004, 401 M Street SW., Washington, DC 20460.

VI. Request for Public Comment

The Agency requests comments on all the analyses conducted for this review and on EPA's proposal to delete Na_2SO_4 from the list of toxic chemicals. EPA also requests that any pertinent data on Na_2SO_4 be submitted to the address at the front of this document. All comments must be submitted on or before April 18, 1989.

VII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore, requires a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "major rule" because it will not have an effect on the economy of $100 million or more.

This proposed rule would decrease the impact of the section 313 reporting requirements on covered facilities and would result in cost-savings to industry, EPA, and states. Therefore, this is a minor rule under Executive Order 12291.

This proposed rule was submitted to the Office of Management and Budget (OMB) under Executive Order 12291.

There are 1,362 to 1,946 facilities which manufacture, process, or otherwise use sodium sulfate. The cost savings of delisting for industry over a 10-year period is estimated to be up to $10 million, while the savings for EPA are estimated to be up to $252,000 (10-year present values using a 10 percent discount rate).

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, the Agency must conduct a small business analysis to determine whether a substantial number of small entities will be significantly affected. Because the proposed rule results in cost savings to facilities, the Agency certifies that small entities will not be significantly affected by the rule.

C. Paperwork Reduction Act

This proposed rule does not have any information collection requirements under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 372

Community right-to-know, Environmental protection, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: February 10, 1989.

Victor J. Kimm,

Acting Assistant Administrator, Office of Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Part 372 be amended as follows:

PART 372—[AMENDED]

1. The authority citation for Part 372 would continue to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

§ 372.65 [Amended]

2. Section 372.65(a) and (b) are amended by removing the entire entry for sodium sulfate (solution) under paragraph (a) and removing the entire CAS. No. entry for 7757–82–6 under paragraph (b).

[FR Doc. 89–3814 Filed 2–16–89; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 218

[FRA Docket No. RSOR–7, Notice No. 1]

RIN 2130–AA48

Procedures for Protecting Camp Cars

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA proposes to amend its railroad operating practices regulations to require that certain procedures be employed when railroad employees occupy camp cars (on-track vehicles where rest is provided). The procedures are intended to prevent injuries that can occur when such vehicles are moved without proper precautions to protect the occupants.

DATES: (1) A public hearing regarding this proposed rule will begin at 10:00 a.m. on April 5, 1989. Any persons who desire to make statements at the hearing should submit their prepared statements to the Docket Clerk at least five days before the hearing date.

(2) Written comments must be received by March 21, 1989. Comments received after that date will be considered to the extent practicable without incurring additional delay. A 30-day comment period has been chosen in order to provide sufficient time for public comment, while complying with the rulemaking deadline set by Congress.

ADDRESSES: (1) Hearing location: A public hearing will be held in room 2230 of the Nassif Building located at 400 Seventh Street SW., Washington, DC 20590.

(2) Written comments should be submitted to the Docket Clerk, Office of Chief Counsel, FRA, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: J.A. McNally, Director of Safety Enforcement, Office of Safety, FRA, 400 Seventh Street SW., Washington, DC 20590 (telephone (202) 366–9252) or Mary-Jo Cooney Spottswood, Office of Chief Counsel, FRA, 400 Seventh Street SW., Washington, DC 20590 (telephone (202) 366–0628).

SUPPLEMENTARY INFORMATION: At present, railroads own 3,637 on-track vehicles that are typically used to provide housing for workers who are building or maintaining tracks, signals, or bridges. These vehicles are known by several names, e.g., camp cars, outfit cars, and bunk cars. For convenience, these vehicles are referred to as "camp cars" in this notice and proposed rule. The units range from modular homes mounted on flat cars to converted passenger and freight cars. There are approximately 1,309 flat cars, 422 converted passenger cars, and 1,869 converted freight cars. Nearly all are used by six Class I railroads: Atchison, Topeka and Santa Fe, Burlington Northern, Conrail, CSX Transportation Systems, Norfolk and Western, and Union Pacific.

Under current industry practice, sizable groups of workers are organized in so called "production gangs" to improve the speed, quality, and efficiency with which large scale maintenance can be accomplished. Such a group will move progressively over that section of rail line on which work is being done. This is typically seasonal work that must be accomplished while weather permits. Railroads need to house workers in reasonable proximity

to the work site; in many areas of the country, no feasible alternatives exist.

Railroads assemble groups of workers and mechanized (on-rail) equipment and assign a certain number of cars outfitted as mobile living quarters. That collective unit will station itself at a given site and perform its work. At the end of the work day, crews return to the site of the sleeping quarters. In this notice, FRA is proposing to require the use of certain operating procedures to protect railroad workers housed in such on-track vehicles.

Camp cars are generally parked in yards. When space allows, they are placed on tracks to which they have exclusive access. However, in many cases camp cars must be located on tracks where switching is performed or to which other carrier equipment requires access.

When camp cars share a track or siding with other equipment, there is the risk that the cars will be struck by rolling stock and that the occupants will be injured. A number of railroads have rules addressing this hazard. However, the level of protection varies among railroads and FRA observations indicate that adherence to such rules is sporadic.

Current FRA regulations governing railroad operating practices, 49 CFR Part 218, prescribe rules for protection of railroad employees assigned to inspect, test, and repair rolling stock. This proposed amendment to those rules would extend similar protection to workers occupying camp cars.

Section 19(c) of the Rail Safety Improvement Act of 1988 (RSIA) (Pub. L. 100–342) states that:

> The Secretary shall, within one year after the date of the enactment of this Act, amend part 218 of title 49, Code of Federal Regulations, to apply blue signal protection to on-track vehicles where rest is provided.

The purpose of this provision is to require that the same type of protection now provided to workers on rolling stock be provided to maintenance-of-way, signal, and bridge and building workers. However, FRA's proposal does differ in some respects from both the existing regulatory formulation and from other existing methods for protecting rail workers because of the particular safety concerns that are present in this situation.

In formulating its proposal, FRA examined three distinct but related efforts to address the safety problems that are the focus of the legislative concern: (1) The historical industry approach to analogous safety concerns, now embodied in FRA's blue signal provisions in Part 218; (2) the current individual railroad practices for worker protection; and (3) a joint recommendation submitted by a labor-management task force. FRA's proposal blends elements from each of these sources.

FRA is particularly grateful for the very timely efforts made by the Association of American Railroads (AAR) and the Brotherhood of Maintenance-of-Way Employes (BMWE). In the brief interval since the legislation was enacted, an AAR and BMWE task force has agreed on an approach to this issue and provided FRA with detailed written suggestions about ways to resolve virtually all of the issues raised in connection with this proposal. Many of these suggestions have been incorporated in this proposal. The BMWE/AAR submitted some suggestions that FRA believes are separate and distinct from those it intended to address in this rulemaking. One, a prohibition against humping occupied camp cars or flat switching them without being coupled to a locomotive, was so important that it is included in this proposal. Another suggestion was to create a 25-foot "envelope" around camp cars to protect them from movements on adjacent tracks, at least movements in excess of a designated speed. FRA has not included a proposal on this subject because it goes beyond the mandate of the statute and because FRA does not have sufficient information on the need for or parameters of such protection. Commenters, however, are invited to address this issue.

FRA's basic safety purpose in this rule is to protect rail workers when they are occupying camp cars that have been parked on main track or other than main track. In such circumstances, the occupants of that equipment have a reasonable expectation that the equipment will not be unexpectedly moved. If the equipment is unexpectedly moved, the workers risk being injured or killed. In one such instance, a freight train collided with several camp cars resulting in injuries to twenty-two people, including the four crew members of the locomotive and 18 maintenance-of-way employees. The cause was a failure to close a switch on the main track.

Since the camp cars themselves are not capable of self-propulsion, movement of these cars results either from the use of a locomotive or from the impact of other cars entering the track occupied by the camp cars. It is the risk posed by unanticipated movement of this nature that FRA is addressing in this NPRM.

Current Practices

Rail workers whose duties cause them to be on, under, or between rolling equipment for purposes such as inspecting, testing, or repairing that equipment have historically been afforded a method of protection that is commonly denominated as "blue flag" protection. The essential elements of this method of protecting workers are placing a warning signal near the ends of the equipment being worked on and physically limiting access to the segment of track on which such equipment is located. FRA has established clear minimums concerning each basic element of that method in Subpart B of Part 218.

Rail workers who occupy camp cars have historically been afforded varying methods of protection. This diversity is reflected in the current individual railroad practices that FRA examined in preparing this proposal. When specific system-wide methods for protecting such workers have been in effect, most railroads employed both a warning signal and some form of physical access deterrent.

Building on that historical precedent, the BMWE/AAR recommended use of both a warning signal and physical impediments to prevent the unanticipated movement of occupied camp cars.

FRA's Proposal

Where railroads currently provide blue signal protection to camp cars, most use a white signal with black lettering warning of the camp cars' presence. We are aware, however, of at least one carrier which uses a blue tinted signal. In drafting the proposed rule, we considered the option of requiring one type of sign, while permitting the alternative coloration if the signal was otherwise deployed in accordance with the regulation. We were concerned, however, that permitting various railroads to use different colored signals for camp car protection would create a safety hazard, especially where a train crew operates over another railroad's territory. We note that adoption of a uniform tint could create at least a short-term risk on carriers required to shift to that coloration. But the proposal set forth in this notice is premised on the belief that there is less danger in requiring one, or a small number, of carriers to experience a short-term adjustment than there is in allowing a system of differing color codes to exist over the long-term.

The blue tint is recognized throughout the industry as a warning that

movement beyond the signal will create a hazard of death or injury to workers on or about equipment on that track, and as a requirement to obtain the permission of those workers prior to any such movement. However, signals colored blue are normally employed for only relatively brief periods (hours rather than days) and only to denote a particular class of hazards (i.e., that workers are on, under, or between rolling equipment on that track). Uniform color coding of hazard signals is a long tradition in the railroad industry. Orange identifies a rear-end marker; yellow is used by many carriers for derails, and red represents a "stop signal." The color blue has long been associated with a particular risk—workers on, under, or between rolling equipment on an occupied track—and we are concerned that its use for long periods in relationship to a different class of hazards could promote confusion counterproductive to the safety objectives of this proposal. We are also concerned that using the color blue to denote differing hazards could undermine the employees' confidence in the reliability of color coding for other hazards. Finally, we believe—subject to the receipt of comments in this proceeding—that more carriers use a white lettered disk to identify camp cars than a blue tinted warning, meaning that the adoption of a white disk will require less adjustment than endorsement of the color blue. As a consequence, the proposal in this notice specifies use of the white disk. However, FRA solicits public comment on this issue.

One final concern about the signal is the need to illuminate the device. Given the fact that workers tend to occupy camp cars during darkness and that such equipment contains a ready source of electrical power, FRA is proposing that the signal be illuminated during darkness. FRA welcomes comment on this aspect of the proposal as well as on the benefits or problems presented by any of these or other possible options, including an explanation of how the option would comport with the statutory mandate.

The placement of a warning signal alone does not provide a sufficient level of protection for workers in camp cars. Any number of circumstances can render that signal ineffective. Oversight, inattention, inadvertent removal, and vandalism are some of the more common illustrations of what can nullify the effectiveness of such devices. FRA, therefore, is proposing to supplement the signal display with at least one method for physically limiting access to the track on which the camp cars are parked.

Any track on which camp cars are parked will be connected on at least one end to some other track. FRA proposes to physically restrict movement on the segment of track on which the camp cars are located by controlling such connections that could provide other cars or locomotives access to the camp cars. Physical restriction of access to the camp cars would occur either through placement of a locked derail at a specified distance from the end of the camp cars or by having the connecting switches lined away from the segment of track occupied by the camp cars and locked in that position. The derails or switches would have to be locked with an effective locking device. FRA previously defined such locking devices as excluding locks that multiple parties can operate, such as the typical switch lock. FRA's definition of this term requires a special lock that is controlled only by the workers who are being protected by it. *See* 49 CFR 218.5(d). FRA previously discussed the meaning of this provision when it adopted the current rules (44 FR 2175, January 10, 1979).

In essence, FRA proposes to employ the same procedures for limiting access that are contained in its existing rules but with one important difference. The procedures for physically limiting access to the segment of track occupied by camp cars will be applied regardless of whether the cars are parked on main track or other than main track. FRA is mindful of the fact that the most common form of protection is spiking the switch providing access to the track where camp cars are located; this is currently done by five of the six major railroads. Some also require that the switch be locked, and at least two railroads require placement of a derail to avert the chance of rolling equipment striking the occupied cars. The BMWE/AAR suggested approach would require that switches be locked and spiked. FRA's proposal does not incorporate the use of multiple levels of protection because FRA does not believe that such redundancy is required in a Federally mandated minimum standard and because experience has demonstrated that compliance with our existing rules establishes effective protection for workers under similar circumstances. That is, an "effective locking device" meeting the regulatory definition of that term makes additional protection superfluous. FRA did consider making spiking an alternative to use of a lock, but concluded that since a spike can be removed by anyone, while the effective locking device can be removed only by those benefiting from the protection, the spike would not provide the same degree of protection. Railroads can, of course, do both pursuant to railroad rules or collective bargaining agreements. However, FRA welcomes comment on this issue.

FRA proposes to deviate from its existing regulatory approach to address the fact that camp cars, unlike employees assigned to work on, under, or between rolling equipment, tend to remain in a single location for lengthy periods of time. FRA proposes to follow the practice of several railroads and require that the dispatcher be notified of camp car placement. FRA proposes to allow the dispatcher flexibility in alerting operating personnel about the presence of the camp cars rather than dictate the manner in which that information will be disseminated. At present, one railroad issues train orders indicating the location of cars and the others use a combination of measures to notify affected personnel.

Section-by-Section Analysis

FRA proposes to add a new subpart E that would include the provisions relating to camp cars. FRA recently initiated another rulemaking to prohibit tampering with locomotive safety devices that will become subpart D of this regulation (see the August 31, 1988 issue of the **Federal Register**, 53 FR 33786). FRA also proposes to add a new definition to existing § 218.5 to define the type of rolling equipment to which this subpart applies.

Section 218.61 would state the scope of the subpart.

Section 218.63 would require that a signal be displayed whenever such cars are designated for occupancy, not only when crews would normally be resting or off-duty (such cars are also used to provide meals for crews or to house sick or injured workers). When such signals are displayed, cars could not be coupled to other rolling equipment or moved. As noted earlier, FRA proposes that this signal be a white disk with the works "Occupied Camp Car" in black lettering. This section would also indicate who is authorized to display or remove such signals.

Section 218.65 would require that each switch providing access to the segment of track where camp cars are located be lined and secured with an effective locking device and tagged with an appropriate signal. This requirement would apply regardless of whether camp cars are located on main track or other than main track. FRA proposes to employ the same definitions for what

constitutes "switch providing access," "main track," and "effective locking device" that it currently employs for blue signal protection provisions of these rules. This section also contains FRA's proposal of notification that camp cars are occupying a segment of track.

Section 218.69 would provide alternative methods of protection for occupied camp cars covered under § 218.67. When railroad operations demand that a portion of the track be used by other equipment, FRA is proposing to sanction the use of derails to subdivide the track in question, just as the current blue signal rules permit in servicing areas. Camp cars located on tracks where switching occurs or where other rolling equipment has access could be protected by use of a portable derail placed 150 feet from the end of the camp car and by use of the required signal. If speed within the area is restricted to not more than five miles per hour, a derail, capable of restriction access to that portion of the track where the occupied camp cars are located, will satisfy the requirements of a manually operated switch when placed at lease 50 feet from the end of the equipment to be protected by the appropriate signal. When derails are so used, they must be locked with an effective locking device and flagged with an appropriate signal.

Section 218.67 contains the details of how protection would be established in areas where remotely controlled switches are present. The designated person, normally the camp car foreman, must notify the operator of the switches that camp cars have been placed in the area. The operator of each remotely controlled switch must inform the designated camp car employee that each switch has been lined against movement to that track and locked. The operator of each remotely controlled switch shall maintain for 15 days a written record of each notification with the requisite information. This proposal varies from FRA's approach to remotely controlled switches under the current blue signal rule in two ways. First, the retention period for this written record remains the same, but the retention period does not commence until the operator has been notified that protection is no longer needed. Second, FRA proposes to modify slightly its methods of physical protection when the access switch is a remotely controlled switch. As noted earlier, FRA's current blue signal rule implicitly contemplated only relatively brief time periods when the use of a remotely controlled switch would be constrained. Since the locking devices for such switches do not have the same level of physical security as the locks required for manual switches, FRA is concerned that, with the passage of an extended period of time, such a remotely controlled switch could be inadvertently activated. FRA proposes to address this possible occurrence by requiring that a locked derail be installed at least 150 feet from the end of the camp cars if the cars remain on main track for more than 48 hours.

Economic and Regulatory Impact

E O. 12291 and DOT Regulatory Policies

The proposed rule has been evaluated in accordance with existing policies and procedures. It is considered to be a non-major rulemaking under Executive Order 12291 but significant under DOT policies and procedures (44 FR 11034; February 26, 1979).

At present, railroads own an estimated 3,637 camp car type vehicles. Of this total, approximately 90 percent are owned by the following carriers, ordered by size of fleet: Burlington Northern (901), CSX (730), Conrail (539), Union Pacific (486), Norfolk and Western (362), and Santa Fe (327). These six railroads comprise the majority of the activity as well as ownership of camp cars. The remaining 10 percent of camp cars are owned by 16 carriers, with none of these carriers owning more than 70 camp cars, or 2 percent of the total camp car fleet.

The majority of camp cars are currently afforded sufficient protection. The proposed rule will further reduce the accident risk by mandating more uniform safety procedures for protecting workers housed in camp cars.

Projected potential benefits of the proposed rule are based on avoidance of accidents. Historical data from FRA shows one major accident in the last ten years. Track and property damage from the accident amounted to $36,550 and 22 injuries (4 crew members and 18 maintenance of way employees). Each injured employee was estimated to be absent from work an average of almost 17 days, but at this time the injury costs have not been quantified.

The projected potential costs from the proposed rule are also expected to be minimal. Cost impacts will be limited to purchases of additional equipment that may be needed by carriers not already complying with the planned regulatory action. It is estimated that manufacture and illumination of the proposed signal device will be $94.95 per commercial device and approximately $20.00 per carrier made device. The 760 estimated devices include all cases and may well overstate the actual cost of the proposal. Nevertheless, the total cost of this estimate does not exceed $34,178, assuming that a third of the devices are manufactured commercially and the remaining two thirds are produced by the carriers. There will be minimal costs resulting from the recordkeeping provisions. This rule will not have a significant economic impact since the basic protection mandated in the Rail Safety Improvement Act of 1988 is already practiced by most carriers using camp cars.

With no notable changes in potential benefits and costs, a draft regulatory evaluation has not been prepared; however, the agency invites comments on costs and benefits expected to be incurred.

Regulatory Flexibility Act

These proposed regulations will not have any economic impact on small entities. FRA therefore certifies that this proposal will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

The proposed rule has information collection requirements. FRA is submitting these information collection requirements to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980. Any comments of these information collection requirements should be provided to Mr. Gary Waxman, Regulatory Policy Branch, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, N.W., Washington, DC 20503. Copies of any such comments should also be submitted to the docket of this rulemaking at the address provided above.

Environmental Impact

The proposed rule will not have any identifiable environmental impact.

Federalism Implications

This proposed rule will not have a substantial effect on the states, on the relationship between the states and the national government, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

List of Subjects in 49 CFR Part 218

Occupational Safety and Health Penalties, Railroad employees, Railroads, Reporting and recordkeeping requirements.

Public Participation

Interested persons are invited to participate in this proceeding by submitting written data, views, or comments. Communications should identify the regulatory docket number and the notice number and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590. Persons desiring acknowledgement that their submissions save been received should attach a stamped pre-addressed postcard to the first page of each submission. Comments received before March 22, 1989, will be considered before final action is taken on the proposed rule. All comments received will be available for examination by interested persons at any time during regular working hours in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

In addition, FRA will conduct a public hearing at 10:00 a.m. on April 5, 1989, in Room 2230, 400 Seventh Street, SW., Washington, DC. The hearing will be informal. There will be no cross-examination of persons making statements. A staff member of FRA will make an opening statement outlining the subject matter for the hearing. Interested persons will then have the opportunity to present their oral statements. At the completion of all initial oral statements, those persons who wish to make rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures for conducting the hearing will be announced at the hearing.

Interested persons may present oral or written statements at the hearing. All statements will be made part of the record of the hearing and will be a matter of public record. Any person who wishes to make an oral statement at the hearing should notify the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590 (telephone (202) 366-0635), before March 31, 1989 stating the amount of time required for the initial statement.

FRA proposes to amend Part 218 as set forth below. FRA solicits comments on all aspects of the rule and may make changes to the final rule based on comments received in response to this proposal. The final rule in this proceeding will include a revised penalty schedule for Part 218 reflecting the higher maximum penalties now available and will add entries for the new sections proposed. See the recent revisions to the penalty provision and penalty schedule of Part 218 required by the RSIA and published in the Federal Register on July 28, 1988 (53 FR 28594). Because FRA's penalty schedules are statement of policy, notice and comment are not required on revisions of these schedules (see 5 U.S.C. 553 (b)(3)(A)). Nevertheless, interested parties are welcome to submit their views on what penalties may be appropriate.

The Proposed Rule

In consideration of the foregoing, FRA proposes to amend 49 CFR Part 218 by amending subpart A and by adding a new subpart E to read as follows:

PART 218—[AMENDED]

1. The authority citation for Part 218 continues to read as follows:

Authority: 45 U.S.C. 431 and 438, as amended: Pub. L. 100-342; and 49 CFR 1.49(m).

2. By amending the table of contents to add subpart E as follows:

Subpart E—Protection of Occupied Camp Cars

Sec.

3. By amending § 218.5 by adding a new paragraph (q) to read as follows:

§ 218.5 Definitions.

* * * * *

(q) "Camp car" means any on-track vehicle, including outfit, camp, or bunk cars or modular homes mounted on flat cars used to house rail employees.

4. Add subpart E consisting of sections 218.61 through 218.70 to read as follows:

Subpart E—Protection of Occupied Camp Cars

§ 218.61 Purpose and scope.

This subpart prescribes minimum requirements governing protection of camp cars or other on-track vehicles that house railroad employees.

§ 218.63 Warning signal display.

(a) Warning signals, *i.e.*, a white disk with the words "Occupied Camp Car" in black lettering during daylight hours and an illuminated white signal at night, displayed in accordance with §§ 218.65, 218.67, or 218.69 signify that employees are in, around, or in the vicinity of camp cars. When signals are displayed—

(1) The camp cars may not be coupled to other rolling equipment or moved;

(2) Rolling equipment may not be placed on the same track so as to reduce or block the view of a warning signal; and

(3) Rolling equipment may not pass a warning signal.

(b) Warning signals indicating the presence of occupied camp cars, displayed in accordance with §§ 218.65 and 218.69, shall be displayed by a designated occupant of the camp cars or that person's immediate supervisor. The signal(s) shall be displayed as soon as such cars are placed on the track, and such signals may only be removed by those same individuals prior to the time the cars are moved to another location.

§ 218.65 Methods of protection for camp cars.

When camp cars requiring protection are on either main track or track other than main track:

(a) A warning signal shall be displayed at or near each switch providing access to that track.

(b) The person in charge of the camp car occupants shall immediately notify the person responsible for directing train movements on that portion of the railroad where the camp cars are being parked; and

(c) Once notified of the presence of camp cars and their location on main track or other than main track, the person responsible for directing train movements on that portion of the railroad where the camp cars are being parked shall take appropriate action to alert affected personnel of the presence of the cars.

(d) Each manually operated switch providing access to track on which the camp cars are located shall be lined against movement to that track and secured with an effective locking device; and

(e) Each remotely controlled switch providing access to the track on which the camp cars are located shall be protected in accordance with § 218.67.

§ 218.67 Remotely controlled switches.

(a) After the operator of the remotely controlled switch is notified that a camp car is to be placed on a particular track, he shall line such switch against movement to that track and apply an effective locking device applied to the lever, button, or other device controlling the switch before informing the person in charge of the camp car occupants that protection has been provided.

(b) The operator may not remove the locking device until informed by the person in charge of the camp car occupants that protection is not longer required.

(c) The operator shall maintain for 15 days a written record of each notification that contains the following information:

(1) The name and craft of the employee in charge who provided the notification;

(2) The number or other designation of the track involved;

(3) The date and time the operator notified the employee in charge that protection had been provided in accordance with paragraph (a) of this section; and

(4) The date and time the operator was informed that the work had been completed, and the name and craft of the employee in charge who provided this information.

(d) If the camp cars are parked on main track and remain at that location for more than 48 hours, a derail, capable of restricting access to that portion of the track on which such equipment is located, shall be positioned no less than 150 feet from the end of such equipment and locked in a derailing position with an effective locking device and a warning signal must be displayed at the derail.

§ 218.69 Alternative methods of protection.

Instead of providing protection for occupied camp cars in accordance with § 218.65 or § 218.67, the following methods of protection may be used:

(a) When occupied camp cars are on track other than main track:

(1) A warning signal must be displayed at or near each switch providing access to or from the track;

(2) Each switch providing entrance to or departure from the area must be lined against movement to the track and locked with an effective locking device; and

(3) If the speed within this area is restricted to not more than five miles per hour, a derail, capable of restricting access to that portion of track on which the camp cars are located, will fulfill the requirements of a manually operated switch in compliance with paragraph (a)(2) of this section when positioned at least 50 feet from the end of the camp cars to be protected by the warning signal, when locked in a derailing position with an effective locking device, and when a warning signal is displayed at the derail.

(b) Except as provided in paragraph (a) of this section, when occupied camp cars are on track other than main track:

(1) A derail, capable of restricting access to that portion of the track on which such equipment is located, will fulfill the requirements of a manually operated switch when positioned no less than 150 feet from the end of such equipment; and

(2) Each derail must be locked in a derailing position with an effective locking device and a warning signal must be displayed at each derail.

§ 218.70 Movement of occupied camp cars.

Occupied camp cars may not be humped or flat switched unless coupled to a locomotive.

Issued in Washington, DC, on February 14, 1989.

John H. Riley,

Administrator.

[FR Doc. 89-3845 Filed 2-16-89; 8:45 am]

BILLING CODE 4910-06-M

Federal Highway Administration

49 CFR Parts 350 and 390

[FHWA Docket No. MC-89-5]

RIN 2125-AC27

Federal Motor Carrier Safety Regulations; General; Commercial Motor Vehicle Definition

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The FHWA requests comments from all interested and/or affected parties regarding the issue of the gross vehicle weight rating (GVWR) criterion used to define a "commercial motor vehicle" subject to the Federal Motor Carrier Safety Regulations (FMCSRs). The FHWA, in its efforts to achieve safety regulatory and enforcement uniformity for the operation of commercial motor vehicles in both interstate and intrastate commerce, is specifically seeking comments regarding enforcement and regulatory compatibility. This issue is being addressed because of a request received from the Delaware Department of Public Safety (DDPS) asking that States, which do not regulate commercial motor vehicles having a gross vehicle weight rating (GVWR) of less than 26,001 pounds, be considered as having rules compatible with the regulations contained in the FMCSRs and, therefore, in compliance with the general requirements of the Motor Carrier Safety Assistance Program (MCSAP).

DATE: Comments must be received on or before April 18, 1989.

ADDRESS: Submit written, signed comments to FHWA Docket No. MC-89-5, Room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 360Kb density) in a format that is compatible with either word processing programs, Word Perfect or WordStar. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m. ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366-2981, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366-1350, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The DDPS has requested that the FHWA consider allowing States that do not regulate commercial motor vehicles having a GVWR of less than 26,001 pounds to be considered as having rules compatible with the general requirements of the MCSAP. Specifically, it suggests that the MCSAP eligibility requirements (49 CFR Part 350) be amended to reflect its request. The DDPS contends that such a revision would permit States to focus their enforcement activities on larger motor vehicles. The DDPS stated, in support of their request, that according to the Fatal Accident Reporting System (FARS) data, larger motor vehicles represent 87 percent of all truck-related fatalities.

Analysis by the FHWA of available accident data shows that trucks with a GVWR of greater than 26,000 pounds have a fatal accident rate of almost twice that of smaller vehicles (6.6 versus 3.6 vehicles involved in a fatality per 100 million miles of travel). The FHWA believes that the DDPS petition warrants public review and comment. The FHWA is requesting interested persons to submit comments on whether a change in the definition of "commercial motor vehicle" is warranted. The FHWA is particularly interested in receiving accident and enforcement data from the various States and local governments.

The 26,001 pounds GVWR criterion requested by the DDPS is consistent with the definition of a "commercial motor vehicle" established in the Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. App. 2701 *et seq.* It has

been determined, from a current review of State regulations, that at least 17 States provide for intrastate exemptions based on a GVWR between 10,000 and 26,001 pounds. In light of this, comments are specifically requested on whether the FHWA should consider using the same 26,001 pounds GVWR criterion for the purpose of determining State compatibility with the FMCSRs under the requirements of 49 CFR Part 350. Further, comments are being sought on whether the FHWA should consider amending the FMCSRs (Parts 390–399) to establish a new weight threshold that would be compatible with the weight threshold found at 49 CFR Part 383.

The FHWA is interested in receiving comments regarding the effect of such a change on current FHWA programs such as the Motor Carrier Safety Assistance Program (MCSAP), enforcement of the Federal Motor Carrier Safety Regulations, and the work of the Safety Regulatory Review Panel.

As noted earlier, the FHWA, is aware that several States have recently enacted laws affecting commercial motor vehicle safety which, when implemented, will vary greatly from the FMCSRs. The FHWA is extremely interested in receiving comments from these States, including any and all technical information used to support legislative actions, as to why their regulations should be considered compatible with Federal regulations for MCSAP purposes. This information should not be limited to only vehicle size changes (i.e., changing the GVWR threshold from 10,001 to 26,001 pounds) but on all legislative changes and/or proposed regulatory changes that may alter the regulated population.

Commenters are encouraged to submit any additional information they believe is necessary to support their position. The FHWA is especially interested in receiving responses to the following questions:

1. Should the FHWA consider establishing another GVWR threshold? If yes, please specify what the threshold should be and articulate your rationale.

2. Should a minimum GVWR threshold by mandatory nationwide or should the various States be allowed to exempt vehicles with lower GVWRs and still be eligible for Federal funding under the MCSAP? Should such exemptions apply to both interstate and intrastate transportation?

3. Should GVWR be the sole, or at least primary, determinant in whether the vehicle and its operator are subject to the FMCSRs, which with the exception of the transportation of hazardous materials or more than 15 passengers, is now the case?

4. What other factors should be considered when determining whether the vehicle and its operator are subject to the FMCSRs?

5. Would there be a degradation of safety if the GVWR threshold was raised to a higher level or would there be an improvement in safety by focusing enforcement activities on larger vehicles? To what extent? Is there an identifiable point of diminishing return regarding anticipated safety benefits from the enforcement of the FMCSRs?

6. What consideration, if any, should be given to a "targeted industry" concept, and to what extent can the "targeted industry" be better identified through vehicle size and weight configuration?

7. The Canadian National Safety Code for commercial motor vehicles applies to vehicles with a GVWR above 10,000 pounds. How would a change in the GVWR threshold for applicability of the U.S. FMCSRs affect carriers that operate in both the United States and Canada? Could a major difference in the applicability of motor carrier safety regulations in the two countries create a barrier to the flow of traffic and commerce across the U.S.-Canada border? Would U.S. or Canadian motor carriers find themselves at a competitive disadvantage to their counterparts across the border if the GVWR threshold in the United States was raised from 10,000 to 26,000 pounds?

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking action to all individuals will be minimal. For this reason, a regulatory evaluation and flexibility analysis has not been prepared.

For the foregoing reasons and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Authority: 49 U.S.C. 2391–2404; 49 U.S.C. App. 2505; 49 U.S.C. 3102; 49 CFR 1.48.

List of Subjects in 49 CFR Parts 350 and 390.

Grant programs; Highway safety, Highways and roads, Motor carriers, Motor vehicle safety.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: February 2, 1989.

R.D. Morgan,

Executive Director.

[FR Doc. 89–3777 Filed 2–16–89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal to List the Cracking Pearly Mussel as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list the cracking pearly mussel (*Hemistena* (=*Lastena*) *lata*) as an endangered species under the Endangered Species Act of 1973, as amended (Act). This species, which was once known from the Ohio, Cumberland, and Tennessee River systems, is presently known to survive only at a few shoals in the Clinch, Powell, and Elk Rivers, and possibly a short reach of the Tennessee and Green Rivers. The species' range has been seriously restricted by the construction of impoundments and by other impacts to its habitat. Due to the species' limited distribution, any factors that adversely modify habitat or water quality in the river reaches it now inhabits could further threaten the species. Comments and information pertaining to this proposal are sought from the public.

DATES: Comments from all interested parties must be received by April 18, 1989. Public hearing requests must be received by April 3, 1989.

ADDRESS: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Asheville Field Office, 100 Otis Street, Room 224, Asheville, North Carolina 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins at the above address (704/259–0321 or FTS 672–0321).

SUPPLEMENTARY INFORMATION:

Background

The cracking pearly mussel (*Hemistena* (=*Lastena*) *lata*) was initially described by Rafinesque (1820). This freshwater mussel has a thin, medium-size, elongated shell (Bogan and Parmalee 1983). The shell's outer surface is brownish green to brown and often has broken dark green rays. The nacre (inside of shell) color is pale bluish to purple. Because of its rarity, little is known of the mussel's biology. The species inhabits moderate-size streams on gravel riffles where it is often deeply buried in the substrate (Bogan and Parmalee 1983). Like other freshwater mussels, it feeds by filtering food particles from the water. It has a complex reproductive cycle in which the mussel larvae parasitize fish. The mussel's life span, fish species its larvae parasitize, and other aspects of its life history are unknown.

The cracking pearly mussel has undergone a substantial range reduction. It was historically distributed in the Ohio, Cumberland, and Tennessee River systems (Stansbery 1970, Kentucky Nature Preserves Commission 1980, Bogan and Parmalee 1983, Bates and Dennis 1985). The loss of populations occurring in these river systems was probably due to direct impacts of impoundments, pollution, and habitat alteration and the indirect impacts associated with the reduction or elimination of its larval host species by these same factors. Based on personal communications with knowledgeable mussel experts (Steven Ahlstedt and John Jenkinson, Tennessee Valley Authority, 1987; Arthur Bogan, Philadelphia Academy of Sciences, 1987; Richard Neves, Virginia Polytechnic Institute and State University, 1987; David Stansbery, Ohio State University, 1987) and a review of current literature on the species (see above plus Ahlstedt 1986), the species is definitely known to survive in only three river reaches—the Clinch River, Hancock County, Tennessee, and Scott County, Virginia; the Powell River, Hancock County, Tennessee, and Lee County, Virginia; and the Elk River, Lincoln County, Tennessee.

Although the species has not been collected in the Green River since 1966, and a survey of the Green River in Hart and Edmonson Counties in 1987 failed to collect the species, there is a possibility that an isolated population may still exist in the Green River (Richard Hannan, Kentucky Nature Preserves Commission, personal communication, 1988). Another small population may also still exist in the Tennessee River below Pickwick Dam in Hardin County, Tennessee (Paul Yokley, Jr., University of North Alabama, personal communication, 1988). Live specimens have not been taken below Pickwick Dam since the 1970s, but a few relict shells have been taken in the 1980s, indicating that a small population may still be holding on in a short reach of the Tennessee River.

All of the known populations and the populations that may exist in the Green and Tennessee Rivers are threatened, and are located in areas bordered primarily by private lands. The Powell River is severely threatened by the impacts of coal mining. The Clinch River, although in much better condition, is also impacted by coal mining and in the past has experienced extensive fish and mussel kills caused by toxic spills from a riverside power plant. The Elk River mussel fauna has been impacted by cold-water discharges from Tims Ford Reservoir, and the Green River has had a history of water quality problems from oil and gas production in the watershed. The Tennessee River below Pickwick Dam has been impacted by gravel dredging, channel maintenance work and the upstream reservoir.

The cracking pearly mussel was recognized by the Service in the May 22, 1984, **Federal Register** (49 FR 21664) as a species that was being considered for possible addition to the Federal List of Endangered and Threatened Wildlife and Plants. This mussel was then placed in category 2 on this candidate list. Category 2 is for those species for which the Service has some information indicating that the taxa may be under threat, but sufficient information is lacking to prepare a proposed rule. The Service has met and been in phone contact with various Federal and State agency personnel concerning the species' status and the need for the protection provided by the Endangered Species Act. On January 14, 1988, and May 16, 1988, the Service also notified appropriate Federal, State, and local governmental agencies by mail that a status review was being conducted and that the species might be proposed for listing. Nine written comments were received. The National Park Service provided distributional data. The States of Virginia, Kentucky, and Indiana and an interested scientist responded with distribution and threat data and were supportive of the species' being protected under the Act. The Tennessee Valley Authority and the State of Tennessee supported our efforts to review the species' status. No negative comments were received.

Summary of Factors Affecting the Species

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 set forth the procedures for adding species to the Federal list. 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 the cracking pearly mussel are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The cracking pearly mussel was once fairly widely distributed in the Ohio River basin. It ranged in the Ohio River from Ohio downstream to Illinois (Bogan and Parmalee 1983). In Indiana and Illinois it was historically known from the White, Wabash, and Tippecanoe Rivers (Kevin Cummings, Illinois State Natural History Survey Division, and Max Henschen, Mollusk Technical Advisory Committee, personal communications, 1988) Kentucky records (Kentucky Nature Preserves Commission 1980: Richard Hannan, Kentucky Nature Preserves Commission, personal communication, 1988) show that the species once inhabited the upper Cumberland, Big South Fork, Green, and Kentucky Rivers. The cracking pearly mussel has historically been taken in Tennessee from the Tennessee, Cumberland, Powell, Clinch, Holston, Elk, Duck, and Buffalo Rivers (Bogan and Parmalee 1983, Ahlstedt 1986, Bates and Dennis 1985) In Alabama, this mussel existed in the Tennessee River (Bogan and Parmalee 1983). Portions of the Powell, Clinch, and Holston Rivers in Virginia are also reported to have supported the species (Bogan and Parmalee 1983; Charles Sledd, Virginia Department of Game and Inland Fisheries, and Michael Lipford, Virginia Department of Conservation and Historic Resources, personal communications, 1988)

Based on a literature review (see above) and personal contacts with knowledgeable Federal, State, and independent biologists, the species is presently known to be surviving only in the Clinch River, Hancock County, Tennessee, and Scott County, Virginia; the Powell River, Hancock County, Tennessee, and Lee County, Virginia; and the Elk River, Lincoln County, Tennessee. The species may also still

survive in the Green River, Hart and Edmonson Counties, Kentucky (Richard Hannan, personal communication, 1988), and in a short reach of the Tennessee River below Pickwick Dam, Hardin County, Tennessee (Paul Yokley, Jr., personal communication, 1988).

The Powell River's population was sampled in 1979 by the Tennessee Valley Authority (Ahlstedt 1986). They surveyed 78 sites over about 97 river miles and found the cracking pearly mussel at only three sites. The Powell River watershed is mined extensively for coal, and coal mining impacts to the river are evident. The upper reaches of the Powell River are significantly impacted. The lower river reaches, which still contain a relatively diverse mussel fauna, have large deposits of coal fines and silt (Ahlstedt 1986). In 1973 the section of the Powell River inhabited by the cracking pearly mussel experienced a mussel kill that may have resulted in a loss of 5 percent of the mussel population (Ahlstedt and Jenkinson 1987).

The Clinch River population of the cracking pearly mussel is the largest and covers the greatest river length. Ahlstedt (1986) reported the species from 16 of the 141 sites sampled in a 1978–83 Tennessee Valley Authority survey that covered about 174 river miles. Although this river and its mussel fauna are apparently healthier than the Powell, the Clinch River does have environmental degradation problems. Charles Sledd (Virginia Commission of Game and Inland Fisheries, personal communication, 1988) stated that land use practices along the Clinch have contributed to the loss of water quality and decline in mussel populations. The Clinch River also experiences some impacts from coal mining, and the river has been subjected to two mussel kills that resulted from toxic substance spills from a riverside coal-fired power plant.

The cracking pearly mussel was taken at only two of 108 sites over the 172 miles of the Elk River surveyed in 1980 by the Tennessee Valley Authority (Ahlstedt 1986). This river, according to Ahlstedt (1986), has a considerable amount of suitable habitat for freshwater mussels, and a large number of relic shells was present. However, Ahlstedt (1986) reported that cold-water releases from Tims Ford Reservoir and pollution from an unknown source in the lower Elk River have impacted the mussel fauna, and mussel density has been reduced.

The cracking pearly mussel has not been taken since 1966 from the Green River, and a 1987 mussel survey did not find the species (Ronald Cicerello, Kentucky Nature Preserves Commission, personal communication, 1988). However, suitable habitat appears to be available in the Green River, and an isolated population may still exist there (Richard Hannan, personal communication, 1988). In the Tennessee River live specimens were taken in the 1970s, but only relic shells have been taken in recent years. According to personal communication with Dr. Paul Yokley, Jr., (1988), this species, which apparently existed only in small numbers in this river reach, could possibly still survive there.

If populations still persist in the Tennessee River below Pickwick Dam in Tennessee and the Green River in Kentucky, these populations are also at risk. The Green River's mussel fauna has also been seriously depleted. Ortmann (1926) reported finding 66 species of mussels in the Green River. Isom (1974) reported only 27 species present. The Green River has been degraded by oil and gas exploration and production and by alterations of stream flow from an upstream reservoir. Any population below Pickwick Dam in the Tennessee River is potentially threatened by gravel dredging, channel maintenance, and operation of Pickwick Dam. This river reach also experienced a mussel die-off in 1985 and 1986 (Ahlstedt and Jenkinson 1987).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* This freshwater mussel species is not commercially valuable, but because of its rarity it could be sought by collectors. Thus, because of the species' restricted range, taking could be a threat to its continued existence. Federal listing would help control any indiscriminate taking of individuals.

C. *Disease or predation.* Although the cracking pearly mussel is undoubtedly consumed by predatory animals, there is no evidence that predation threatens the species. However, freshwater mussel die-offs, possibly due to disease, have been reported in recent years throughout the Mississippi River basin, including the Tennessee River and its tributaries (Ahlstedt and Jenkinson 1987) Significant losses have occurred to some populations.

D. *The inadequacy of existing regulatory mechanisms.* The States of Kentucky, Tennessee, and Virginia prohibit taking fish and wildlife, including freshwater mussels, for scientific purposes without a State collecting permit. However, these States' laws do not protect the species' habitat from the potential impacts of Federal actions. Federal listing would provide the species additional protection under the Endangered Species Act by requiring a Federal permit to take the species and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may adversely affect the species.

E. *Other natural or manmade factors affecting its continued existence.* The Powell River and Elk River populations are small, and if the species continues to exist in the Green River and Tennessee River, these populations must be very limited. All the populations are geographically isolated from each other. This isolation restricts the natural interchange of genetic material between the populations, and the small population size reduces the reservoir of genetic variability within the populations. It is likely these populations, with the possible exception of the Clinch River, are now below the generally acceptable level (Soule 1980) required to maintain long-term genetic viability.

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 propose this rule. Based on this evaluation, the preferred action is to list the cracking pearly mussel (*Hemistena* (=*Lastena*) *lata*) as an endangered species. Historical records reveal that the species, although now rare, was once widely distributed in the Ohio River drainage. Presently only three, small, isolated populations, and possibly two others, are known to survive. These populations are all threatened by a variety of factors, including gravel dredging, coal mining, oil and gas resource development, and other factors that adversely impact the aquatic environment. Due to the species' history of population losses and the vulnerable nature of the populations, threatened status does not appear appropriate for this species. See the following section for a discussion of why critical habitat is not being proposed for the cracking pearly mussel.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be 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 the cracking pearly mussel at this time, owing to the lack of benefits from such designation. The U.S. Army Corps of Engineers, the Tennessee Valley Authority, and the National Park Service are the three Federal agencies

most involved, and they, along with the State natural resources agencies in Tennessee, Kentucky, and Virginia, are already aware of the location of the remaining populations that would be affected by any activities in these river reaches. These Federal agencies have conducted studies in these river basins and are knowledgeable of the fauna and of their projects' impacts. No additional benefits would accrue from critical habitat designation that would not also accrue from the listing of the species. In addition, this species is so rare that taking for scientific purposes or private collections could be a threat. The publication of critical habitat maps and other information accompanying critical habitat designation, such as the location of inhabited river reaches, could increase that threat. The location of populations of this species have consequently been described only in general terms in this proposed rule. Available precise locality data will be accessible to appropriate Federal, State, and local governmental agencies through the Service office described in the "**ADDRESSES**" section.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, 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 such a species or destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The Service has notified Federal agencies that may have programs that affect the species. Federal activities that could occur and impact the species include, but are not limited to, the carrying out or the issuance of permits for hydroelectric facility construction and operation, reservoir construction, river channel maintenance, stream alterations, wastewater facilities development, and road and bridge construction. It has been the experience of the Service, however, that nearly all section 7 consultations have been resolved so that the species has been protected and the project objectives have been met. In fact, the areas inhabited by the cracking pearly mussel are also inhabited by other mussels that have been federally listed since 1976. The Service has a history of successful section 7 conflict resolutions that have protected the species and provided for project objectives being met throughout these areas.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take any listed species, import or export it, ship it in interstate commerce in the course of commercial activity, or sell it or offer it for sale in interstate or foreign commerce. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes to enhance the propagation or survival of the species and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought on:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, U.S. Fish and Wildlife Service, Asheville Field Office, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

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).

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Author

The primary author of this proposed rule is Richard G. Biggins, U.S. Fish and Wildlife Service, Asheville Field Office, 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).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, 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; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under CLAMS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
CLAMS							
*	*	*	*	*	*	*	
Pearly mussel, cracking	*Hemistena* (=*Lastena*) *lata*	U.S.A. (AL, IL, IN, KY, OH, TN, VA).	NA	E		NA	NA
*	*	*	*	*	*	*	

Dated: December 22, 1988.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–3790 Filed 2–16–89; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 54, No. 32
Friday, February 17, 1989

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

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Feed Grain Donations for the Blackfeet Tribe Indian Reservation in Montana

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Blackfeet Tribe Reservation in Montana has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Blackfeet Tribe for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation (CCC) for livestock feed for such needy members of the Tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of the Tribe to be acute distress areas and authorize the donation of feed grain owned by the CCC to livestock owners who are determined by the Bureau of Indian Affairs, United States Department of the Interior, to be needy members of the tribe utilizing such lands. These donations by the CCC may commence upon February 15, 1989, and shall be made available through May 15, 1989, or such other date as may be stated in a notice issued by the USDA.

Signed at Washington, DC on February 13, 1989.

Milton J. Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 89-3807 Filed 2-16-89; 8:45 am]

BILLING CODE 3410-05-M

Feed Grain Donations for the Northern Cheyenne Tribe Indian Reservation in Montana

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11326, I have determined that:

1. The chronic economic distress of the needy members of the Northern Cheyenne Tribe Reservation in Montana has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Northern Cheyenne Tribe for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation (CCC) for livestock feed for such needy members of the Tribe will not displace or intervere with normal marketing of agricultural commodities.

3. Based on the above determination, I hereby declare the reservation and grazing lands of the Tribe to be acute distress areas and authorize the donation of feed grain owned by the CCC to livestock owners who are determined by the Bureau of Indian Affairs, United States Department of the Interior, to be needy members of the tribe utilizing such lands. These donations by the CCC may commence upon February 15, 1989, and shall be made available through May 15, 1989, or such other date as may be stated in a notice issued by the USDA.

Signed at Washington, DC on February 13, 1989.

Milt Hertz,

Administrator, Agricultural Stabilization and Conservation Service

[FR Doc. 89-3753 Filed 2-16-89; 8:45 am]

BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

[Docket No. 89-020]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are adivising the public that three applications for a permit to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR Part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Document Control Officer, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plan Health Inspection Service, U.S. Department of Agriculture, Room 847, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-5874.

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

Pursuant to these regulations, APHIS has received and is reviewing the following applications to release genetically engineered organisms into the environment:

Accession No.	Applicant	Date received	Organism	Field test location
89-030-02	Monsanto Co	1-30-89	Genetically engineered tomato plants for lepidopteran insect resistance	California.
89-030-03	Monsanto Co	1-30-89	Genetically engineered potato plants for potato virus X and Y resistance	Idaho.
89-030-04	Monsanto Co	1-30-89	Genetically engineered potato plants for potato virus X and Y, and potato leaf roll virus, resistance.	Illinois.

Done at Washington, DC, this 14th day of February 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-3802 Filed 2-16-89; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

King-Titus Fire Recovery, Klamath National Forest, Siskiyou County, CA; Intent To Prepare Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement (EIS) for a proposal to implement fire recovery activities on a portion of the King-Titus Fire on the Happy Camp Ranger District.

A range of alternatives for this area will be considered. One of these will be no recovery activities in the project area. Other alternatives will range from implementing fire recovery activities to recovery in combination with more extensive timber management projects.

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

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Refinement of public comment into issues that may be addressed within the scope of analysis covered by the EIS.
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 evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the watershed.

The Forest Supervisor will hold a public meeting in his office at the Klamath National Forest, large conference room, 1312 Fairlane Road, Yreka, California, at 1:00 p.m., on Saturday, February 25, 1989.

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

The analysis is expected to take about 5 months. The draft environmental impact statement should be available for public review by May, 1989. The final environmental impact statement is scheduled for completion by July 1989.

Written comments and suggestions concerning the analysis should be sent to George R. Harper, District Ranger, Happy Camp Ranger District, P.O. Box 377, Happy Camp, California, 96039, by March 1, 1989.

Questions about the proposed action and environmental impact statement should be directed to Carmine Lockwood, Planning Forester, Happy Camp Ranger District, Happy Camp, California, 96039, phone (916) 493-2243.

Date: January 20, 1989.

Barbara Holder,

Deputy Forest Supervisor.

[FR Doc. 89-3737 Filed 2-16-89; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Upper Crab Orchard Creek Watershed, IL

AGENCY: Soil Conservation Service.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

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 being prepared for the Upper Crab Orchard Creek Watershed, Williamson County, Illinois.

FOR FURTHER INFORMATION CONTACT: John J. Eckes, State Conservationist, Soil Conservation Service, 301 North Randolph Street, Champaign, Illinois 61820, telephone (217) 398-5267.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, John J. Eckes, State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for this project.

The project concerns a plan for watershed protection and flood prevention. Alternatives under consideration to reach these objectives include systems for conservation land treatment, nonstructural measures, and channel improvement.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. A meeting will be held at 9:00 a.m., Wednesday, March 16, 1989, at the Williamson County Soil and Water Conservation District, conference room, 712 N. Carbon Street, Marion, Illinois to determine the scope of the evaluation of the proposed action. Further information on the proposed action, or the scoping meeting may be obtained from John J. Eckes, State Conservationist, at the above address or telephone (217) 398-5262.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assistance programs and projects is applicable.)

Date: February 8, 1989.

Mark W. Berkland,

Deputy State Conservationist.

[FR Doc. 89-3741 Filed 2-16-89; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket Nos. 4656-04, 4656-05(1) 4656-06)2)]

Actions Affecting Export Privileges: William Carlton Dart, et al.

Summary

Pursuant to the January 13, 1989

Recommended Decision and Order on Remand of the Administrative Law Judge, which Decision and Order is attached hereto and affirmed by me, the charges contained in the 1985 Charging Letter against Respondent William Carlton Dart, individually and doing business as Respondent Display Systems, Inc. and Perpetuum, Inc. are dismissed, and the names of all three Respondents shall be deleted from the Table of Denial Orders in Supplement No. 1 to Part 788 of the Regulations.

Discussion

The procedural background of this case is fully set forth in the Recommended Decision and Order of the Administrative Law Judge (ALJ) which is attached hereto. Of particular importance is the decision of the Circuit Court of Appeals for the District of Columbia in *Dart* v. *U.S.*, 848 F. 2nd 217 (DC. Cir. 1988). In that case, the Court of Appeals ruled that the Under Secretary for Export Administration (then Assistant Secretary for Trade Administration) does not have authority under section 13(c)(1) of the Export Administration Act to reverse a Recommended Decision and Order of the ALJ under language supposedly limiting his authority to "affirm, modify, or vacate" such decisions. Until modified by either further judicial construction or statutory language, the Circuit Court of Appeals decision undermines the authority of the Under Secretary for Export Administration, the Department of Commerce official charged with safeguarding the national security of the United States through the enforcement of strategic export controls.

In a case such as the one at bar, under the Circuit Court of Appeals reasoning, the Under Secretary of Export Administration is powerless to act contrary to the ALJ's Decision even in those cases the Under Secretary feels that the evidence has been so misconstrued by the ALJ that a reversal is required, whether in favor of or against the interests of a particular respondent. Carried to its logical conclusion, the *Dart* decision by the Court of Appeals renders the Under Secretary a mere rubber stamp for the Administrative Law Judge. It is doubtful that this was the intent of the drafters of the statute.

The definition of "reverse" with respect to a legal decision is to "revoke" or "annul." To reverse also means, in the same vein, to change direction. For example, if an ALJ were to impose penalties on a particular respondent for alleged violations of the Export Administration Act and the Under Secretary, feeling that there had been no violation, reversed the ALJ, the result would be a revocation or an annulment of the original decision. The reversal would also constitute a change in outcome. The definition of the word "vacate" is basically the same: "to deprive of validity; to void; to annul." It is logically inconsistent for the Court of Appeals to accord to the Under Secretary the right to vacate without the right to reverse. Taken to its logical conclusion, the result is absurd. An Under Secretary disagreeing with an ALJ might vacate an order only to see the same order come back *ad infinitum*. Without the power to reverse, the Under Secretary lacks the authority to direct a different verdict from the ALJ within any vacation order. If that were the result that the drafters of the legislation sought, it would have been easy enough to omit the word "vacate" from the statutory language. Rules of statutory construction demand that the word "vacate" be accorded reasonable meaning within the parameters of the law. The *Dart* decision, *supra*, fails in this respect.

Notwithstanding the above, the District Court of Appeals decision at present stands as the operative legal construction of the statute, and must be followed even if the result is inconsistent with common sense and rules of statutory construction. Therefore, although I am still convinced that a preponderance of the evidence in this case supports a finding that the Respondents violated the provision of the Act and the Regulations, I am powerless to do other than to affirm the decision of the Administrative Law Judge Order.

Order

On January 13, 1989, the ALJ entered his Recommended Decision and Order on Remand in the captioned matter. That Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. In keeping with the discussion above, I hereby affirm the Recommended Decision and Order on Remand of the ALJ.

This constitutes final agency action in this matter.

Date: February 13, 1989.

Paul Freedenburg,

Under Secretary for Export Administration.

Decision and Order on Remand

[Docket No. 4656-04, 4656-05[1] and 4656-06[2]]

Appearance for Respondents: John F. McKenzie, Esq., Baker & McKenzie, Two Embarcadero Center, San Francisco, CA 94111; William D. Outman, II, Esq., Baker & McKenzie, 815 Connecticut Avenue NW., Washington, DC 20006.

Appearance for Agency: Thomas C. Barbour, Esq., Attorney-Adviser, Office of the Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3329, 14th & Constitution Avenue NW., Washington, DC 20230.

Preliminary Statement

This proceeding is conducted under the authority of the Export Administration Act of 1979, as amended (50 U.S.C.App. 2401-2420) ("the Act"), and the Export Administration Regulations ("the Regulations").[3] The proceeding focuses on a charge by the Office of Export Enforcement ("the Agency"), Bureau of Export Administration,[4] U.S. Department of Commerce that four individuals and four corporations tried in 1983-84 to export unlawfully from the United States to Czechoslovakia two used wafer polishers.

Each of the four corporations was a small company through which one or more of the four individuals did business, and all eight of these individuals and corporations became respondents in cases initiated by the Agency. The present proceeding concerns the cases brought against individual Respondent William Carlton Dart and two corporations through which he does business, Respondent

[1] This Docket Number was listed in the September 15, 1988 Decision and Order of the Under Secretary for Export Administration as 4656-06, and that number was repeated in subsequent orders and filings in this proceeding. The correct number is 4656-05, as listed in the June 3, 1986 Decision and Order of this Tribunal and orders issued prior thereto.

[2] This Docket Number was listed in the September 15, 1988 Decision and Order of the Under Secretary for Export Administration as 4656-07, and that number was repeated in subsequent orders and filings in this proceeding. The correct number is 4656-06, as listed in the June 3, 1986 Decision and Order of this Tribunal and orders issued prior thereto.

[3] The Act was reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985), and amended by the Omnibus Trade and Competitive Act of 1988, Pub. L. 100-418, 102 Stat. 1107 (Aug. 23, 1988).

The Regulations, formerly codified at 15 CFR Parts 368-399, were redesignated as 15 CFR Parts 768-799, effective October 1, 1988 (53 FR 37751, Sept. 28, 1988).

[4] When this proceeding began in 1984, the Office of Export Administratiton was part of an organization within the U.S. Department of Commerce titled "International Trade Administration." As of October 1, 1987 it became part of an organization within the Department now titled "Bureau of Export Administration."

Display Systems, Inc. and Respondent Perpetuum, Inc.

Procedural Background

This proceeding is presently before this Tribunal on remand from the Department's Under Secretary for Export Administration. The history of this proceeding is lengthy. It begins November 6, 1984 with the issuance *ex parte* upon request of the Department's Office and General Counsel, of a temporary denial order against the eight respondents to facilitate enforcement of the Act and the Regulations, 49 FR 45,468 (Nov. 16, 1984). This temporary denial order denied the respondents the privileges of participating in the export or reexport of U.S.-origin commodities and technical data.

On April 3, 1985 the Agency issued charging letters to each of the four individual respondents, charging each of them and the four respondent corporations through which they did business with violations of the Regulations. The transaction underlying both these charging letters and the temporary denial order was the respondents' 1983–84 effort, noted above, to export wafer polishers to Czechoslovakia. Respondent Dart, individually and doing business as Respondent Display Systems, Inc. and Respondent Perpetuum, Inc., was charged with attempt (§ 787.3(a) of the Regulations), conspiracy (§ 787.3(b)), and acting with knowledge of a violation (§787.4).

The temporary denial order was the subject of various motions by Respondent Dart to vacate or to modify it. Three of the motions to modify deserve mention. For the first, in which Respondent Dart joined with two of the other individual respondents, a hearing was held January 16, 1985 in Washington, DC; and the subsequent March 5, 1985 decision modified the temporary denial order so as to permit certain exports by all eight respondents, 50 FR 9,473 (March 8, 1985).

For the second motion to modify, in which Respondent Dart joined with one of the other individual respondents, a hearing was held April 4, 1985 in Washington, DC; and the subsequent May 24, 1985 decision declined the requested modification of the temporary denial order. For the third motion, Respondent Dart and one of the other individual respondents agreed with the Agency that these two individuals and two respondent corporations through which they did business, Respondent Display Systems, Inc. and Respondent Perpetuum, Inc., should be allowed to make certain exports; and a September 20, 1985 order modified the temporary denial order to permit these exports, 50 FR 39,159 (Sept. 27, 1985).

For the charging letters, all of the individual respondents filed answers that denied all of the charges against them and the respondent corporations. Ultimately a five-day hearing for all the respondents was held March 17–21, 1986 in San Jose, California that addressed the issues raised by both the temporary denial order and all the charging letters.

On the basis of that hearing and the total record compiled in the cases involving the respondents, this Tribunal issued four decisions on June 3, 1986, one for each of the four individual respondents. These decisions dismissed all of the charges against the four individual respondents and against the four corporate respondents through which they did business. Pursuant to section 13(c)(1) of the Act, these four decisions were referred to the Department's Assistant Secretary for Trade Administration, to whom the Secretary of Commerce had delegated the authority assigned the Secretary by section 13(c)(1).

The Assistant Secretary issued a single July 3, 1986 Order in which he stated that "I affirm" the June 3 decisions as to two of the individual respondents (July 3, 1986 Decision 3) and that "I hereby modify" the June 3 decisions as to the other two, including Respondent Dart (*id.* 2). The Assistant Secretary's decision found Respondent Dart, individually and doing business as Respondent Display Systems, Inc. and as Respondent Perpetuum, Inc., to have violated the Regulations as charged, and imposed on all three a 15-year denial of export privileges and imposed on Respondent Dart a $150,000 civil penalty.

Court Actions to Present

Respondent Dart sought relief from the courts. In the District Court for the District of Columbia, he filed a suit raising statutory and constitutional objections to the Assistant Secretary's decision. The District Court, in October 1986, dismissed Respondent Dart's suit for lack of jurisdiction, based on the finality accorded the Assistant Secretary's decision by the Act (*Dart* v. *United States*, No. 86–2264, memorandum op. (D.D.C. Oct. 8, 1986)).

On appeal of that dismissal to the Court of Appeals for the District of Columbia Circuit, however, the dismissal was reversed in May 1988 (*Dart* v. *United States, 848 F.2d 217 (D.C. Cir. 1988)). The Court of Appeals ruled that the Assistant Secretary's decision exceeded the Secretary's authority under section 13(c)(1) of the Act, which is to "affirm, modify, or vacate" decisions of this Tribunal. According to the Court of Appeals, the Assistant Secretary's decision "clearly reversed" the decision of this Tribunal, and such authority to reverse is not given the Secretary under the Act (id.* 231). The Court of Appeals directed that the Assistant Secretary's decision be vacated, and remanded the case to the District Court.

On August 16, 1988 the District Court accordingly vacated the Assistant Secretary's decision and remanded the case to the Secretary of this Department with directions "to affirm, modify or vacate" this Tribunal's June 3, 1986 decision regarding Respondent Dart. On September 15, 1988 the Department's Under Secretary for Export Administration, to whom the Secretary of the Department has now delegated his authority under the Act, issued a Decision and Order vacating this Tribunal's June 3, 1986 decision and remanding the case to this Tribunal for further consideration. Such consideration, per the Under Secretary's order, was to allow the parties to file briefs, could include further evidentiary hearings, and was to include the addressing of seven questions that are set forth in the Decision and Order.

Respondent Dart and the Agency filed briefs and other submissions, including additional evidence, with this Tribunal since that September 15th remand. The last filing occurred January 6, 1989; and the record is now ready for this Tribunal's Decision and Order on Remand. The seven questions set forth by the Under Secretary are addressed below immediately preceding the Conclusion.

Facts

The export transaction at the center of this proceeding lasted from June 1983 to February 1984. In June 1983 one of the individual respondents, Josef Kubicek, purchased six used wafer polishers, which were of a model known as 320B. He intended to sell them to Czechoslovakia, but believed that they needed to be upgraded to be like a more advanced model, known, as a 3700, in order to be thus saleable. For this upgrading, Kubicek contracted with Research Machines, Inc. ("RMI"), a firm that was in the business of rebuilding and upgrading polishing equipment employed in the semiconductor industry.

Although Kubicek retained the sole financial interest in these used wafer polishers and their export, he was assisted in the day-to-day dealings with the upgrading firm by two of the other individual respondents: Respondent Dart and a close business associate of

Respondent Dart. Respondent Dart and his associate were then also engaging, jointly with Kubicek, in other export transactions in which they themselves did have a financial interest. The fourth individual respondent was hired by Kubicek to go to Czechoslovakia to assist in installation of the wafer polishers. Respondent Dart and the other respondents, except for the one who was to go Czechoslovakia for the installation, were located in California, as was RMI.

In November 1983, the president of RMI traveled to Washington, DC to check with the Commerce Department regarding the export licensing requirements for shipping the wafer polishers to Czechoslovakia. While he was at the Department, he was requested by the Agency to assist in an investigation of Respondent Dart and others of the respondents. Later in November 1983, a vice president of RMI was also requested by the Agency to provide such assistance. This assistance, which the two RMI officers agreed to provide, took the form of their serving as, to use the Agency's terminology citizen informants.

After that November 1983 trip to Washington by its president, RMI pursuant to its contract with Kubicek, continued to upgrade two of the wafer polishers and to arrange for their export. Finally in February 1984 these two machines, having been upgraded, were seized by U.S. Customs at Los Angeles International Airport as they were being prepared for shipment to Czechoslovakia. These machines lacked the validated export license that was required for such shipment.

Procedural Issues

Respondent Dart argued that this case should be dismissed both because of improper conduct by the Agency and also because of deficiencies in the charging letter. The chief conduct alleged by Respondent Dart to have been improper was the failure to inform him of the export licensing requirements for the upgraded wafer polishers. This issue is addressed under Discussion below, with respect to estoppel. The argument regarding the charging letter is addressed here.

Respondent Dart argued that the charging letter should be dismissed because it failed to satisfy the mandate of § 788.4(a) of the Regulations that it "set forth the essential facts about the alleged violation * * *." Respondent Dart attacked generally four statements or groups of statements in the charging letter to support this argument. None of these statements or groups of statements, however, provides a basis for dismissing the charging letter.

Respondent Dart cited prominently the charging letter's inaccurate statement of the licensing requirements for exporting the model of used wafer polisher that the one respondent purchased (Respondents' Post-Hearing Brief, April 28, 1986, at 6–10). The charging letter stated that that model could have been exported to Czechoslovakia under general license G-DEST. Pursuant to the Regulations, any export that qualifies for a general license does not need a validated license.

At the March 1986 hearing, however, an official from the Department's export licensing unit, called by the Agency itself as an expert witness, testified that this model did not qualify for a general license for export to Czechoslovakia during 1983–84, but needed a validated license (V Hearing Transcript, March 17–21, 1986 (hereinafter "Tr.") 808). The Agency did not dispute that the charging letter was mistaken on this point (Agency Response, May 6, 1986, at 3–4).

The charging letter did accurately state that the advanced model of wafer polisher, toward which the two used models were upgraded, required a validated license for export to Czechoslovakia. The charging letter further stated accurately that the two machines that were seized also required a validated license for such export.

As for the misstatement cited by Respondent Dart, it is not a misstatement that justifies dismissal of the charging letter. The heart of the violations alleged by the charging letter is not the licensing status of the wafer polisher model that was purchased as a used machine. Rather, the core of the alleged violation is the effort to export wafer polishers that had been upgraded and that, like that more advanced model, did require a validated license for export to Czechoslovakia. The charging letter did accurately state the licensing requirements for both the upgraded machines and the more advanced model; and that accuracy is sufficient to sustain the charging letter's compliance with the Regulations in terms of its setting forth the pertinent licensing requirements.

Respondent Dart's second attack on the charging letter focused on a group of statements reciting acts that he allegedly did as part of violating the Regulations (Respondents' Post-Hearing Brief, April 28, 1986, at 6–10). Respondent Dart cited, for example, the charging letter's statement that in October and November 1983 Respondent Dart and another of the individual respondents arranged for the upgrading of the used wafer polishers (*id.* 7). Respondent Dart criticized this statement and others in the group he cited as being untrue.

All of such Agency statements cited by Respondent Dart were, however, a reasonable account of the Agency's version of the relevant 1983–84 events. At the March 1986 hearing, the Agency introduced evidence to prove this version. Respondent Dart challenged this version at the hearing with his evidence tending to disapprove it. The challenge, if successful, would not provide a basis for dismissing the charging letter as fatally defective for not "set[ting] forth the essential facts about the alleged violation." Rather, that challenge would supply a basis for dismissing the charges through a decision on the merits that the record failed to sustain the Agency's charges.

The third target of Respondent Dart's attack on the charging letter was its one-sentence allegation of a conspiracy violation, without any citation of an agreement or of an overt act in furtherance of the conspiracy (*id.* 8–9). The sentence did refer to three paragraphs in which the letter described actions that Respondent Dart allegedly took, sometimes together with other named respondents, to export the wafer polishers in violation of the Regulations.

Although the charging letter does lack any statement of a conspiratorial agreement and any specification of an overt act taken in furtherance of a conspiracy, the reference to the three paragraphs of alleged actions is sufficient to save the charging letter from dismissal. It is reasonably possible to read the three paragraphs as charging that those acts that Respondent Dart is stated to have done together with other individual respondents were done pursuant to an agreement with them; and the acts, if proved, could have constituted a violation of the Regulations.

Respondent Dart's fourth attack on the charging letter targeted its statement that he knew the pertinent licensing requirements. Some of the Agency's posthearing argumentation contended, according to Respondent Dart, that he had reason to know these requirements, not that he actually knew them (Respondents' Opening Brief, Nov. 2, 1988, at 10–14).

A fair portion of the Agency's argumentation, however, sought to prove that Respondent Dart actually knew the pertinent licensing requirements. Evidence adduced by the Agency to show that Respondent Dart was told something about these

requirements can legitimately be cited to argue both that he should have known them, and also that he did know them (see generally Agency Reply, Nov. 21, 1988, at 5 n.4). Consequently, on this point as well, the charging letter is not fatally defective.

In sum as to the charging letter, its most serious shortcoming cited by Respondent was its inaccuracy regarding the licensing requirements for the model of used wafer polisher that was purchased. But this inaccuracy, together with the other points cited by Respondent Dart, was not of a magnitude such that the letter deserves to be dismissed for failure to "set forth the essential facts about the alleged violation."

Discussion

Citizen Informants

A central element of the Agency's presentation was its use of the two citizen informants. The record indicates that both of them undertook this role at the risk of some possibly significant sacrifice of their own interests, and they are to be commended for their willingness to cooperate with the Agency.

A prime issue for decision in this proceeding is what message the conduct of these citizen informants communicated to Respondent Dart regarding the licensing requirements for exporting the upgraded wafer polishers. The origin of this issue was a meeting held in California on or about November 9, 1983.[5] In attendance were, at minimum, Respondent Dart, Kubicek, and the president and vice president of RMI. This meeting occurred before the president and vice president had been recruited to become citizen informants. Those present at the meeting reviewed a proposal, prepared by RMI, for upgrading the used wafer polishers. Kubicek and RMI concluded a contract for RMI to upgrade them.

At this November 9th meeting, RMI was requested also to become the exporter of record for the upgraded machines. RMI's president said that, before the firm accepted this additional responsibility, he wanted to check the pertinent export licensing requirements with the Commerce Department in Washington, DC (*see, e.g.*, II Tr. 134–35, 180–83, 191–92, 207–08, 255, 258–59, 316, 318–20; III Tr. 498; IV Tr. 639).[6] Kubicek agreed to pay the cost of the RMI president's trip to Washington (II Tr. 135), and Kubicek was apparently billed a thousand dollars for the trip (II Tr. 181, 237).

RMI's president traveled to Washington in mid-November 1983 to talk in person with officials of the Commerce Department. It was while then meeting with the Department that he was requested to assist in an investigation of the respondents; and, later that month, he, and also RMI's vice president who had attended the November 9th meeting in California mentioned above, both agreed to become citizen informants.

As to the licensing requirements for exporting wafer polishers to Czechoslovakia, the citizen informants gave Respondent Dart an oral report of what RMI's president had learned in his Washington trip. They said that the model represented by the used machines could be exported under general license G–DEST; but, they said further, the advanced model toward which the machines were to be upgraded would need a validated license, because of two of its technical characteristics that they specified, and a request for such a license would be denied (II Tr. 146–47, 327–28).

The citizen informants did not tell Respondent Dart whether the wafer polishers as upgraded per the contract would need a validated license for export to Czechoslovakia. But RMI did go ahead and perform its contract, which provided for the firm both to upgrade the used machines and to arrange their export. RMI arranged the export under general license G–DEST, an arrangement known to and intended by Respondent Dart and the other respondents.

After agreeing to serve as citizen informants, RMI's president and vice president worked closely with the Agency. From late November 1983 to mid-February 1984, at the direction of the Agency they first took notes on five conversations they had with the respondents, and then covertly recorded thirty such conversations.

In addition, the citizen informants needed the Agency's help to complete RMI's contract to upgrade the wafer polishers. For the upgrading, they required certain equipment from the manufacturer of the polishers, but had trouble obtaining this equipment, partly because RMI owed an outstanding balance to the manufacturer (II Tr. 131–32, 200). The Agency solved the problem by itself obtaining the equipment from the manufacturer and giving it to the citizen informants (V Tr. 690–91, 716).

Estoppel

Respondent Dart claimed that the conduct of the citizen informants reasonably led him to believe that the upgraded wafer polishers could be exported to Czechoslovakia under general license. The president of RMI had said that the firm would not accept the exporting responsibility until he had checked the pertinent licensing requirements in person with the Commerce Department in Washington; he had traveled to Washington for this purpose; and after his return RMI continued to perform its contract for the upgrading and exporting. On this sequence of events, Respondent Dart based his claim to have believed reasonably in the legality of the intended general license export.

Because much of what the citizen informants did was done with the knowledge of and at the direction of the Agency, the question arises as to whether the Agency should be estopped from pursuing its charges further against Respondent Dart. Although estoppel is less available against the government than against a private party, the government too may be estopped if the circumstances warrant.

Here one circumstance is that the Agency knew the true situation, *viz.*, that the upgraded wafer polishers required a validated licesne for export to Czechoslovakia. A second circumstance is that Respondent Dart was ignorant—or at least he claimed to have been ignorant—of this true situation. Actually the Agency argued that Respondent Dart knew or should have known of the validated licensing requirement for the upgraded machines, and this Agency argument is considered in the following part. Anyhow Respondent Dart's claimed ignorance of this requirement—if his claim withstands the Agency argument to the contrary—is a second relevant circumstance for estoppel; and it would mean that, as to the first circumstance, the Agency alone knew the true situation.

A third circumstance is that Respondent Dart relied to his detriment on the representation by the citizen informants and their firm of the true licensing situation, or again at least claimed to have so relied. The Agency's argument, noted above, that Respondent Dart really knew or should have known of the validated license requirement

[5] Although some suggestion was made that this meeting might have occurred on a day in autumn 1983 other than November 9th, both parties in their filings regularly used November 9th as the date for this meeting, and that date will be used in this Decision.

[6] In this part of the Decision, citations are given particularly for those points that were placed in contention by the parties' replies to Question 2 of the October 3, 1988 Order.

would refute such reliance. But if Respondent Dart's claimed reliance withstands the contrary Agency argument, then he clearly would have relied to his detriment on the citizen informants and their firm, since his involvement in exporting the upgraded machines under general license has made him a Respondent in this proceeding.

A fourth circumstance that would be important for invoking estoppel is that the Agency have intended that the pertinent conduct of its citizen informants and their firm be relied on by Respondent Dart, or at least that Respondent Dart reasonably have thought that such conduct was so intended. The existence of this circumstance is less clear.

Certainly the Agency intended that Respondent Dart rely on the statements and actions by the citizen informants regarding the contract to upgrade and export the wafer polishers. These actions obviously included their firm's continuing to perform the contract after the president had checked the licensing requirements in Washington. These statements clearly included the informants' telling Respondent Dart, after the Washington trip, that the used model of wafer polisher did not need a validated license, but the advanced model did. The Agency reviewed with the citizen informants what they were to tell Respondent Dart about the Washington trip in advance of their reporting to him on it (II Tr. 142–47, 185–87, 327–28).

What is unclear is whether the Agency intended that the citizen informants tell Respondent Dart nothing about the licensing status of the upgraded machines, or even knew of that omission. Nonetheless, the Agency reasonably should have been aware of it. The Agency maintained a close connection with the citizen informants during the November 1983 through February 1984 period, and their report to the respondents on the Washington trip was a significant point to which the Agency had paid some attention in advance.

Moreover, the Agency apparently knew that RMI's president had come to Washington to check the licensing requirements before agreeing to become the exporter of record, and that the export was to be sent under general license. (*e.g.*, II Tr. 142). If he were to return to the respondents in California and report that such an export would be illegal, presumably the matter would not simply end there. Presumably the president would then either decline to become a party to the export, or, if he opted to continue, he would demand substantially more money to compensate for serving as the exporter of record for a shipment that he had just learned was to be illegal.

The Agency knew that RMI was continuing to perform the contract. The Agency also probably knew that the citizen informants had not demanded more money for performing the contract. In view of the relationship between the Agency and the citizen informants, it is unlikely that they would make such a demand without authorization from the Agency; and, if they had made such a demand on their own, the Agency would have expected to have been told of the results. Consequently the Agency knew both that the citizen informants' firm was continuing to perform the contract, and that they probably had not demanded any additional money. The logical conclusion, had the Agency reflected on the point, was that the citizen informants had failed to report that the upgraded machines could not be legally exported as planned.

In fact, the record does not indicate that the Agency during November 1983—February 1984 thought through this issue to that extent. But the record does show, as outlined above, that the evidence available to the Agency indicated that the citizen informants had not reported the licensing status of the upgraded wafer polishers. More fundamentally, the citizen informants were attentive to the directions they received from the Agency, and the relationship between them and the Agency was close.

On the basis of that relationship, the Agency can reasonably be held responsible for the informants' not reporting the licensability of the upgraded machines, as well as their firm's continuing to perform the contract. Therefore, as a fourth circumstance relevant to estoppel, certainly Respondent Dart could reasonably have believed that the citizen informants intended him to rely on their report of the Washington trip and their firm's continued performance of the contract; and the Agency can reasonably be held responsible for such report and continued performance.

In sum, provided that Respondent Dart's claimed ignorance of the validated licensing requirement for the upgraded wafer polishers survives the Agency's challenge, as discussed below, four circumstances exist that would justify invoking estoppel against the Agency. The Agency alone knew the true licensing situation; Respondent Dart was ignorant of it; Respondent Dart relied, to his detriment, on the conduct of the Agency's citizen informants and their firm for his understanding of the licensing situation; and Respondent Dart could reasonably have believed that he was intended to rely on such conduct, and the Agency can reasonably be held responsible for that conduct.

Respondent Dart's reliance in these circumstances was so reasonable that it would be fair to invoke estoppel against the Agency to protect him from the consequences of that reliance. Indeed, the Agency was asked what conclusions Respondent Dart could have reasonably drawn from the conduct of the citizen informants described above (October 3, 1988 Order, Question 3). The Agency generally declined to answer, but instead cited evidence in the record suggesting that Respondent Dart actually knew or should have known that the upgraded machines needed a validated license (Agency Submission, Nov. 2, 1988, at 14–18). That Agency argument is addressed in the following part.

A final point regarding use of estoppel in this proceeding is that invoking it would not unduly injure the public's interest. The facts of this proceeding are sufficiently unusual that applying estoppel here should not significantly impede Agency enforcement efforts. And essential fairness requires that the Agency be held responsible for clear messages communicated by its citizen informants to persons under investigation.

Agency's Arguments

The Agency advanced two particular arguments to show that Respondent Dart actually knew or should have known that export of the upgraded wafer polishers to Czechoslovakia required a validated license. If supported by the record, these arguments would undercut the applicability of estoppel to protect him. First and especially strongly asserted is evidence allegedly indicating Respondent Dart's awareness of those technical characteristics of wafer polishers that entail a validated licensing requirement. Second and also significant are conversations of Respondent Dart possibly suggesting his awareness of participating in an unlawful transaction. Additionally, the Agency advanced several other arguments to sustain its charges.

Technical Characteristics of Upgraded Machines

First, the Agency cited evidence indicating that Respondent Dart was aware that those technical characteristics that the upgrading was to impart to the used wafer polishers were characteristics that would require a

validated license for their export to Czechoslovakia. The Agency cited especially: His attendance at the November 9, 1983 meeting noted above; his November 15, 1983 telephone call to an official of the manufacturer of these wafer polishers; his November 23, 1983 telephone conversation with the citizen informants; his conversation in person with one of the citizen informants on about November 29, 1983; and his signing on that last occasion of a modification of the contract to upgrade the machines.

At the November 9, 1983 meeting, Respondent Dart saw the document that became the contract for the upgrading, and heard a discussion of what technical upgrading was to be done to the used machines to make them more like the advanced model. On November 15, 1983 Respondent Dart telephoned an official of the company that makes these wafer polishers to ask about the licensability of both the model represented by the used machines and also the model toward which they were to be upgraded.

On November 23, 1983 both of the citizen informants talked by telephone with Respondent Dart and reported the results of the recently completed trip to the Commerce Department in Washington by one of them. As recorded in the handwritten notes of that conversation by the other citizen informant: "We reitterated [sic] that as we suspected the * * * [model of the used machine] was classified G-Desk [sic], but that the * * * [advanced model] machine required a Designated [sic] License [sic]. Due to its waxless mounting design and capacity for larger wafers" (March 17–21 Hearing, Agency Exhibit (hereinafter "Agency Exh.") 13; see also II Tr. 328).

On or about November 29, 1983, Respondent Dart met with one of the citizen informants. At that meeting, the citizen informant, according to his handwritten notes of that meeting (Agency Exh. 22) roughly repeated the technical statements quoted above; and Respondent Dart, at the direction of and on behalf of Kubicek, signed a modification of Kubicek's contract with RMI.

Finally, the Agency cited several documents (Agency Exh. 31–38] to show Respondent Dart's familiarity with the relevant technical characteristics of wafer polishers. These documents are mostly various business notes and papers connected with this transaction.

None of the above evidence, however, individually or cumulatively, proves the Agency's argument. The Agency cited the evidence to contend that Respondent Dart knew or should have known that the upgrading of the used wafer polishers gave them those technical characteristics that meant a validated license was required for their export. The Agency's evidence does show that Respondent Dart had some knowledge was enough to have told him that the upgrading would mean a validated licensing requirement.

As for the discussion at the November 9th meeting, it was of course clear that the purpose of the upgrading was to make the used model of wafer polisher more like the advanced model. But the export licensing ramifications of that upgrading—even to the citizen informants who were in the business of rebuilding and upgrading such equipment—was sufficiently unclear that one of them wanted to travel all the way to Washington to check out that point.

As to Respondent Dart's November 15, 1983 telephone call to an official of the manufacturer of the wafer polishers, Respondent Dart asked about the licensing situation for the models represented by both the used machine and the more advanced machine. The official replied with various information, including his view that at that time only the model of the used machine would have any chance of being licensed for Czechoslovakia. The official explained also some of the technical differences between the two models. But there was no discussion at all of upgrading the lesser model in the direction of the more advanced, or of the licensability of the resulting machine. Moreover, this telephone conversation occurred before the trip to Washington by the one citizen informant that was to be undertaken specifically to check that licensability.

Finally, as to documents, Respondent Dart saw the contract for upgrading the used machines at the November 9th meeting, and signed a modification of it on or about November 29th. The modification concerned nontechnical matters, and Respondent Dart signed it at the same time that he was conferring on the telephone with Kubicek, on whose behalf he signed it. Respondent Dart did hear reports on the technical characteristics of these machines and validated licensing requirements on November 23rd and on or about November 29th. But that evidence falls short of showing that he could have related what he had learned from seeing the contract to the technical characteristics that he was told are significant for export licensing. The additional documents cited by the Agency [Agency Exh. 31–38] were not shown by the Agency to reflect any significant additional understanding on Respondent Dart's part.

The Agency's own expert witness on wafer polishers, an official of the manufacturer of the machines at issue here, testified that "it would take somewhat of an expertise" to determine, from a reading of the contract, the technical significance of the upgrading it provided (V Tr. 794). Another official of that manufacturer, whom Respondent Dart telephoned November 15, 1983 and who was a member of that company's customer service unit, did testify as to Respondent Dart's knowledge in this area. This witness said that, as to "semiconductor materials," Respondent Dart was "quite knowledgeable * * * because he * * * seemed to know what he was talking about on wax versus waxless machines * * * [and] knew what the polisher was" (I Tr. 76).

Respondent Dart, in his own behalf, testified that he had never seen a wafer polisher before mid-1983. He testified further that, while he did see the six used wafer polishers after their purchase by Kubicek, these polishers had a lid that was always down, and he never lifted the lid of any of them to look inside, nor has he ever in his life seen the interior of a wafer polisher. Finally, he testified that he never saw the two machines that were upgraded after their upgrading, nor the export documentation for them.

Taken as a whole, all this evidence clearly shows that Respondent Dart knew something about wafer polishers. But the evidence is short of establishing that Respondent Dart had enough "expertise" to have understood, or have been able reasonably to understand, that the technical upgrading specified by the contract encompassed characteristics that would require a validated license for export of the end product.

The difficulty encountered by the Agency and by the Commerce Department themselves in applying the licensing requirements to wafer polishers suggests how hard it can be, even for experts. Everything in the record indicated that, from the November 1983 trip to Washington by RMI's president all the way to the March 1986 hearing almost two and a half years later, the Agency's position was that the used model of wafer polisher could be exported to Czechoslovakia under general license. Then, on the evening of the fourth day of the five-day March 1986 hearing, an expert witness from the Department, sponsored by the Agency, changed that position. He testified that this model of wafer polisher, like the more advanced model, required a validated license for export to Czechoslovakia. The Agency

has not challenged this change of its position by its expert witness.

This change meant that, on the RMI president's trip to Washington in November 1983, the advice given him by the Departmental licensing officer, whose specialty is the types of equipment that include wafer polishers, was inaccurate. Two of the Agency's special agents, one of whom had been called into the RMI president's meeting with that Departmental licensing officer, instructed the citizen informants to tell Respondent Dart that the used model could go general license. So the Agency's change of position meant that its special agents had directed that Respondent Dart be given this inaccurate licensing advice. The Agency's change of position meant that it itself, in its April 1985 charging letters issued to all the respondents, stated incorrectly that this model of used wafer polisher could be exported to Czechoslovakia under general license.

The point of this episode is not that even skilled licensing officers and even efficient organizations may occasionally err in making technical determinations. The point is that it suggests that a fair degree of technical expertise about wafer polishers is needed to know whether their export to Czechoslovakia requires a validated license. Although this proceeding turns on the licensability of the used wafer polishers upgraded to the level of the more advanced model, not on the licensability of the used model before the upgrading, the pertinent licensing provisions of the Regulations are the same.

For Respondent Dart, the record does not reflect that he was a technically trained person. He did acquire knowledge about wafer polishers during the course of the 1983–84 export transaction, and he did see the contract, hear discussion of it, and then hear the above cited reports from the citizen informants of the Washington trip. But his technical knowledge was not shown to have reached a level such that, from his exposure to the contract and the reports of the citizen informants, he would, or should, have known that the upgrading of the used machines was to involve those characteristics that entail a validated licensing requirement. Therefore the Agency's arguments based on Respondent Dart's technical knowledge of wafer polishers and licensing requirements fail to persuade.

Respondent Dart's Conversations

A second argument by the Agency that Respondent Dart knew, or should have known, of the validated licensing requirement for the upgraded wafer polishers is based on certain of his conversations. According to the Agency, these conversations suggest an awareness on Respondent Dart's part of participating in an unlawful transaction. The two citizen informants took notes on five conversations with the respondents and then covertly recorded thirty. In ten of these conversations, Respondent Dart was one of the speakers.

Only three of these conversations, however, really concerned the lawfulness of the export. One particularly lends itself to the Agency's argument. On February 1, 1984 one of the citizen informants told Respondent Dart that the export transaction carried a risk because it involved the shipment, without a validated license, of wafer polishers that had been upgraded beyond the model they originally represented (Agency Exh. 7, item 4.d.15, at 3). Respondent Dart's subsequent explanation of this conversation was that these statements by the citizen informant were included in a lengthy monologue to which he, Respondent Dart, was paying little attention. In this connection Respondent Dart argued that he generally paid little attention to the details of this export transaction because he himself had no financial stake in it. Moreover as to the February 1, 1984 conversation, it occurred well after the transaction had presumably already been structured on the basis of the November 1983 Washington trip.

The Agency cited also another exchange at a later point in this February 1, 1984 conversation. The citizen informant told Respondent Dart that another of the respondents "didn't want me to ship the manual with the * * * machines" (*id.* 4). Continuing, the citizen informant referred to still another respondent, who was to install the machines in Czechoslovakia, and said, "This is going to be absolutely invaluable to him in hooking the thing up, * * * [a]nd that [manual] covers absolutely everything applicable to the [advanced model]" (*id.*). Respondent Dart replied, "[H]e should hand-carry this then" (*id*). As interpreted by the Agency, this exchange apparently showed Respondent Dart's intention to ship an equivalent of the more advanced model. In terms of Respondent Dart's version of what happened, it apparently was just a well meaning effort to provide something that the citizen informant had said would be useful for the installation in Czechoslovakia.

An earlier conversation by Respondent Dart with both citizen informants squarely supports, according to Respondent Dart, his version of what he intended. In a November 23, 1983 conversation, they told him that the report of the Washington trip was that export of the lesser model of wafer polisher did not need a validated license, but that export of the more advanced model did. Respondent Dart then replied that the transaction should go ahead with the lesser model. The counter interpretation of this conversation, advanced by the Agency, was that Respondent Dart was simply stating what was to be the respondents' public position. It remains unclear from that interpretation how the citizen informants would have known that they were to disregard Respondent Dart's explicit direction.

The Agency cited, in connection with its interpretation, another conversation, on or about November 29, 1988, again between Respondent Dart and this same citizen informant, held at the time Respondent Dart signed a modification of the contract for upgrading the used machines. As written in notes made after the meeting by the citizen informant, "Bill asked what brought up the discussion of [the more advanced] model in Washington meeting" (Agency Exh. 22, at 1). On behalf of Respondent Dart, it could be argued that this question was simply an innocent inquiry, or else just a reiteration of the intent to export only a model that remained within the licensing status of the lesser model.

The two conversations stressed by the Agency—those of November 29 and February 1—can be read, as urged by the Agency, as indicating an awareness by Respondent Dart that the planned export would be unlawful. On the other hand, the alternative interpretation of them—that they reveal only lawful intentions—is also plausible. Taken as a whole, they are inconclusive, and thus fail to establish the point that the Agency seeks to derive from them. Their inconclusiveness is heightened by the consideration that they represent all the evidence the Agency was able to muster on the issue from thirty covertly recorded conversations with the respondents and five more on which notes were taken, ten of the conversations' involving Respondent Dart.

A further noteworthy feature of all the conversations is the absence of any clearly incriminating statements by Respondent Dart. The Agency's explanation of this absence is that conspirators rarely voice illegal designs openly. That explanation has some realistic logic. At the same time, here the Agency had the advantage of citizen informants who were expressly directed to try to engage the respondents in incriminating conversations. One

possibility would have been for an informant simply to have told Respondent Dart that the Washington trip had ascertained that the used machines, upgraded as planned, would need a validated license for export to Czechoslovakia, and then to have asked Respondent Dart what accordingly should be done.

Other Agency Arguments

The Agency advanced several other arguments to support its charges. Thus one of the citizen informants, supported generally by the other, testified at the hearing that Respondent Dart knew that the used wafer polishers to be exported had been upgraded to the model that needed a validated license, but were being exported as the lesser model in an effort to circumvent this requirement. Both citizen informants were articulate witnesses at the hearing. But the force of their testimony on this point is significantly diminished by the lack of any solid corroboration in the thirty recorded and five noted conversations.

Partly to counter the apparent failure of the citizen informants to include the licensing status of the upgraded machines in the oral report to Respondent Dart of the Washington trip, the Agency attributed particular significance to his not then pressing the question with them (Agency Nov. 2, 1988 Submission 16–17). The Agency's theory is apparently that, once RMI was willing to handle the exporting, he sought to know as little as possible about the licensing requirements.

At least there is nothing illegal as such in the transfer of the exporting responsibility to RMI, especially absent a showing, which the Agency has not made, that Respondent Dart knew the shipment would need a validated license. Moreover, the November 23, 1983 conversation in which Respondent Dart was told the report of the Washington trip is equally consistent with an innocent explanation of events.

As described above, in that conversation the citizen informants told Respondent Dart that export of the lesser model of wafer polisher would need a validated license but export of the more advanced model would not, and Respondent Dart replied that the transaction should proceed with the lesser model. Since RMI then proceeded to perform the contract, that exchange could reasonably be viewed, from Respondent Dart's standpoint, as having settled the matter.

The Agency additionally tried to support its charges against Respondent Dart through certain actions of Kubicek. To reduce the meaning of the Washington trip by RMI's president, the Agency cited statements by Kubicek at the November 9, 1983 meeting at which this trip was agreed upon. According to both citizen informants, Kubicek repeatedly told RMI's president, when at the Commerce Department in Washington, to describe the wafer polisher to be exported as the less advanced model.

These statements by Kubicek, however, would not have undercut the meaning that Respondent Dart derived from that Washington trip. RMI's president testified clearly that Respondent Dart had not suggested that the export be described in Washington as anything other than what it was to be. More basically, RMI's president had every incentive in his own self interest to describe the proposed export accurately to the Commerce Department. That self interest existed regardless of what Kubicek might have suggested to him.

RMI was to be the exporter of record; and consequently, to avoid any legal transgression by himself or RMI, he needed to obtain licensing information addressed specifically to his proposed export. The licensing status of both the lesser and more advanced models of wafer polisher were pertinent, but he knew that it was the licensing status of the upgraded machines for which he and RMI were to be held accountable. Therefore Respondent Dart could reasonably have concluded that, if RMI continued to perform its contract after the Washington trip, the firm's president had satisfied himself as to the legality of the proposed export. The whole background of the trip to Washington suggests that its only purpose was to ascertain this legality, and the Agency has not suggested any other logical reason why RMI's president would have undertaken the trip.

The Agency further cited Kubicek's statements at the November 9th meeting as a reason why Respondent Dart had been properly alerted to the possibility of an unlawful export. To make this same point, the Agency cited also a previous export involving Kubicek and Respondent Display Systems, Inc. In that transaction, according to the Agency, Kubicek, apparently without the knowledge of Respondent Display Systems, Inc., inserted in an export going general license some items that required a validated license. The shipment was seized by Customs, according to the Agency, but nothing is said as to whether any sanction was imposed.

The Agency's argument cited Respondent Dart's continuing to engage in exporting with Kubicek after this incident, and his continuing with the export of the used wafer polishers after hearing Kubicek's statements at that November 9th meeting. The Agency requested that its other evidence be viewed in light of this background that, it contended, should have alerted Respondent Dart to the possibility of illegality in the export of these upgraded machines.

These background circumstances cited by the Agency are, as the Agency suggested, relevant to the evaluation of all the evidence. But these circumstances of themselves do not—nor does the Agency assert otherwise—establish that Respondent Dart knew or should of known of intended illegality in the export of the upgraded wafer polishers. Specifically, these circumstances fail to undercut the reasonableness of Respondent Dart's conclusion that RMI's continuing to perform the contract after the Washington trip meant that the licensing question had been resolved satisfactorily.

The Agency did advance one argument that might sustain its charges notwithstanding the estoppel consideration discussed above. According to that argument, there is enough evidence of the existence of an unlawful conspiracy involving Respondent Dart before the November 9, 1983 meeting, or alternatively before the ensuing Washington trip, that a violation may be found on the basis of that evidence, independently of what transpired at the November 9th meeting or thereafter (Agency Nov. 21, 1988 Reply 6–9; Agency Dec. 29, 1988 Submission).

The difficulty with this Agency argument is that it cited little meaningful evidence. Most of the evidence that it did cite showed nothing illegal, and most of the assertions in the argument that claimed illegality were unsupported by citations to evidence.

One fact stressed by the Agency in this argument was the request at the November 9th meeting that RMI be the exporter of record. The Agency suggested two reasons for that request. The first was that Kubicek and Respondent Dart thought that, as a result of the Customs' seizure of the export described above, any shipment by any of their respondent companies would be subjected to a close monitoring, which they sought to avoid. The second suggested reason was their desire to insulate themselves from the actual export of the wafer polishers as much as possible, in case anything went wrong. One of the citizen informants testified that Respondent Dart himself said the request was made because he,

Respondent Dart, was then encountering "some problems" in obtaining export licenses from the Commerce Department, so that shipping the wafer polishers would be easier if RMI handled the exporting (II Tr. 134).

This testimony by the citizen informant lends credence to the Agency's first suggested reason. The Agency cited no evidence for its second suggested reason. But the evidence for the first reason does not establish anything unlawful. In 1983–84 the processing of export licensing matters in the Commerce Department sometimes entailed delays that exporters would try to minimize or avoid. Respondent Dart's exports, according to the testimony, may have encountered particular delays. His efforts to avoid such delays by exporting through RMI was not illegal. It would be consistent with the Agency's theory of an unlawful conspiracy; but it would also be consistent with Respondent Dart's professed innocent intentions, and the Agency cited little other evidence to prefer its theory of events.

Under Secretary's Questions

The Under Secretary's September 15, 1988 Decision and Order included a remand of seven questions. Each of these questions is set forth below, followed by the answer.

1. A person violates § 387.4(a) of the Regulations if he or she commits a prohibited act with 'reason to know' that a violation has, is about to, or is intended to occur. In light of this, how can knowledge that the model 320B wafer polishers 'were upgraded to become in important respects like a more advanced model that it did require a license' (ALJ, p. 8) not lead to the reasonable conclusion that Dart 'should have known' the upgraded polishers would likewise require licenses?"

The reason, as discussed in more detail above, is that RMI's president told Respondent Dart and others at a November 9, 1983 meeting that the firm would become the exporter of record only after he, RMI's president, had traveled to Washington, DC to check the pertinent licensing requirements with the Commerce Department. RMI's president made the trip to Washington, and upon his return neither he, nor the firm's vice president who also was working on this transaction, told Respondent Dart the licensing requirements for the upgraded machines; but their firm did continue to perform its contract to upgrade and export them. This conduct of RMI's president and vice president and their firm could reasonably have led Respondent Dart to the conclusion that RMI's president had been told by the Commerce Department in Washington that the upgraded machines did not need a validated license for the intended export.

2. In light of the documented continuing business relationship between Dart and Kubicek, is it necessary that Dart have had a monetary interest in the particular transaction at issue to find a violation of the Regulations?

Respondent Dart could be found to have violated the Regulations as charged in this proceeding whether or not he had a monetary interest in the export of the upgraded wafer polishers. The significance of his not having had such an interest is that it is a factual point to be weighed in evaluating his claim that he paid little attention to the details of this export because of his lack of such an interest.

3. Can an individual who 'clearly participate(s)' (ALJ, p. 9) in a prohibited transaction as an accommodation to another be found to have committed a violation absent a monetary interest in the transaction?"

Such a person may be found to have committed a violation, on the basis of the participation, absent a monetary interest in the transaction, and also regardless of whether the person's motive was to accommodate somebody else.

4. Does the evidence support a finding that Dart and Kubicek wanted to upgrade the model 320B polishers to be the functional equivalent of the model 3700 polisher? If so, how can it follow that there was no knowledge or reason to know of the requirement of an export license?

The Agency cited evidence that, in the Agency's words, "Kubicek intended to export to Czechoslovakia a wafer polisher which could perform the same functions as a model 3700" (Agency Nov. 2, 1988 Submission 9). For Respondent Dart, the Agency advanced little definition with citation to evidence of precisely what he wanted technically in terms of the upgrading (*id.* 9–11). Nonetheless, the evidence does support a finding that both Kubicek and Respondent Dart wanted the upgraded model 320B polishers to be in certain important respects like the model 3700 polisher. As to how it could then follow that Respondent Dart neither knew nor had reason to know of the licensing requirement for exporting such upgraded 320B polishers, the explanation is the conclusion that he could reasonably have drawn from the conduct of RMI and its president and vice president, as set forth in the answer to question 1 above.

5. Why is there no specific resolution in the recommended Decision and Order of the charges encompassed in § 387.3(a) and (b)? If the finding of no knowledge or reason to know with respect to the § 387.4 charge precludes a positive finding under § 387.3(a) and (b), so state. If not, the charges must be disposed of separately.

As set forth in the Conclusion below, the estoppel that is applied against the Agency is dispositive of all the charges against Respondents in this proceeding.

6. Even though Kubicek and Dart asked RMI to be the exporter of record, Kubicek and Dart remained the real parties in interest. Does not this fact place on them the affirmative duty to comply with the Regulations? May a real party in interest insulate himself or herself by transfer to an agent the obligation to obtain an export license? Absent entrapment, does not the agent act for and bind the principal?

Kubicek and Respondent Dart retained an affirmative duty to comply with the Regulations. Ordinarily a real party in interest would not insulate himself or herself by transferring to an agent the obligation to obtain an export license, and ordinarily an agent acts for and binds a principal; but the facts of any individual situation would have to be examined for a final ruling on that situation.

7. In view of *United States* v. *Luk*, Cr. 86–59 (HLH) (C.D. Cal.) and § 388.13 of the Regulations, why should Department's exhibits 31 through 39 be excluded from evidence? Does the Under Secretary for Export Administration have the right to consider evidence excluded by the ALJ, or, alternatively, only the right to direct the ALJ to consider excluded evidence?

As to *United States* v. *Luk*, Cr. 86–59 (HLH) (C.D. Cal.), which was cited first by the Agency (Agency April 24, 1986 Post-Hearing Brief 6 n.4), Respondent Dart objected to its citation because, he asserted, it was an unreported decision (Respondent Nov. 2, 1988 Opening Brief 39–40). The Agency did not dispute that assertion, but subsequently submitted (Agency Dec. 8, 1988 Memorandum) a recently issued decision in *Luk* by the Ninth Circuit Court of Appeals, No. 86–5153, slip op. (Oct. 6, 1988). On the basis of that Ninth Circuit decision, the Order of December 21, 1988 ruled that Agency Exhibits 31 through 38 for the March 17–21, 1986 hearing were admissible into evidence. Both parties then made further submissions regarding such Exhibits.

As for Agency Exhibit 39 for such hearing, it is missing from the record presently before this Tribunal, and the Agency has stated that it does not have the Exhibit or a copy (Agency Dec. 22, 1988 Response). The Chief Judge of this Tribunal, in a Memorandum of January 6, 1989, stated that a search had failed to locate Exhibit 39 and that the record as to Exhibit 39 was closed.

As to the admissibility of Exhibit 39, one of the inquiries posed in this Question 7, both parties have made filings. The Agency submitted (Agency Dec. 16, 1988 Submission) the recently issued decision in *United States* v. *Kubicek*, Misc. 22131(FFF), slip op. (Dec. 1, 1988). The answer to the admissibility of Exhibit 39 is as follows.

Respondent Dart objected to the admission of Exhibit 39 on the basis of its connection with a grand jury, and on that basis it had been ruled inadmissible by the Ruling of April 2, 1986 and the Order of April 28, 1986. In view of *Kubicek* and of the other material in the record relating to Exhibit 39, however, the connection of this Exhibit with a grand jury is an insufficient basis for ruling it inadmissible. This present ruling therefore amends the Ruling of April 2, 1986 and the Order of April 28, 1986 that declared Exhibit 39 inadmissible on that basis. For admission into evidence, the Agency would still of course have to show that this Exhibit satisfies § 788.13(b) of the Regulations and any other pertinent requirements.

As for the grand jury connection of Exhibit 39, that Exhibit comprised documents that were, as far as the record shows, returned from the grand jury to Kubicek, from whom they had been obtained by a grand jury subpoena. The documents were created independently of the grand jury, not for the grand jury; and it has not been shown that the Agency seeks them other than for the information they contain, as opposed to a revelation of the grand jury's operations. In this situation, that the documents were once subpoenaed by the grand jury and in its custody does not of itself render them inadmissible in this proceeding.

The last sentence in Question 7 inquired into the procedure to be followed if the Under Secretary determines that evidence was improperly excluded by this Tribunal. That point has now become moot for this proceeding, since the Agency's Exhibits 31 through 39 are no longer subject to rulings excluding them from evidence.

Conclusion

As set forth above under Discussion, the appropriate elements exist for invoking estoppel against the Agency. Respondent Dart reasonably concluded from the conduct of the about the pertinent licensing requirements.

Order

The charges made by the April 3, 1985 charging letter against Respondent William Carlton Dart, individually and doing business as Respondent Display Systems, Inc. and as Respondent Perpetuum, Inc., are dismissed; and the names of all three Respondents shall be deleted from the Table of Denial Orders in Supplement No. 1 to Part 788 of the Regulations.

This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C. App. 2412(c)(1)).

Date: January 13, 1989.

Thomas W. Hoya,

Administrative Law Judge.

[FR Doc. 89-3797 Filed 2-16-89; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[Docket No. 90122-9022]

Foreign Buyer Program; Support for Domestic Trade Shows

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of implementation of the Foreign Buyer Program for January 1, 1990, through September 30, 1991.

SUMMARY: This notice sets forth objectives, circumstances and application review criteria associated with the Department's Foreign Buyer Program (FBP) to support domestic trade shows. The FBP was established to promote selected leading U.S. trade shows in industries with high export potential. The FBP emphasizes cooperation between the Department of Commerce and trade show organizers to benefit U.S. firms exhibiting at selected events. The FBP provides practical, hands-on assistance to U.S. companies interested in exporting. The assistance provided includes export counseling, marketing analysis, and overseas promotion to potential foreign buyers, end-users, agents and distributors. Shows selected for the Foreign Buyer Program will provide a venue for U.S. companies interested in expanding their sales into international markets.

DATE: Applications must be received by March 17, 1989.

ADDRESS: Export Promotion Services/ Foreign Buyer Program, U.S. and Foreign Commercial Service (US&FCS), International Trade Administration, U.S. Department of Commerce, Room 2118, 14th and Constitution Avenue NW., Washington, DC 20230, (202) 377-0871/2.

FOR FURTHER INFORMATION CONTACT: Director, Marketing Development Branch, Export Promotion Services, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., 20230, (202) 377-0871/2.

SUPPLEMENTARY INFORMATION: The Foreign Buyer Program is shifting from a calendar year to a fiscal year basis. Accordingly, the International Trade Administration of the U.S. Department of Commerce is accepting applications for the FBP for events taking place between January 1, 1990, and September 30, 1991.

Under the Foreign Buyer Program, the Department will select and promote domestic trade shows in industries with high-export potential in order to bring foreign buyers together with U.S. firms. Selection of a trade show is one-time, i.e., a trade show organizer seeking selection for a recurring event must submit a new application for selection for each occurrence of the event. If the event occurs more than once in the 21 month period covering this announcement, the trade show organizer must submit a separate application for each event.

The Department will select 27 events to support during this 21 month period. The Department will select those events which in its judgment most clearly and best meet the Department's objectives as well as satisfy the selection criteria. For this reason, non-selection of an event should not be viewed as a finding that the event will not be successful in promoting U.S. exports.

The collection of the information required in an application is authorized by law (15 U.S.C. 1512 *et seq.*). A trade show will not be considered for the Foreign Buyer Program unless a completed application has been received.

The Office of Management and Budget has approved the information collection requirement contained in this notice under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) (OMB number 0625-0151 approved for use through September 30, 1991).

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Reports Clearance Officer, International Trade Administration, Room 4001, U.S. Department of Commerce, Washington, DC 20230 and to the Office of Information and Regulatory Affairs,

Office of Management and Budget, Paperwork Reduction Project (0625–0151), Washington, DC 20503.

General Selection Criteria

Subject to Departmental budget and resource constraints, selection will be granted to those events which, in the judgment of the Department, most clearly and best meet the following criteria:

(a) *Export potential:* The products and services to be promoted at the trade show should be from U.S. industries which have high export potential as determined by U.S. Department of Commerce sources.

(b) *International interest:* Trade shows will be selected which meet the needs of a significant number of overseas markets covered by the US&FCS, correspond to marketing opportunities as identified by these posts, and which warrant the attention and promotional effort by those overseas posts. Previous foreign attendance at the show may be used as an indicator.

(c) *Scope:* The event must offer a broad spectrum of U.S. made products and/or services. Trade shows with a majority of U.S. firms exhibiting will be given preference.

(d) *Stature:* The trade show must be clearly recognized by the industry it covers as a leading event for the promotion of that industry's products and services both domestically and internationally and as a showplace for the latest technology or techniques in that industry.

(e) *Exhibitor interest:* There must be a clearly demonstrated interest on the part of U.S. exhibitors to receive international business visitors during the trade show. A significant number of these exhibitors should be new-to-export or seeking to expand sales into additional foreign markets.

(f) *Logistics:* The trade show site, facilities, transportation services and availability of accommodations must be in keeping with the stature of an international-class trade show.

(g) *Cooperation:* Successful applicants will be required to enter into a Memorandum of Understanding (MOU) which sets forth the specific actions to be performed by the show producer/owner and the USDOC. There must be a willingness on the part of the trade show organizer to cooperate with the US&FCS to further ITA export expansion goals, adhere to target dates set out in the MOU and all other program requirements covered by the MOU and this announcement. Special consideration will be given to show organizers willing to offer preferential treatment/incentives to members of delegations of buyers recruited through US&FCS overseas posts. Examples of this preferential treatment/incentives include waived or reduced admission fees to the event, competitive travel packages, plant tours, international receptions, complimentary accommodations for delegation leaders, etc.

Department of Commerce Support of Foreign Buyer Program Events

The support provided for selected events may differ depending on the specific needs identified and agreed upon by the Department and the show organizer. Services may include, but are not limited to special overseas marketing efforts by staff of the US&FCS. Such marketing activities include contacting key foreign government and private sales prospects and providing publicity in appropriate Departmental periodicals.

Specific Department Actions

For selected shows the Department of Commerce will:

(a) Designate a Project Manager as central contact to work with the show organizer on all apsects of promotion abroad and foreign buyer assistance at the show. The Project Manager will work with the show organizers' contact to develop a international marketing plan and overall promotional timetable.

(b) Prepare and distribute an information letter and form ITA–4014P to exhibiting U.S. companies to determine their international business objectives in meeting with foreign buyers. The information collected will be forwarded to the show organizer and incorporated into the selected show's directory/exhibits guide.

(c) Advise and work closely with all interested U.S. Embassies and Consulates to assure maximum trade show promotion and exposure for those companies indicating export interest.

(d) Promote industry trade show participation through announcements in key domestic and international publications (e.g., regional, posts and embassy commercial newsletter, and *Commercial News USA*).

(e) Provide show organizer with specifications of a DOC-designed hard panel system International Business Center (IBC), including furniture requirements, DOC office, conference rooms storage area, etc.

(f) Provide show organizer with specifications for a multi-language brochure, U.S. Embassy/Consulate address lables, shipping instructions and quantities required for overseas shipment.

(h) Provide a final show report to the show organizer not later than 90 days after the show.

(i) Request US&FCS District Offices in the U.S. to provide export counseling or specific marketing information to those U.S. participants that have indicated a need for such counseling before and during the show.

Services Provided at Trade Show Site

(a) One or more Project Managers, depending upon event size, will provide primary management of the International Business Center (IBC) and assist with on-site registration (if appropriate) of foreign buyers and post-organized groups, facilitate matching foreign buyers with exhibiting U.S. companies at the trade show, and inform U.S. companies about US&FCS products and services and other ITA programs. At least one Trade Specialist from a US&FCS District Office will be available throughout the show to provide additional export counseling.

(b) The Department of Commerce will provide export counseling or specific geographic marketing information to exhibitors in a designated area in the International Business Center and assist foreign buyers to meet their purchasing/representation objectives during the show.

(c) US&FCS staff will participate, if appropriate, in special export promotion seminars specifically aimed at new-to-market/new-to-export firms exhibiting at the trade show.

(d) The US&FCS will encourage local bank and financial institutions to have a representative available to provide export finance counseling.

Specific Responsibilities of the Show Organizer

Show organizers selected for the FBP must:

(a) Designate an official authorized to work with the US&FCS Project Manager on all aspects of the show promotion.

(b) Provide the Project Manager with a contact during the show to assist with foreign visitor information and product referral.

(c) Provide the Project Manager with a current list of exhibitors, including contact names and addresses. The name of the contact should, if possible, be the decision maker of the exhibiting firm on international matters. The exhibitor list should be on gummed mailing labels.

(d) Produce and distribute a multilingual promotional brochure in the quantities specified by the Project Manager for overseas distribution. Draft of the brochure must be approved by the Project Manager prior to printing. These

brochures must be printed not less than six months prior to the show.

(e) Provide all U.S. exhibitors information about the IBC and US&FCS services prior to the show.

(f) Show organizer will incorporate information collected in forms ITA 4014P (products or services which U.S. exhibitors wish to export, international marketing objective and geographic areas of interest to the company) into the show directory/exhibitors guide. Three copies of this directory will be distributed to all US&FCS posts overseas as soon as the directory is published.

(g) Provide to the Project Manager names and addresses of foreign attendees at most recent show. Provide a list of pre-registered foreign attendees at the current show, including names, addresses, and business interests. Both lists are to be provided by country and on a mutually agreed upon date.

(h) Establish a registration system to assure US&FCS Project Managers access to all foreign attendees at time of registration, and on a daily basis during the show, provide names, addresses, business and product interests of registered foreign attendees. This information will be posted at the International Business Center for the benefit of U.S. exhibitors interested in international business. The information will also be disseminated at the conclusion of the event to all exhibitors indicating interest in international business and listed as such in the show directory/exhibit guide.

(i) Establish an International Business Center (IBC) at the show in a prominent location, adjacent to the main registration area. Show organizer agrees to construct the IBC (minimum of 1500 sq. ft.) according to DOC-designed specifications which include: (a) A separate registration area for foreign visitors, (b) appropriate furniture and office equipment, telephone, telex, photocopier, telefax, etc.; (c) interpreters, (d) registration staff and support; (e) DOC office and a minimum of 2 conference rooms, storage area, refreshments and lounge. The IBC must be given high visibility in show catalog/program daily newsletters, floor plans, and by strategically placed signs at the exhibition entrance, registration area and on the exhibition floor. DOC design specifications do not allow for pipe and drape at the IBC. A hard panel system is required.

(j) Provide to the Project Manager a Convention Center floor layout indicating the location and dimensions of the International Business Center.

(k) On an agreed date following the show, provide the Project Manager with a registration printout of the names and addresses of the foreign attendees, by country. Show organizer will also assist Project Manager in the collection of data reflecting the FBP's results including the number of useful international contacts at the event, number of agent/distributor agreements made or pending, joint venture/licensee type arrangements made or pending, dollar value of overseas orders booked at event, and projected overseas sales as a result of contacts made at the event.

(l) Upon notification of acceptance into the Foreign Buyer Program, remit the appropriate contribution. For this recruitment period the contribution is $3,500.

(m) The show organizer will show for one page advertisement in the show catalog highlighting the Foreign Buyer Program and the International Business Center. The copy will be supplied by the Department.

(n) Provide for interpreters at the International Business Center, as appropriate.

Selection

Selection indicates that the Department has found the event to be a leading international trade show worthy of participation by U.S. exporting firms and promotion in overseas markets by U.S. Embassies and Consulates. Selection does not constitute a guarantee by the U.S. Government of success of the show or of the undertakings or obligations of the show organizer. Selection is not an endorsement of the show organizer except as to its Foreign Buyer activities. Each successful applicant will be given copies of an official U.S. Department of Commerce logo and/or logo of the U.S. and Foreign Commercial Service for use in its advertising promotional materials.

Exclusions

Trade shows which will not be considered are those which are either first time events or are horizontal, that is, not industry specific. Annual trade shows will not be selected more than twice in any three year period (e.g., shows selected for calendar years 1988 and 1989 are not eligible for inclusion in calendar year 1990, but will be considered in subsequent years.

When, Where and How to Apply for Selection in the 1988 Foreign Buyer Program

Except to the extent required by laws, no information of a propriety nature reported on this application will be disclosed without the prior written consent of the relevant firm.

Please type the information requested below on company letterhead and mail two (2) complete sets of your application no later than March 17, 1989 to: Marketing Development Branch, Room 2118, Office of Marketing Programs, Export Promotion Services, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230.

Answer to the questions listed below constitutes the formal application:

(1) Name of show.

(2) Site of show.

(3) Dates of show. Indicate if show is held annually, biennially, or other.

(4) Name, address, and phone number of applicant.

(5) Name, address, and phone number of applicant contact.

(6) Name, address, and phone number of show sponsor (trade associate, national or state government, etc.)

(7) Basic history or description of show. Applicant must demonstrate that subject is a leading international trade show for the industry. Include copies of previous show promotion materials.

(8) Resume of applicant's show experience.

(9) Planned number of total exhibitors (show U.S. and foreign separately). A majority of show exhibitors must be of U.S.A. origin.

(10) Specify gross area of show (sq. ft. or sq. mtrs.). Net area for exhibit space (show U.S. and foreign separately).

(11) Admission fees for show visitors and indicate if there will be reduced or waived fees for international visitors or FBP delegations.

(12) Description of technical program and cost to attend (if applicable).

(13) Product categories to be displayed.

(14) Audience profile of potential foreign customers (target countries, industries, profession or technical level).

(15) Specify incentive plan/preferential treatment offered to FBP delegations.

(16) Submit two (2) sets of all show promotional literature, including show catalog, for previous show.

Applicant must type the following and submit with the appropriate signature: "The above information is correct and the applicant will abide by the terms set forth in the Notice of Implementation of the Foreign Buyer Program for January 1, 1990, through September 30, 1991.

Applications will be processed by the Marketing Development Branch, Export Promotion Services, and final selection of events will be made by April 28, 1989.

Contribution: A contribution of $3,500 is

required for shows selected and promoted during the January 1990 through September 1991 period.

ITA has determined that this action is not a major rule within the meaning of section 1(b) of Executive Order 12291. Therefore a Regulatory Impact Analysis has not nor will be prepared. Because a notice of proposed rulemaking and an opportunity for public comment is not required for this agency action relating to practice and procedure under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, no initial or final Regulatory Flexibility Analysis has to be or will be prepared. This notice does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

February 3, 1989.

Ann H. Watts,

Director, Marketing Development Branch, Export Promotion Services, U.S. Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 89-3719 Filed 2-16-89; 8:45 am]

BILLING CODE 3510-FP-M

Short-Supply Review on Certain Flat-Rolled Steel; Request for Comments

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice and Request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products, with respect to certain T-2 feeler gauge steel.

DATE: Comments must be submitted on or before February 27, 1989.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. ". . . determines that because of abnormal supply or demand factors, the US steel industry will be unable to meet demand in the USA for a particular product, (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product * * *."

We have received a short-supply request for certain Swedish T-2 feeler gauge steel, general specification AISI 1095, hardened, tempered, bright polished, round polished edges, in thicknesses ranging from 0.001 to 0.040 inch, and in widths of 0.25 inch and 0.50 inch.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than February 27, 1989. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce, at the above address.

Jan W. Mares,

Assistant Secretary for Import Administration.

February 9, 1989.

[FR Doc. 89-3825 Filed 2-16-89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

The Gulf of Mexico Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public hearings on draft Amendment 1 for the Reef Fish Fishery Management Plan (FMP) which will address bag, size, and quota limits for the various reef fish species. Individuals and organizations may comment in writing to the Council at the address given below if they are unable to attend the hearings.

DATES: Written comments will be accepted until April 21, 1989. All hearings will begin at 7:00 p.m., and will adjourn at 10:00 p.m. The hearings are scheduled as follows:

1. March 6, 1989, Key West, Florida
2. March 7, 1989, Naples, Florida
3. March 8, 1989, Madiera Beach, Florida
4. March 9, 1989, Panama City, Florida.

ADDRESSES: Comments may be mailed to Douglas R. Gregory, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609.

The hearing will be held at the following locations:

1. Key West—American Legion Hall, 5610 Junior College Road, Key West, Florida
2. Naples—Norris Community Center, 735 Eighth Avenue South, Naples, Florida
3. Madiera Beach—City Hall Auditorium, 300 Municipal Drive, Madiera Beach, Florida
4. Panama City—Panama City Marina Civic Center, Gallery Two, 8 Harrison Avenue, Panama City, Florida.

FOR FURTHER INFORMATION CONTACT: Douglas R. Gregory, Gulf of Mexico Fishery Management Council, 813-228-2815.

SUPPLEMENTARY INFORMATION: Amendment 1 to the FMP will deal with the following issues: (1) An across-the-board reduction for all users; the red snapper catch is to be reduced by 45 percent from the 1979-1986 average recreational and commercial landings. Grouper landings are to be reduced 20 percent from the 1979-1986 average landings of 11.5 million pounds (M). (2) A minimum size limit of 20 inches for red, yellowfin, Nassau, black, and gag groupers and 50 inches for jewfish. (3) A minimum size limit of 12 inches total length for red, yellowtail, mutton, and gray, and 8 inches for lane and vermilion snappers. (4) A commercial quota of 2.9 M for red snapper (45 percent reduction from the 1979-1986 average landings). (5) A minimum size limit of 8 inches for black sea bass. (6) A minimum size limit of 28-inch fork length and a bag limit of 3 for amberjack with a commercial quota of 829,000 pounds (7) The sale of undersized fish would be prohibited. (8) A daily recreational bag limit of 5 grouper and 10 snappers with no more than 5 red snapper. These bag limits would apply also to fish taken by trawl, entangling nets, or shark longlines. (9) Commercial quotas for grouper (20 percent of 1979-1986 average landings to be 1.658 M for black and gag; 6.17 M for red; and 1.381 M for other grouper expect jewfish). (10) Fish traps

fishing for reef fish would be prohibited in Federal waters and bottom longlines and buoy rigs for reef fish would be prohibited within 50 fathoms west of Cape San Blas and within 20 fathoms east of Cape San Blas (near Appalachicola, Florida). (11) To qualify for a commercial permit, an individual must have had 50 percent or more of his income derived from commercial fishing which may include charter income.

Dated: February 13, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-3823 Filed 2-16-89; 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

Automated Patent System Industry Review Advisory Committee

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of establishment.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the General Services Administration (GSA) rule on Federal Advisory Committee Management, 41 CFR Part 101-6, and after consultation with GSA, the Secretary of Commerce has determined that the establishment of the Automated Patent System Industry Review Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department by law.

SUPPLEMENTARY INFORMATION: The Committee's purpose is to advise the Patent and Trademark Office on the technical development, architectural characteristics, operational practices, and deployment issues of the Automated Patent System.

The Committee shall consist of at least 8 but no more than 15 members whose background qualify them to offer advice on how the Patent and Trademark Office should develop and deploy its Automated Patent System. To the extent practicable, a balanced membership shall be drawn from senior industry technical managers who are highly experienced in the application of advanced information systems technology to solve complex Government or industry problems.

The Committee will function solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act, 15 days from the date of the publication of this notice.

Interested persons are invited to submit comments regarding the establishment of this committee to Boyd Alexander, Deputy Assistant Commissioner for Information Systems, U.S. Patent and Trademark Office, Washington, DC 20231, telephone: 703-557-6000, or the Department's Committee Management Analyst, telephone: 202-377-3271.

Date: December 22, 1988.

Donald Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 89-3824 Filed 2-16-89; 8:45 am]

BILLING CODE 3510-16-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

February 14, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing import limits.

EFFECTIVE DATE: February 22, 1989.

FOR FURTHER INFORMATION CONTACT: Anne Novak, 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, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: .

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).

In a Memorandum of Understanding dated January 31, 1989, the Governments of the United States and the People's Republic of Bangladesh agreed to extend the Bilateral Cotton and Man-Made Fiber Textile Agreement, effected by exchange of notes dated February 19 and 24, 1986 for the period beginning on February 1, 1989 and extending through January 31, 1992. A formal exchange of diplomatic notes will follow.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 53 FR 44937, published on November 7, 1988).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 14, 1989.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton and Man-Made Fiber Textile Agreement, effected by exchange of notes dated February 19 and 24, 1986, as amended by a Memorandum of Understanding dated January 31, 1989 between the Governments of the United States and the People's Republic of Bangladesh; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 22, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the followng categories, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1989 and extends through January 31, 1990, in excess of the following restraint limits:

Category	*12-mo. restraint limit*[1]
331	624,160 dozen pairs.
334	75,161 dozen.
335	134,952 dozen.
340/640	1,581,486 dozen of which not more than 514,730 dozen shall be in shirts made from fabric with two or more colors in the warp and/or filling in Categories 340-Y/640-Y.[2]
341	1,310,118 dozen of which not more than 575,339 dozen shall be in shirts made from fabric with two or more colors in the warp and/or filling in Category 341-Y.[3]
347/348	1,179,106 dozen.
635	170,363 dozen.
641	548,583 dozen.
647/648	741,576 dozen of which not more than 482,024 dozen shall be in long trousers in Categories 647pt./648 pt.[4]

[1] The limits have not been adjusted to account for any imports exported after January 31, 1989.

[2] In Categories 340-Y/640-Y, only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060 in Category 340-Y; and 6205.30.2010, 6205.30.2020, 6205.30.2050, 6205.30.2060 in Category 640-Y.

[3] In Category 341-Y, only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

[4] In Categories 647pt./648 pt., only HTS numbers 6103.23.0040, 6103.29.1020, 6103.43.1520, 6103.43.1540, 6103.49.1020, 6103.49.3014, 6112.12.0050, 6112.19.1050, 6112.20.1060, 6113.00.0045, 6203.23.0060, 6203.29.2030, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.49.1500, 6203.49.2010, 6203.49.2030, 6203.49.3030, 6210.40.1030, 6211.20.1525, 6211.20.3030 and 6211.33.0030 in Category 647; and 6104.23.0032, 6104.29.1030, 6104.29.2038, 6104.63.2010, 6104.63.2025, 6104.69.2010, 6104.69.3026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.0050, 6117.90.0046, 6204.23.0040, 6204.29.2020, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.69.2510, 6204.69.2530, 6204.69.3030, 6204.69.9030, 6210.50.1030, 6211.20.1555, 6211.20.6030, 6211.43.0040 and 6217.90.0060 in Category 648.

Textile products in the foregoing categories which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

Imports charged to these category limits for the period February 1, 1988 through January 31, 1989 shall be charged against the levels of restraint to the extent of any unfilled balances. 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.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. (a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-3789 Filed 2-16-89; 8:45 am]

BILLING CODE 3510-DR-M

Amendment of Import Limits and Import Restraint Period for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

February 14, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: February 22, 1989.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, 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, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-9480. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

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).

Under the terms of section 204 of the Agricultural Act of 1956, as amended, and based upon the implementation of the Harmonized Commodity Code on January 1, 1989, the Committee for the Implementation of Textile Agreements is amending the restraint period and the limits for certain textile products exported from Indonesia.

Carryover of 100 percent will be available between the restraint periods July 1, 1988 through December 31, 1988 in Categories 337 and 637 and January 1, 1989 through June 30, 1989 in Category 237.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 24476, published on June 27, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

February 14, 1989.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Mr. Commissioner:

This directive amends, but does not cancel, the directive issued to you on June 24, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the period which began on July 1, 1988 and extends through June 30, 1989.

Effective on February 22, 1989, you are directed to amend the current sublimits and control period for Categories 337 (Group I) and 637 (Group II) for goods exported during the new six-month period beginning on July 1, 1988 and extending through December 31, 1988. Goods exported in Categories 337 and 637 will remain subject to the Group I and Group II limits, respectively. (Based upon the implementation of the Harmonized System on January 1, 1989, Categories 337 and 637 are being replaced by Category 237.)

Category	New 6-mo. limit [1] July 1, 1988-Dec. 31, 1988
337	44,663 dozen.
637	73,034 dozen.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1988.

You are directed further to establish a six-month sublimit for Category 237 in Group II for the period January 1, 1989 through June 30, 1989. Category 237 shall be subject to the adjusted Group II limit.

Category	New 6-mo. limit [1] Jan. 1, 1989-June 30, 1989
237	117,697 dozen.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1988.

Imports charged to Categories 337 and 637 for the period July 1, 1988 through December 31, 1988 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the level established in this directive for Category 237.

Effective on February 22, 1989, Categories 631-W and 631-O are being deleted from Groups I and II. A sublimit for Category 631 is being established in Group II, and Groups I and II are being amended. All import charges in Category 631-W made on after July 1, 1988 shall be charged to Category 631 in Group II and deducted from Group I.

Category	Amended 12-mo. limit [1] July 1, 1988-June 30, 1989
Group I: 219, 313-315, 317/617/326, 331, 334-336, 338/339, 340, 341, 347/348, 351, 369-S[2], 445/446, 604-A[3], 613/614/615, 625/626, 635, 638/639, 640, 641, 645/646, 647 and 648, as a group.	229,993,287 square meters equivalent.

—Continued

Category	Amended 12-mo. limit [1] July 1, 1988–June 30, 1989
Group II:	
200, 201, 218, 220, 222–227, 229, 237, 239, 300, 301, 330, 332, 333, 342/642, 345, 349, 350, 352–354, 359, 360–363, 369–D[4], 369–O[5], 400–444, 447–469, 600, 603, 604–O[6], 606, 607, 611, 618–622, 624, 627–629, 630, 631–634, 636, 643, 644, 649, 650–654, 659, 665, 666, 669, 670, 831–836, 838, 840, 842–847, 850–852, 858 and 859, as a group.	63,223,606 square meters equivalent.
Sublevel in Group II:	
631	823,310 dozen pairs.

[1] The limtis have not been adjusted to account for any imports exported after June 30, 1988.
[2] In Category 369–S, only HTS number 6307.10.2005.
[3] In Category 604–A, only HTS number 5509.32.0000.
[4] In Category 369–D, only HTS numbers 6302.60.0010 and 6302.91.0020.
[5] In Category 369–O, all HTS numbers except 6302.60.0010 and 6302.91.0020 in Category 369–D; and 6307.10.2005 in Category 369–S.
[6] In Category 604–O, all HTS numbers except 5509.32.0000.

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. 89–3787 Filed 2–16–89; 8:45 am]

BILLING CODE 3510–DR–M

Announcement of Request for Bilateral Textile Consultations with the Government of India

February 14, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

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); Arrangement Regarding International Trade in Textiles done at Genva on December 20, 1973, as further extended on July 31, 1986; Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987, as amended.

The purpose of this notice is to announce that on December 28, 1988, under the terms of the current bilateral textile agreement between the Governments of the United States and India, the United States requested consultations with the Government of India with respect to imports of cotton dish towels in Category 369–D.

According to the terms of the current agreement, the United States reserves the right to establish a limit at 209,377 kilograms for the ninety-day consultation period which began on December 28, 1988 and extends through March 27, 1989.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultation with the Government of India, further notice will be published in the **Federal Register.**

A summary market statement for Category 369–D follows this notice.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

Anyone wishing to comment or provide data or information regarding the treatment of Category 369–D under the agreement with India, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in this category, is invited to submit 10 copies of such comments or information to James H. Babb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement

Category 369 Pt.—Cotton Dish Towels, India, December 1988.

Summary and Conclusions

United States imports of cotton dish towels—Category 369 Pt.—from India were 885 thousand dozen (1.4 million pounds) during the year ending October 1988, up 10 percent from the 806 thousand dozen (1.4 million pounds) imported a year earlier. During the first ten months of 1988 India's imports reached 841 thousand dozen, 19 percent above the January–October 1987 level. India is the fourth largest supplier of cotton dish towels, accounting for 9 percent of total imports in 1988.

The sharp and substantial increase of low-valued imports of Category 369 Pt. dish towels from India is causing a real risk of market disruption.

Production and Market Share

U.S. production of cotton dish towels declined from 8.1 million dozen in 1984 to 6.6 million in 1985, a decrease of 19 percent. Production in 1986 partially recovered, reaching 7.3 million dozen, but fell again in 1987 to a level of 5.2 million dozen, 28 percent below the 1986 level and 36 percent below the 1984 level. During the first half of 1988, production dropped 31 percent below the level in the comparable period of 1987.

The U.S. producers' share of the market for domestically produced and imported cotton dish towels declined in every year since 1984, falling from 54 percent in 1984 to 33 percent in 1987. The U.S. producers' share continued its decline during the first half of 1988, dropping to 27 percent.

Imports and Import Penetration

U.S. imports of Category 369 Pt. cotton dish towels from all sources have been on the rise since 1984, reaching a record level 10.5 million dozens in 1987, an increase of 51 percent over the 1984 level. During the first ten months of 1988, imports of cotton dish

towels were up 1 percent over the comparable period in 1987.

The ratio of imports to domestic production more than doubled between 1984 and 1987, increasing from 85 percent in 1984 to 202 percent in 1987. The ratio increased another 32 percent, reaching 266 percent during the first half of 1988.

Import Values

During the period January–August 1988, 82 percent of India's Category 369 Pt. cotton dish towel imports entered under TSUSA No. 366.2860—cotton, not jacquard-figured dish towels. The duty-paid landed values of Category 369 Pt. dish towels from India are well below the U.S. producers' prices for comparable dish towels.

[FR Doc. 89–3788 Filed 2–16–89; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to Procurement List 1989 a commodity to be produced by a workshop for the blind or other severely handicapped.

EFFECTIVE DATE: March 20, 1989.

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: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On December 2, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (53 FR 48708) of proposed addition to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

No comments were received concerning the proposed addition to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshop to produce the commodity at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodity is hereby added to Procurement List 1989:

Stand, Canteen Cup
8465–01–250–3632.

(Requirements for all DLA Depots except Mechanicsburg, Pennsylvania)

Beverly L. Milkman,

Executive Director.

[FR Doc. 89–3798 Filed 2–16–89; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1989; Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee has received a proposal to add to Procurement List 1989 a commodity to be produced by a workshop for the blind or other severely handicapped.

Comments Must Be Received on or Before: March 20, 1989.

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: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government will be required to procure the commodity listed below from a workshop for the blind or other severely handicapped.

It is proposed to add the following commodity to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Commodity

Strap, Webbing
5430–00–477–3700
5430–00–494–8283
5430–00–494–8239.

Beverly L. Milkman,

Executive Director.

[FR Doc. 89–3799 Filed 2–16–89; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Intention To Prepare Environmental Impact Statements for the Closure of Norton AFB, CA

The United States Air Force intends to prepare Environmental Impact Statements (EISs) for use in decision-making regarding the closure and final disposition of property at Norton AFB, CA. That closure was announced on December 29, 1988, as part of a comprehensive package prepared by the Defense Secretary's Commission on Base Realignments and Closures. On January 5, 1989, the Secretary of Defense accepted the Commission's recommendations.

The EIS process has been modified by Pub. L. 100–526 section 204(c) (1) and (2) which provides that the National Environmental Policy Act (NEPA) does not apply to the actions of the Commission or to the Secretary of Defense's acceptance of the Commission's recommendations. This means that the decision to close Norton AFB has already occurred and it outside the scope of the EISs being announced today. One of the EISs is an implementation EIS, focused on the potential closure impacts taking place at Norton AFB. Its purpose is to help the Air Force intelligently cease operations. It will analyze the local environmental effects caused by the closure and the measures necessary to implement the closure. It will also develop appropriate mitigation measures. The Air Force hopes to have the EIS associated with base closure completed by the end of 1989.

Implementing the closure involves moving units from Norton AFB to other bases. The environmental impacts to Norton AFB caused by the departure of those units are within the scope of this EIS. The environmental impacts caused by the arrival of those units at the new locations are not part of this EIS; those impacts will be analyzed in separate NEPA documents focusing on impacts and issues at the various receiving bases.

The other EIS will cover the final disposition of the facilities at Norton. This process also involves laws and community issues quite different from

the comparatively straightforward steps involved in closure (i.e. halting operations and removing equipment and personnel). Although the Air Force is only in the rudimentary stages of considering disposal proposals, the scoping process is beginning at this time because the Air Force desires to solicit community comments at the earliest opportunity.

The Air Force will conduct a public scoping meeting on March 8, 1989 at 7 p.m. in the City Council Chambers located in San Bernardino City Hall to obtain public input. This input will assist in determining the nature, extent and scope of the issues and concerns to be addressed in the EISs. The scoping process may also include other meetings with local officials, either before or after the public meeting. In addition, anyone may write to the Air Force with comments on the scope of the EISs. To assure the Air Force will have sufficient time to consider public input on issues to be included in the EISs, comments should be forwarded to the addressee listed below by April 7, 1989.

After scoping and analysis of the closure process, the Air Force may find that the environmental impacts are insufficient to justify preparation of the EISs. If so, the Air Force would prepare environmental assessments and Findings of No Significant Impact. Both documents would be publicly announced and publicly available. For further information concerning the EISs, contact: Ms Pat Calliott, HQ MAC/DEEV, Scott AFB, IL 62225, (618) 256–5764.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–3725 Filed 2–16–89; 8:45 am]

BILLING CODE 3910-01-M

Intent To Prepare an Environmental Impact Statement for the Addition of the 63rd and 445th Military Airlift Wings to March AFB, CA; Correction

In notice document 89–3144 beginning on page 6255 of the **Federal Register** issue of Wednesday, February 8, 1989, make the following correction:

In the third column, paragraph three of the notice, correct the second sentence by changing 14 F–4Es to 24 F–4Es.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–3724 Filed 2–16–89; 8:45 am]

BILLING CODE 3910-01-M

Intention To Prepare an Environmental Impact Statement for the Addition of F–111s to Cannon AFB, NM

The United States Air Force intends to prepare an Environmental Impact Statement (EIS) for use in decision-making regarding the addition of part (32 F–111A/Es) of the 366th Tactical Fighter Wing (TFW) at Cannon AFB, NM. This action will result in a gain at Cannon AFB, of 1102 military personnel and 57 civilians. This realignment was announced on December 29, 1988, as part of a comprehensive package prepared by the Defense Secretary's Commission on Base Realignments and Closures. On January 5, 1989, the Secretary of Defense accepted the Commission's recommendations.

The EIS process has been modified by Pub. L. 100–526 section 204(c) (1) and (2) which provides that the National Environmental Policy Act (NEPA) does not apply to the actions of the Commission or to the Secretary of Defense's acceptance of the Commission's recommendations. This means that the decision to add part of the 366th TFW at Cannon AFB has already occurred and is outside the scope of the EIS. The EIS being announced today is an implementation EIS, focused primarily on the realignment impacts taking place at Cannon AFB. It will analyze the local environmental effects caused by the 366th TFW realignment. The EIS will also develop appropriate mitigation measures. The Air Force hopes to have this EIS completed by mid 1990.

The environmental impacts to Cannon AFB caused by this action are within the scope of this EIS. However, the environmental impacts caused by the departure of part of 366th TFW from Mountain Home AFB is *not* part of this EIS; those impacts will be analyzed in a separate NEPA document focusing on impacts and issues at that base.

The Air Force will conduct a public scoping meeting on March 29 and 30, 1989 to obtain public input. This input will assist in determining the nature, extent and scope of the issues and concerns to be addressed in the EIS. Notice of the time and place of the planned meeting will be made available to local officials and annouced in the news media. The scoping process may also include other meetings with local officials, either before or after the public meeting. In addition, anyone may write to the Air Force with comments on the scope of the EIS. To assure the Air Force will have sufficient time to consider public input on issues to be included in the EIS, comments should be forwarded to the addressee listed below by May 1, 1989.

After scoping and analysis of this realignment, the Air Force may find that the environmental impacts caused by this action at Cannon AFB are insufficient to justify preparation of an EIS. If so, the Air Force would prepare an Environmental Assessment and a Finding of No Significant Impact. Both documents would be publicly announced and publicly available.

For further information concerning this EIS, contact: Captain Wilfred Cassidy, HQ TAC/DEEV, Langley AFB, VA 23665, (804) 764–4430.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–2726 Filed 2–16–89; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

February 14, 1989

The USAF Scientific Advisory Board Ad Hoc Committee on Electronic Combat will meet on March 7–9, 1989 from 8:00 a.m. to 5:00 p.m. at the Rand Corporation, 1700 Main Street, Santa Monica, CA 90406–2138.

The purpose of this meeting is to review the requirements for and the status of Air Force Electronic Combat programs. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code specifically subparagraph (1) thereof, and accordingly will closed to the public.

For further information, contact the Scientific Advisoty Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air force Federal Register Liaison Officer.

[FR Doc. 89–3767 Filed 2–16–89; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

State Student Incentive Grant Program

AGENCY: Department of Education.

ACTION: Notice of closing date for receipt of State applications for fiscal year 1989.

SUMMARY: The Secretary gives notice of the closing date for receipt of State applications for fiscal year 1989 funds under the State Student Incentive Grant (SSIG) Program. This program, through matching formula grants to States for student awards, provides a nationwide delivery system of grants for students with substantial financial need

A State that desires to receive SSIG funds for any fiscal year must have an agreement with the Secretary as provided for under the authorizing law and must submit an application through the State agency that administered its SSIG Program on July 1, 1985.

The Secretary is authorized to accept applications from the 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, and the Republic of Palau, provided it remains a trust territory. (The future eligibility of the Republic of Palau will be determined by the provisions of the Compact of Free Association.) Authority for this program is contained in sections 415A through 415D of the Higher Education Act of 1965, as amended (HEA). (20 U.S.C. 1070c–1070c–4)

Closing Date for Transmittal of Applications

An application for fiscal year 1989 SSIG Program funds must be mailed or hand-delivered by March 20, 1989.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Education, Office of Student Financial Assistance, 400 Maryland Avenue SW., Washington, DC 20202, Attention: Mr. Fred Sellers, Chief, State Student Incentive Grant Section, Room 4018, ROB #3.

An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice or receipt from a Commercial Carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office. The Department of Education encourages applicants to use registered or at least first-class mail.

Each late applicant will be notified that it cannot be assured that its application will be considered for fiscal year 1989 funding.

Applications Delivered by Hand

An application that is hand-delivered must be taken to the U.S. Department of Education, Office of Student Financial Assistance, 7th and D Streets SW., Room 4018, GSA Regional Office Building #3, Washington, DC. Hand-delivered applications will be accepted between 8:00 a.m. and 4:30 p.m. daily (Washington, DC time), except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information

The Secretary requires an annual submission of an application for receipt of SSIG funds. In preparing an application, each State agency should be guided by the table of allotments provided in the application package.

State allotments are determined by the statutorily mandated formula and are not subject to negotiations. The States may also request a share of reallotments, an addition to their basic allotments, contingent upon the availability of such funds from allotments to any States unable to use of their basic allotments. In FY 1988, all 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands participated in the SSIG assistance delivery network.

Application Forms

The required application form for receiving SSIG Program funds will be mailed to officials of appropriate State agencies at least 30 days before the closing date. Applications must be prepared and submitted in accordance with the HEA and the program regulations cited in this notice. The Secretary strongly urges that applicants not submit information that is not requested.

Applicable Regulations

The following regulations are applicable to the SSIG Program:

(1) The SSIG Program regulations (34 CFR Part 692).

(2) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-Administered Programs), Part 77 (Definitions That Apply to Department Regulations), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), and Part 85 (Governmentwide Debarment and Suspension (Nonprocurement)).

(3) The regulations in 34 CFR Part 604 that implement section 1203 of the HEA (Federal-State Relationship Agreements).

(4) The Student Assistance General Provisions in Subpart A of 34 CFR Part 668.

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. Fred Sellers, Chief, State Student Incentive Grant Section, Office of Student Financial Assistance, U.S. Department of Education, Washington, DC 20202; telephone (202) 732–4507.

(20 U.S.C. 1070c–1070c–4)

Dated: February 9, 1989.

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

(Catalog of Federal Domestic Assistance Number 84.069, State Student Incentive Grant Program)

[FR Doc. 89–3856 Filed 2–16–89; 8:45 am]

BILLING CODE 4000–01–M

Intergovernmental Advisory Council on Education; Meeting

AGENCY: Intergovernmental Advisory Council on Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Intergovernmental Advisory Council on Education's Executive Committee. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to participate.

DATE: March 6, 1989; 2:30 p.m.

ADDRESS: U.S. Department of Education, 400 Maryland Avenue SW., Room 3036, Washington, DC 20202–7576.

FOR FURTHER INFORMATION CONTACT: Gwen A. Anderson, Executive Director, Intergovernmental Advisory Council on Education, Room 3036, 400 Maryland Avenue SW., Washington, DC 20202–7576, 202–732–3844.

SUPPLEMENTARY INFORMATION: The Intergovernmental Advisory Council on Education was established under section 213 of the Department of Education Organization Act (20 U.S.C. 3423). The Council was established to provide assistance and make recommendations to the Secretary and the President concerning intergovernmental policies and relations pertaining to education.

The teleconference meeting of the Executive Committee is open to the public. The proposed agenda includes

discussion of the Council's role and possible conference topics, dates and locations.

Records are kept of all Council proceedings, and are available for public inspection at the Office of the Intergovernmental Advisory Council on Education, Room 3036, 400 Maryland Avenue SW., Washington, DC 20202–7576, from the hours of 9:00 a.m. to 5:00 p.m.

Dated: February 14, 1989.

Michelle Easton,

Deputy Under Secretary for Intergovernmental and Interagency Affairs.

[FR Doc. 89–3851 Filed 2–16–89; 8:45 am]

BILLING CODE 4000–01–M

Laboratory Review Panel; Meeting

AGENCY: Department of Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming partially closed meeting of the Laboratory Review Panel. This notice also describes the functions of the panel.

DATES: February 23–24, 1989.

ADDRESS: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Charles B. Stalford, Office of the Assistant Secretary for Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue NW., Room 502H, Washington DC 20208–5644, Telephone (202) 357–6126.

SUPPLEMENTARY INFORMATION: The Laboratory Review Panel has been established by the U.S. Department of Education to provide advice to the Office of Educational Research and Improvement (OERI) regarding the regional educational laboratories it funds. The panel's purpose is to provide advice to OERI as requested on issues affecting the regional laboratories, including the operations of the program and future policies for the program.

The Laboratory Review Panel will meet in Chevy Chase, Maryland on February 23–24, 1989. The meeting will be open to the Public from 8:00 a.m. to 12 noon on Friday, February 24 and closed at all other times.

During the open portion of the meeting, from 8:00 a.m. to 12 noon, the panel will discuss general administrative matters and the current status and operations of the regional laboratory program with representatives of the laboratory governing boards and executive directors of the individual laboratories.

Attendance at the public session will be limited to the space available. Persons wishing to attend should notify the contact person at least two days in advance of the meeting.

The meeting will be closed from 8:30 a.m. to 5:00 p.m. on Thursday, February 23 and from 12 Noon to 4:30 p.m. on Friday, February 24. At all times that the meeting will be closed, the panel agenda includes matters relating to the conduct of a recompetition of existing contracts for regional laboratories, which expire on November 30, 1990. Specifically, the panel will be providing advice on specific areas to be incorporated into a Request for Proposals or a Grants Announcement which will subsequently be made available to the public. This discussion will thus concern matters, the premature disclosure of which would significantly frustrate implementation of a proposed agency action (the recompetition). Such matters are protected by exemption (9)(B) at section 552b(c) of Title 5 U.S.C.

A summary of the activities at the closed sessions and related matters which are informative to the public consistent with Title 5 U.S.C. 552b will be available to the public within thirty days of the meeting.

These materials will be available for public inspection at the U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue NW., Room 502, Washington DC from 9:00 a.m. to 5:00 p.m.; or they may be requested from the contact person.

Patricia Hines,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89–3854 Filed 2–16–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Waste Isolation Pilot Plant; Preparation of a Supplement to Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy (DOE) is preparing a supplement to the 1980 Final Environmental Impact Statement (FEIS) for the Waste Isolation Pilot Plant (WIPP) (DOE/EIS–0026) under the National Environmental Policy Act (NEPA) of 1969, as amended, and the DOE NEPA guidelines (52 FR 47662, December 15, 1987). The purpose of the Supplement to the Final Environmental Impact Statement (SEIS) is threefold:

(1) To present information, data, and analyses that have become available since the FEIS of 1980;

(2) To address proposed changes to the action described in the Record of Decision (46 FR 9162) of January 28, 1981; and

(3) To further the purposes of NEPA, which include providing opportunities for public review of information bearing on the environmental impacts of the WIPP.

DOE is still proposing that WIPP ultimately be a disposal facility for transuranic wastes (TRU) from defense programs, following a period of research and development to demonstrate its safety. The current WIPP proposal, however, differs from the original in several respects, including the waste radionuclide inventory, the regulation of hazardous chemical constituents as part of this waste inventory, aspects of waste transportation, and an expansion of the research and development program. The SEIS will analyze the environmental impacts of WIPP as now proposed, including the long-term impacts of the repository after decommissioning. The assessment will reflect DOE's current understanding of factors such as brine in the salt formation, gas generation by the waste, and post-closure behavior of the repository. The No Action alternative, in which no waste would be placed in the WIPP facility, also will be re-examined.

The DOE intends to issue the draft SEIS in Spring 1989 for public comment and to issue the final SEIS in late Summer 1989. We will use a variety of mechanisms to provide interested citizens and public officials with pertinent information regarding the NEPA process for WIPP. The DOE also plans public hearings on the draft SEIS in several locations. The locations and dates of the hearings also will be published in a **Federal Register** Notice announcing the availability of the draft SEIS.

ADDRESSES: Persons requesting additional information regarding WIPP or wishing to receive a copy of the draft SEIS should contact: Mr. W. John Arthur, III, WIPP SEIS Project Office, U.S. Department of Energy, P.O. Box 5400, Albuquerque, NM 87115, (505) 889–3038.

For general information on the SEIS NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Project Assistance (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600.

Background Information

The DOE is developing the WIPP at the Los Medanos site near Carlsbad in southeastern New Mexico as a deep geologic repository for currently-stored and future-generated transuranic radioactive waste (TRU) from various DOE defense program installations. The repository facility has been excavated from a bedded salt formation 2150 feet below the land surface. Because the WIPP facility's land is under the jurisdiction of the U.S. Department of the Interior (DOI), the DOE has invited the DOI's Bureau of Land Management to be a "cooperating agency" (40 CFR Part 1501.6) in the development of the SEIS.

Congress authorized the DOE to build WIPP to demonstrate the safe disposal of certain radioactive wastes resulting from its defense activities. Since 1970, all defense-generated TRU wastes have been stored at various sites using methods that facilitate retrieval. Continued storage at these sites poses waste management problems and has raised public concerns about health and environmental protection. In addition, the filling of available storage capacity for radioactive waste at certain sites may hamper defense production operations that are vital to national security.

The DOE is proposing two phases for WIPP activities: (a) Research and development, in which up to 10 percent (i.e., up to 84,000 drums) of the design capacity for waste would be brought to WIPP and emplaced underground in a retrievable manner, and (b) disposal operations. The former will take approximately five years, after which the DOE will decide whether to proceed with the WIPP as a permanent waste repository. DOE will not use the WIPP as a permanent waste repository unless the accumulated scientific and operational data show that WIPP operations and long-term disposal will comply with the Environmental Protection Agency's public health and environmental standards (40 CFR Part 191), and other applicable Federal, State, and local requirements.

The SEIS will: (1) Assess potential environmental consequences of the current "proposed action" and any reasonable alternatives to the proposed action so as to reflect changes in the project and new information, assumptions, or methods of analysis since publication of the final EIS, and (2) provide an opportunity for public review and comment. The proposed changes and new information to be considered in the SEIS are mainly in the following areas:

- Changes in the radionuclide inventory to be emplaced in the WIPP, chiefly eliminating tests with high-level waste and adding certain neutron-emitting and high-curie TRU wastes.
- Regulation of hazardous chemical constituents of TRU mixed waste under the Resource Conservation and Recovery Act.
- Changes in waste transportation, including the use of TRUPACT II packages, the predominant use of truck transport, and likely routes for potential shipments from 10 TRU generator sites.
- Revision of the research and development program to include experiments necessary for eventually demonstrating compliance with environmental protection standards (40 CFR Part 191) issued after the FEIS.
- Hydrogeologic and waste characteristics data obtained since 1980, including information relevant to the post-closure potential for gas and brine to accumulate in the respository as the mined opening in the dalt closes around the waste.

Additional Information

A variety of WIPP-related technical reports have been published previously and are available for public inspections during normal business hours at the following locations:

Information Services Department, Albuquerque Public Library, 501 Copper Avenue Northwest, Albuquerque, NM 87102, (505) 768–5140

Carlsbad Public Library, Public Document Room, 101 South Halogueno Street, Carlsbad, NM 88220, (505) 885–6776

Pannell Library, New Mexico Junior College, 5317 Lovington Highway, Hobbs, NM 88240, (505) 392–4510 x355

Thomas Branigan Memorial Library, 200 E. Picacho, Las Cruces, NM 88001, (505), 526–1045

Roswell Public Library, 301 North Pennsylvania Street, Roswell, NM 88201, (505) 622–7101

New Mexico Institute of Mining and Technology Library, Government Documents, Campus Station, Socorro, NM 87801, (505) 835–5740

Zimmerman Library, Government Publications, University of New Mexico, Albuquerque, NM 87131, (505) 277–5441

Public Reading Room, National Atomic Museum, Wyoming Boulevard South, Kirtland Air Force Base, Albuquerque, NM 87115, (505) 844–4378

Santa Fe Public Library, 145 Washington Avenue, Santa Fe, New Mexico 87501, (505) 984–6780

Sandia National Laboratories, Waste Management and Transportation Library, Organization 6332, 1515 Eubank Street SE, Albuquerque, NM 87123, (505) 844–2712

Sandia National Laboratories, Technical Library, Organization 3144, 1515 Eubank Street, SE, Albuquerque, NM 87123, (505) 844–2869

U.S. Department of Energy–ID, Public Reading Room, University Place, 1776 Science Center Drive, Idaho Falls, ID 83402, (208) 526–1144

U.S. Department of Energy–RL, Public Reading Room, Hanford Science Center, 825 Jadwin Avenue, Richland, WA 99352, (509) 376–8583

U.S. Department of Energy–CH, Public Reading Room, 9800 South Cass Avenue, Building 201, Argonne, IL 60439, (312) 972–2010

U.S. Department of Energy–SFO, Public Reading Room, 1333 Broadway, 7th Floor, Oakland, CA 94612, (415) 273–4428

U.S. Department of Energy–NV, Public Reading Room, 2753 South Highland Street, Las Vegas, NM 89109, (702) 295–1274

U.S. Department of Energy–HQ, Public Reading Room, Room 1E–190 Forrestal Building, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586–6020

U.S. Department of Energy–OR, Public Reading Room, Federal Building, 200 Administration Road, Oak Ridge, TN 37830, (615) 576–1216

U.S. Department of Energy–SR, FOI Publication/Document Room, Aiken, SC 29802, (803) 725–1408

Denver Public Library, Government Documents Room, Second Floor, 1357 Broadway, Denver, Colorado 80203–2165, (303) 571–2000

Government Publications, Norlin Library, University of Colorado/ Boulder, 18th and Colorado Streets, Campus Box 184, Boulder, Colorado 80309, (303) 492–8784

Department of Public Works and Utilities, Westminister City Hall, 4800 West 92nd Avenue, Westminster, Colorado 80030, (303) 430–2400, ext. 2181

Dated in Washington, DC this 15th day of February 1989, for the U.S. Department of Energy.

Peter N. Brush,

Principal Deputy Assistant Secretary, Environment, Safety and Health.

[FR Doc. 89–3946 Filed 2–15–89; 3:15 pm]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent To Award Grant to Inner Roof Solar Systems, Inc.—Joseph Allegro

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE–FG01–89CE15379 to Inner Roof Solar Systems, Inc., to design, build and test a prototype of a solar heating system as described under the title "Inner Roof Solar System".

Scope: This Grant will aid in providing funding for Inner Roof Solar Systems, Inc., as follows: (1) Develop unique design of roofing panels for solar energy collection and (2) subcontract specific tasks with firms which will use their special facilities in performing specific tasks within overall work plan to build and test the technology.

The purpose of this project will be to build and to test the ability of the technology to provide roof protection and gather solar energy.

Eligibility: Based on receipt of an unsolicited application, eligibility of this award is being limited to Inner Roof Solar Systems, Inc., a private corporation with high qualifications in this specialized field of technology. The inventor and principal investigator for Inner Roof Solar Systems, Inc., Mr. Joseph Allegro, holds the patent on the inner roof technology. Inner Roof will subcontract this work to three companies who have substantial facilities and expertise in their respective specialities. It has been determined that this project has high technical merit, representing an innovative and novel idea which has a strong possibility of allowing for future reductions in the Nation's energy consumption.

The term of this grant shall be two years from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Rose Mason, MA–453.2, 1000 Independence Avenue SW., Washington, DC 20585.

Scott Sheffield,

Acting Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 89–3847 Filed 2–16–89; 8:45 am]

BILLING CODE 6450–01–M

Morgantown Energy Technology Center Financial Assistance Award (Grant)

AGENCY: Morgantown Energy Technology Center, DOE.

ACTION: Notice of noncompetitive financial assistance application for a grant.

SUMMARY: Based upon a justification pursuant to 10 CFR 6700.14(f), the DOE, Morgantown Energy Technology Center, gives notice of its plans to award a 12-month grant to the University of Missouri-Rolla, Department of Ceramic Engineering, Rolla, Missouri 65401, in the amount of $162,788. The pending award is based on an unsoliciated application for a research project entitled, "Improved Solid-Oxide Fuel Cells (SOFC) Cathode Materials Development." The applicant proposes to address the problem of low conductivity and instability in low oxygen partial pressure environment of the current state-of-the-art SOFC cathode material. The applicant proposes to work with and modify a Lanthanum based pseudo-ternary system which was found to possess great potential as a SOFC cathode material during a recent program conducted with Department of Energy-Basic Energy Science (DOE/BES). The program will be broken down into three tasks: (1) Develop more stable cathode material towards reduction; (2) Develop more conductive cathode material; (3) Prepare and provide improved cathode material to SOFC developers for independent test.

FOR FURTHER INFORMATION CONTACT: R. Diane Manilla, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26506–0880, Telephone: (304) 291–4086, Grant No. DE–FG21–89MC26015.

Date: February 6, 1989.

Randolph L. Kesling,

Acting Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 89–3677 Filed 2–16–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER89–147–000, et al.]

Montaup Electric Co., et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

February 10, 1989.

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

1. Montaup Electric Company

[Docket No. ER89–147–000]

Take notice that on January 27, 1989 Montaup Electric Company (Montaup) filed a letter in response to questions by the Staff concerning the derivation of O&M and A&G costs in the filing in the captioned docket.

On January 13, 1989, the Staff requested Montaup to provide clarification of how O&M and A&G costs were determined for a Montaup filing on December 23, 1988 of an agreement between Montaup and New England Power Company in the captioned docket. The agreement provides for the construction, ownership, operation and maintenance of a tap to be constructed by Montaup for New England Power. Montaup requests waiver of the 30 day notice requirement in order to place the agreement in effect on November 25, 1988.

Specifically, Staff asked how Montaup determined the percentage of gross investment used to calculate O&M and A&G costs. The cost for O&M was estimated to be $660 for the first year, which represents 15% of the gross investment. Operation and maintenance costs for Montaup's transmission system averages 5% of gross investment. Since a tap generally requires less maintenance than other tansmission facilities and engineering personnel expect about a day's worth of work the first year inspecting the facility, 10% of the system average, 5% was used to approximate the first year O&M costs.

Montaup's system average for A&G is approximately 2% of gross investment. A&G for the first year was estimated to be 50% of the 2% system average, which resulted in the $1,320 estimated cost for A&G.

Comment date: February 24, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Union Electric Company

[Docket No. ER84–560–004]

Take notice that on January 20, 1989, Union Electric Company (Union) tendered for filing its refund report pursuant to the Commission's order issued on November 25, 1988.

Comment date: February 24, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

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

Lois D. Cashell,

Secretary.

[FR Doc. 89-3754 Filed 2-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-741-000, et al.]

Northern Border Pipeline Co., et al.; Natural Gas Certificate Filings

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

1. Northern Border Pipeline Company

[Docket No. CP89-741-000]

February 10, 1989.

Take notice that on January 31, 1989, Northern Border Pipeline Company (Northern Border), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP 89-741-000, an application pursuant to section 7(b) of the Natural Gas Act and the Commission's Regulations thereunder for permission and approval to abandon an interruptible transportation service it provides for Midwest Gas, a division of Iowa Public Service Company (Midwest Gas),[1] as agent on behalf of Terra Chemicals International, Inc. (Terra), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

By this application, Northern Border specifically requests Commission authorization to abandon service provided to Midwest Gas, an agent on behalf of Terra, under Rate Schedule X-7 of its FERC Gas Tariff, Original Volume No. 2. Northern states that it entered into an agreement with Midwest Gas on July 9, 1984, as amended, which provided for Northern Border to transport on an interruptible basis up to 31,000 MMBtu of gas per day for Midwest Gas. Northern Border states that authorization was granted pursuant to a certificate authorization granted in Docket No. CP84-579-000 and that the transportation agreement expired on August 25, 1988. Northern Border further states that Midwest Gas has agreed to the abandonment and that Northern Border will continue transporting the gas under its blanket certificate authorization issued pursuant to Part 284 of the Commission's Regulations for Midwest Gas.

Comment date: March 3, 1989, in accordance with Standard Paragraph F at the end of this notice.

[1] Formerly Iowa Public Service Company.

2. Midwestern Gas Transmission Company

[Docket No. CP89-348-000]

February 10, 1989.

Take notice that on December 7, 1988, Midwestern Gas Transmission Company (Midwestern), 1010 Milam, Houston, Texas 77002, filed in Docket No. CP89-348-000 an application, as supplemented January 31, 1989, pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the interruptible transportation of 1,833 Dt of natural gas per day and firm transportation of 1,500 Dt of natural per day for the Equitable Life Assurance Society of the United States (ELAS) and the construction and operation of facilities necessary therefore, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Midwestern states that ELAS has the right to purchase and/or produce certain quantities of natural gas which can be made available to Midwestern's southern system in Ohio County, Kentucky and that ELAS will sell such gas to Western Kentucky Gas Company (Western Kentucky) a distribution company in the Commonwealth of Kentucky. Midwestern states that the gas to be transported was previously dedicated to Midwestern, however, ELAS and Midwestern could not agree on a price for such gas and Midwestern has agreed to release the gas which is surplus to its needs.

Midwestern states that ELAS will construct the measurement facilities and hot tap necessary to deliver the gas to Western Kentucky in Daviess County, Kentucky at an estimated cost of $30,000. It is stated ELAS will bear such cost. Further, Midwestern states that it would supervise the construction of the facilities and would own and operate such facilities. Midwestern also proposes to operate its compressor station number 2113 at 9,500 horsepower in order to provide the additional pressure needed to transport gas on a firm basis for ELAS.[1]

Midwestern states that for the firm transportation ELAS will pay a rate which includes a monthly reservation charge and a monthly commodity charge derived from rates under the Rate Schedule CD-1; that the rate to be paid for interruptible transportation will be equal to the one hundred percent load factor rate derived from the Rate Schedule CD-1 as reflected in the I-1 rate without imputed gas cost. Midwestern states that ELAS would deliver quantities of gas for fuel and use requirements and where applicable ELAS would pay the GRI and ACA surcharges.

Comment date: March 3, 1989, in accordance with Standard Paragraph F at the end of this notice.

[1] The compressor station was originally authorized to operate at 9,100 horsepower in Docket No. CP 79-104 on July 23, 1979 (8 FERC ¶ 61,059).

Northwest Pipeline Corporation

[Docket No. CP89-761-000]

February 10, 1989.

Take notice that on February 6, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP 89-761-000, a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Southwest Gas Corporation—Northern California (Southwest Gas), a local distribution company, under Northwest's blanket certificate issued in Docket No. CP86-578-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport on an interruptible basis up to 10,316 MMBtu equivalent of natural gas on a peak day for Southwest Gas, 125 MMBtu equivalent on an average day and 45,000 MMBtu equivalent on an annual basis. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is stated that Northwest would receive the gas for Southwest Gas's account at various existing receipt points on Northwest's system, as specified in the transportation agreement. It is further stated that Northwest would deliver equivalent volumes of gas to Paiute Pipeline Company in Owyhee County, Idaho. It is explained that the service commenced December 21, 1988, under the automatic authorization provisions of § 284.223 of the Commission's

Regulations, as reported in Docket No. ST89–2015.

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

4. Williams Natural Gas Company

[Docket No. CP89–778–000]

February 10, 1989.

Take notice that on February 7, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–778–000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Rangeline Corporation (Rangeline), a marketer of natural gas, under WNG's blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG proposes to transport, on a firm basis, up to a maximum of 2,200 MMBtu per day for Rangeline from various receipt points in Kansas and Oklahoma to various delivery points on WNG's pipeline system located in Kansas. WNG states that the maximum day, average day, and annual transportation volumes would be approximately 2,200 MMBtu, 2,200 MMBtu and 803,000 MMBtu respectively.

WNG further states that the transportation of natural gas for Rangeline commenced on December 27, 1988, as reported in Docket No. ST89–2019–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations.

WNG advises that construction of facilities would not be required to provide the proposed service.

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

5. Williams Natural Gas Company

[Docket No. CP89–773–000]

February 10, 1989.

Take notice that on February 7, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–773–000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Penntech, Inc. (Penntech), a marketer of natural gas, under WNG's blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG proposes to transport, on an interruptible basis, up to a maximum of 2,200 MMBtu, per day for Penntech from various receipt points in Kansas to various delivery points on WNG's pipeline system located in Kansas. WNG states that the maximum day, average day, and annual transportation volumes would be approximately 2,000 MMBtu, 1,000 MMBtu and 365,000 MMBtu respectively.

WNG further states that the transportation of natural gas for Penntech commenced on December 19, 1988, as reported in Docket No. ST89–1943–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations.

WNG advises that construction of facilities would not be required to provide the proposed service.

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

6. Northwest Pipeline Corporation

[Docket No. CP89–762–000]

February 10, 1989.

Take notice that on February 6, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–762–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for the account of Kimball Energy Corporation (Kimball), a producer of natural gas, under Northwest's blanket certificate issued in Docket No. CP86–578–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport on an interruptible basis up to 100,000 MMBtu of natural gas on a peak day, 3,000 MMBtu on an average day and 1,100,000 MMBtu on an annual basis for Kimball. Northwest states that it would perform the transportation service for Kimball under Northwest's Rate Schedule TI–1 for a primary term continuing until December 31, 1995, and continue on a monthly basis thereafter, subject to termination upon 30 days notice. Northwest indicates that it would transport the gas from various existing receipt points on Northwest's system in Colorado, Oklahoma, Oregon, Utah, Washington, and Wyoming to various delivery points in the states of Colorado, Utah, Idaho, New Mexico, Oklahoma, Oregon, Washington, and Wyoming.

It is explained that the service has commenced under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–2016. Northwest indicates that no new facilities would be necessary to provide the subject service.

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

7. Texas Gas Transmission Corporation

[Docket No. CP89–725–000]

February 10, 1989.

Take notice that on January 30, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89–725–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Natural Gas Clearinghouse, Inc. (Clearinghouse) under the blanket certificate issued in Docket No. CP88–686–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas states that it proposes to transport for Clearinghouse 300,000 MMBtu on a peak day, 50,000 MMBtu on an average and 18,240,000 MMBtu on an annual basis. Texas also states that pursuant to a Transportation Agreement dated November 18, 1988 between Texas and Clearinghouse (Transportation Agreement) proposes to transport natural gas for Clearinghouse from points of receipt located in multiple states. The points of delivery and ultimate points of delivery are located in multiple states.

Texas further states that it commenced December 2, 1988, as reported in Docket No. ST89–182–000.

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

K N Energy, Inc.

[Docket No. CP89–768–000]

February 10, 1989.

Take notice that on February 6, 1989, K N Energy, Inc. (K N Energy), P.O. Box 15265, Lakewood, Colorado, 80215, filed in Docket No. CP89–768–000 a request pursuant to §§157.205 and 157.211 of the Commission Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate sales taps for the delivery of gas to certain end users, under authorizations issued in Docket Nos.

CP83–140–000, CP83–140–001, and CP83–140–002, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

K N Energy proposes to construct and operate sales taps to service fifteen (15) end users located in various counties within Kansas and Nebraska. K N Energy states that the gas would be used to fuel irrigation equipment and provide space heating for residential structures. Peak day and annual deliveries are expected to be 348 Mcf and 11,680 Mcf, respectively. K N Energy estimates that the cost of installing the taps, less connecting charges, would be $7,800. Lastly, K N Energy states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps would have no significant impact on its peak day and annual deliveries.

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

9. Tennessee Gas Pipeline Company

[Docket No. CP89–760–000]

February 10, 1989.

Take notice that on February 6, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89–760–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide a transportation service for Sun Operating Limited Partnership (Sun), a producer, under Tennessee's blanket certificate issued in Docket No. CP87–115–000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee proposes, pursuant to a transportation agreement dated October 27, 1988, as amended December 22, 1988, to transport natural gas for Sun from points of receipt located in the State of Texas. It is stated that points of delivery are located off Tennessee's system in several states. Tennessee further states that under the contract the maximum daily and average daily quantities are 64,500 dekatherms (dt) and 23,542,500 dt on an annual basis. Tennessee states that service under § 284.223(a) commenced January 1, 1989, as reported in Docket No. ST89–1968–000 filed January 26, 1989.

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

10. Natural Gas Pipeline Company of America

[Docket No. CP89–753–000]

February 10, 1989.

Take notice that on February 3, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP89–753–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport, on an interruptible basis, up to a maximum of 100,000 MMBtu (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) for Anadarko Trading Company (Anadarko), a marketer of natural gas. The receipt points are located in Louisiana, Offshore Louisiana, Texas and Offshore Texas and the delivery points are located in Louisiana, Offshore Louisiana, Texas, Offshore Texas, Illinois and Iowa. Transportation would be performed under Natural's blanket certificate issued in Docket No. CP86–582–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural commenced the transportation of natural gas for Anadarko on December 1, 1988 at Docket No. ST89–2119–000 for a one hundred and twenty (120) day period ending March 31, 1989, pursuant to § 284.223(a)(1) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP86–582–000. Natural proposes to continue this service in accordance with §§ 284.221 and 284.223(b).

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

11. Great Lakes Gas Transmission Company

[Docket No. CP89–719–000]

February 13, 1989.

Take notice that on January 30, 1989, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP89–719–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Great Lakes to transport natural gas, on an interruptible basis, for the account of Northern Minnesota Utilities Division of UtiliCorp United, Inc. (NMU), until November 1, 1990, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Great Lakes states NMU has requested the Great Lakes transport up to 80,000 Mcf per day for the account of NMU, from a point on the international Border between the United States and Canada, at Emerson, Manitoba (Emerson), where the facilities of Great Lakes interconnect with the facilities of TransCanada PipeLines Limited, to existing points of interconnection between the facilities of Great Lakes and (1) NMU located at Thief River Falls, Grand Rapids and Cloquet, Minnesota and (2) Northern Natural Gas Company (Northern) at Carlton, Minnesota (Carlton Delivery Point). Great Lakes further states that NMU and Great Lakes entered into a Transportation Service Agreement (Agreement) dated December 30, 1988, which implements these arrangements. Great Lakes indicates that NMU is entering into transportation arrangements with Northern for the transportation of the subject volumes from the Carlton Delivery Point to points of interconnection between the facilities of Northern and NMU.

Great Lakes states that the Agreement provides for a rate for the transportation service to each of the delivery points, and that such rate is equal to the 100 percent load factor rate applicable to deliveries in the Western Zone under existing Rate Schedule T–5 of Great Lakes FERC Gas Tariff under which volumes of natural gas are also transported form Emerson to Great Lakes' Western Zone. Great Lakes further states that the term of the Agreement expires on November 1, 1990. Great Lakes indicates that no new facilities would be required to provide that proposed service.

Comment date: March 6, 1989, in accordance with Standard Paragraph F at the end of this notice.

12. CNG Transmission Corporation

[Docket No. CP89–712–000]

February 13, 1989.

Take notice that on January 27, 1989, CNG Transmission Corporation (CNG), 445 Main Street, Clarksburg, WV 26301, filed in Docket No. CP89–712–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to construct and operate facilities to transport up to 25,900 dekatherms per day (Dtd) of Canadian natural gas supplies to Cogen Energy Technology, Inc. (CETI) and Indeck Gas Services Company (Indeck), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG states that this application is a component of the November 21, 1988 *Offer of Settlement Regarding Niagara Import Projects* (Niagara Settlement). The Commission determined the Nagara Settlement to be a discrete Northeast project in an order issued on January 12, 1988 (46 FERC ¶ 61,013).

CNG proposes to transport up to 13,900 Dtd for CETI's cogeneration plant located near Brookview, New York, under the terms and conditions of CNG's Rate Schedule TF. CNG explains that CETI will arrange for the transportation of its Canadian gas supplies from the Niagara Falls import point via Tennessee Gas Pipeline Company (Tennessee) to the interconnection between Tennessee's and CNG's system located at Marilla, New York. CNG requests authority to transport CETI's gas from Marilla, New York (Marilla), to CNG's interconnection with a local distribution company (LDC) Niagara Mohawk Power Corporation (Niagara Mohawk) for further transportation to CETI at Brookview, New York.

CNG proposes to transport up to 12,000 Dtd of firm Canadian supplies for Indeck's cogeneration facility located near Oswego, New York, under the terms and conditions of CNG's Rate Schedule TF. CNG states that Indeck will arrange for the transportation of its Canadian gas supplies from the Niagara Falls import point via National Fuel Gas Supply Corporation (National Fuel) to the Marilla interconnection with CNG. CNG requests authority to transport Indeck's gas from Marilla to CNG's Biddlecum Road interconnection with Niagara Mohawk for further transportation to Indeck at Oswego, New York.

In order to provide the proposed transportation, CNG proposes to construct and operate the following facilities at a total estimated cost of $10,870,350 (including the filing fee):

(1) Construct 2.35 miles of 30-inch pipeline looping (to be known as Line TL–470);

(2) Expand its exiting measurement and regulation facilities located at Brookview, New York;

(3) Install an additional 1,350 horsepower engine at its State Line Station;

(4) Install an additional 2,250 horsepower engine at its Utica Station;

(5) Replace 2000 feet of 10-inch pipe line with 20-inch pipe line on its Line TL–403; and,

(6) Reimburse Tennessee for measurement of Marilla.

CNG explains that the shippers are in the final stages of negotiation on the underlying transportation agreements. CNG states that the parties would not be able to produce suitable pro-forma precedent agreements prior to the Commission-imposed filing deadline for this application of January 27, 1989. CNG states that it will supplement Exhibits H and I of this filing with pro-forma precedent agreements and fully executed precedent agreements as soon as they are available.

Comment date: March 6, 1989, in accordance with Standard Paragraph F at the end of this notice.

13. Texas Eastern Transmission Corporation

[Docket No. CP89–711–000]

February 13, 1989.

Take notice that on January 27, 1989, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas, 77252, filed in Docket No. CP89–711–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to construct and operate facilities to transport Canadian natural gas supplies for its system supply, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern states that under the Niagara Settlement, which was approved by the Commission on January 12, 1989, in an order finding the Niagara Import Point Projects discrete, the PennEast Niagara Cogen Project in Docket No. CP88–195, *et al.* would be revised whereby PennEast Gas Services Company (PennEast) would provide firm transportation of natural gas of:

(1) 50,000 dt per day for Northeast Energy Associates (Northeast);

(2) 22,000 dt per day for North Jersey Energy Associates (North Jersey); and

(3) 29,000 dt per day for Texas Eastern's system supply.

Texas Eastern proposes to construct and operate 5.0 miles of 24-inch pipeline looping Texas Eastern's Leidy pipeline, M.P. 40.91 to M.P. 35.91, which would increase capacity to receive from PennEast at Leidy, Pennsylvania and deliver into its system at Perulack 29,000 dt per day. Texas Eastern states that it intends to commence construction activities, upon receipt of timely authorization, which would enable it to receive the Canadian gas supplies commencing November 1, 1990. The estimated cost of the proposed facilities is $5,110,000, which Texas Eastern would initially finance from funds on hand or short term borrowings. Permanent financing would be undertaken as part of Texas Eastern's overall long-term financing program at a later date. Texas Eastern also states that the incremental cost of service of the proposed facilities would be rolled-in to Texas Eastern's system cost of service.

Texas Eastern states that the gas purchase agreements underlying the Canadian natural gas for Texas Eastern's sysem supplies are the sales agreements dated November 2 and November 3, 1986, between ProGas Limited (ProGas) and Texas Eastern providing for the sale of Daily Contract Quantities (DCQ) of 50,000 Mcf and 51,000 Mcf of natural gas at the Niagara Falls delivery point. Texas Eastern also states that ProGas and Texas Eastern have agreed that certain quantities of the total DCQ of 101,000 Mcf of natural gas would be released and sold directly by ProGas to North Jersey and Northeast for their proposed cogeneration plants, in Sayreville, New Jersey, and Bellingham, Massachusetts, as reflected in the Amending Agreement between ProGas and Texas Eastern dated September 30, 1988, which merges the November 2 sales agreement into the November 3 sales agreement. Texas Eastern states that under the sales agreement Texas Eastern's DCQ is 101,000 Mcf less the sum of the Northeast and North Jersey DCQ. As a result of combining the two ProGas sales agreements and releasing a portion to the cogeneration purchasers, the resulting Texas Eastern DCQ is 29,000 Mcf of natural gas when both of the cogeneration plants are in full operation.

Texas Eastern states that during the Winter Period of any contract year, the DCQ of Texas Eastern under the gas sales agreement with ProGas would be increased by the quantity of gas which is not purchased by Northeast and North Jersey and which becomes available for sale by ProGas to Texas Eastern for a period of not less than two weeks. Texas Eastern also states that it is necessary for the cogeneration plants to shut-down each year for maintenance purposes for a period of three to four weeks. According to Texas Eastern, if quantities of natural gas available to the two cogeneration plants are not taken by them during the remainder of the year, those quantities would be available to Texas Eastern on an interruptible basis and would be eligible for sale as special purchase gas under the provisions of the Sales Agreement and Special Marketing Agreement. Texas Eastern further states that the Special Marketing Agreement provides for sales of natural gas imported and released by Texas Eastern under the Sales Agreement for direct purchase from ProGas by third parties. Payments would be made by marketers directly to

ProGas. The available quantities would be those that Texas Eastern does not schedule for delivery under the Sales Agreement and would be sold at freely negotiated, competitive prices in Texas Eastern's markets.

The National Energy Board of Canada has authorized the exportation of the 101,000 Mcf referred to herein by License Nos. GL-80 and GL-81. Texas Eastern also states that it has applications pending before the Economic Regulatory Administration (ERA) in ERA Docket Nos. 82-05-NG and 85-19-NG to import up to 50,000 Mcf and 51,000 Mcf of natural gas per day to be purchased from ProGas to Niagara Falls. Also Texas Eastern intends to file a superseding import application with the ERA to import the DCQ of 101,000 Mcf per day at the Niagara Falls delivery point and to release imported volumes to North Jersey and Northeast for their cogeneration plants.

Comment date: March 6, 1989, in accordance with Standard Paragraph F at the end of this notice.

14. Williams Natural Gas Company

[Docket No. CP89-772-000]

February 13, 1989.

Take notice that on February 7, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-772-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide transportation for B P Gas Marketing Company (BP Gas), a marketer, under WNG's blanket certificate issued in Docket No. CP86-631-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG states that pursuant to a service agreement dated December 6, 1988, it proposes to transport on an interruptible basis up to a maximum of 67,000 MMBtu of natural gas per day for BP Gas from various receipt points in Kansas, Missouri, Oklahoma, Texas and Wyoming to various delivery points on WNG's pipeline system located in Kansas, Oklahoma, Texas and Wyoming. WNG states that it anticipates transporting 67,000 MMBtu of natural gas on both a peak day and average day and 24,455,000 MMBtu on an annual basis. It is stated that on December 25, 1988, WNG commenced a 120-day transportation service for BP Gas under § 284.223(a) as reported in Docket No. ST89-1942-000.

WNG further states that no facilities need be constructed to implement the service. WNG proposes to charge the rates and abide by the terms and conditions of its Rate Schedule ITS. It is indicated that WNG would provide the service for a primary term expiring January 1, 1993, but would exend the service for additional periods of one year unless either party gives the other written notice at least ninety days prior to the expiration date of the original or any succeeding or extended term.

Comment date: March 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Williams Natural Gas Company

[Docket No. CP89-752-000]

February 13, 1989.

Take notice that on February 2, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed an application pursuant to sections 7(b) and (c) of the Natural Gas Act (NGA), as amended, and Part 157 of the Commission's Regulations for (1) a certificate of public convenience and necessity authorizing WNG to provide, effective April 1, 1989, a new interruptible contract storage service under new Rate Schedule ISS and blanket authorization, with pregranted abandonment, for shippers under WNG's Rate Schedule FTS and ITS to utilize service under Rate Schedule ISS from time to time and (2) authorization under section 7(b) of the NGA for WNG to terminate existing service under Rate Schedule IDDS and to cancel such rate schedule and related tariff provisions effective March 31, 1989, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WNG states that the authorizations requested therein are predicted upon Commission approval of a concurrently filed stipulation and agreement in Docket Nos. RP87-33 and TA88-88-1-43 and in particular the provisions of Article III and the tariff sheets contained in Appendix C thereof. WNG indicates that no new facilities are contemplated by this application. WNG does state that to the extent that minor new facilities are required, such facilities shall be constructed pursuant to WNG's blanket construction certificate issued in Docket No. CP82-479-000.

Comment date: March 6, 1989, in accordance with Standard Paragraph F at the end of this notice.

16. Natural Gas Pipeline Company of America

[Docket No. CP88-770-000]

February 13, 1989.

Take notice that on February 7, 1989, Natural Gas Pipeline Company of America (Natural) 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-770-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Entrade Corporation (Entrade), under its blanket authorization issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural would perform the proposed interruptible transportation service for Entrade, a marketer of natural gas, pursuant to an interruptible transportation service agreement dated November 16, 1988 (#IGP-1592). Natural proposes to transport on a peak day up to 10,000 MMBtu per day; on an average day up to 10,000 MMBtu; and on an annual basis, 3,650,000 MBtu of natural gas for Entrade. Natural proposes to receive the subject gas at receipt points located in Louisiana, Texas, Oklahoma and Kansas for delivery to points located in Iowa and Louisiana. The gas will be consumed by end-users and local distribution companies in Ohio, Kentucky, Pennsylvania, Maryland, Virginia, New York, Indiana, Illinois, Iowa, Mississippi, Tennessee, and Alabama. It is stated that transportation from or to any points listed in the application involving third-party transporters, Natural understands that Entrade must contract with such third-party transporters separately and such transporters must have appropriate authorization to perform their portion of the transportation service in order for Natural to render its related portion of service for Entrade. Natural avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Natural commenced such self-implementing service on January 1, 1989, as reported in Docket No. ST89-2137-000.

Comment date: March 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. Northwest Pipeline Corporation

[Docket No. CP89-774-000]

February 13, 1989.

Take notice that on February 7, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-774-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Grand Valley Gas Company (Grand Valley), under Northwest's blanket certificate issued in Docket No. CP86-578-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest requests authorization to transport, on an interruptible basis, up to a maximum of 125,000 MMBtu of natural gas per day for Grand Valley from receipt points located in Colorado, New Mexico, Wyoming and Utah to delivery points located in Colorado, Wyoming and Utah. Northwest anticipates transporting, on an average day 6,600 MMBtu and an annual volume of 2,400,000 MMBtu.

Northwest states that the transportation of natural gas for Grand Valley commenced December 9, 1988, as reported in Docket No. ST89-1767-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Northwest in Docket No. CP86-578-000.

Comment date: March 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

18. Northwest Pipeline Corporation

[Docket No. CP89-777-000]

February 13, 1989.

Take notice that on February 7, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-777-000 a request pursuant to §§ 157.205 and 284.223(2)(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport gas for Santa Fe Gas Marketing (Sante Fe), a marketer of natural gas, under Nortwest's blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest states that, pursuant to a transportation agreement dated February 10, 1988, as amended, under Rate Schedule TI-1, it proposes to transport up to 500,000 MMBtu per day of natural gas for Santa Fe from any receipt point on its system to any delivery point on its system (as set forth in the attached list in the agreement dated February 10, 1988, as amended, between Northwest and Sante Fe). Northwest further states that the maximum day, average day, and annual transportation volumes would be approximately 500,000 MMBtu, 300 MMBtu and 100,000 MMBtu, respectively.

Northwest advises that it commenced the transportation of natural gas for Sante Fe on January 2, 1989, at Docket No. ST89-2052-000. Northwest also states that no construction of new facilities will be required to provide this transportation service.

Comment date: March 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. Northwest Pipeline Corporation

[Docket No. CP89-766-000]

February 13, 1989.

Take notice that on February 6, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-766-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for American Hunter Exploration Ltd. (American Hunter) a producer/marketer of natural gas, under Nortwest's blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest proposes to transport, on an interruptible basis, up to 100,000 MMBtu of natural gas equivalent per day for American Hunter pursuant to a gas transportation agreement dated February 10, 1988, as amended on April 5, 1988, November 21, 1988, and December 5, 1988, between Northwest and American Hunter. Northwest would receive the gas at any receipt point on its system and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, at any delivery point on its system.

Northwest further states the estimated average daily and annual quantities to be 250 MMBtu and 90,000 MMBtu, respectively. Service under § 284.223(a) commenced on December 15, 1988, as reported in Docket No. ST89-2009-000, it is stated.

Comment date: March 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

20. Northwest Pipeline Corporation

[Docket No. CP89-767-000]

February 13, 1989.

Take notice that on February 6, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-767-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Harvey's Resort Hotel/Casino (Harvey's) under Northwest's blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest proposes to transport, on an interruptible basis, up to 580 MMBtu of natural gas equivalent per day for Harvey's pursuant to a gas transportation agreement dated February 24, 1988, as amended on November 14, 1988, November 21, 1988, and December 5, 1988, between Northwest and Harvey's. Northwest would receive the gas at any receipt point on its system and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, at any delivery point on its system.

Northwest further states the estimated average daily and annual quantities to be 500 MMBtu and 180,000 MMBtu, respectively. Service under § 284.223(a) commenced on December 16, 1988, as reported in Docket No. ST89-2018-000, it is stated.

Comment date: March 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

21. Northwest Pipeline Corporation

[Docket No. CP89-765-000]

February 13, 1989.

Take notice that on February 6, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-765-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Southwest Gas Corporation-Northern Nevada (Southwest Gas), a local distribution company, under Northwest's blanket

certificate issued in Docket No. CP89–578–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport, on an interruptible basis, up to 61,651 MMBtu of natural gas equivalent per day for Southwest Gas pursuant to a gas transportation agreement dated November 10, 1988, between Northwest and Southwest Gas. Northwest would receive the gas at various points on its system and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, at the Reno Lateral delivery point to Paiute Pipeline Company in Owyhee County, Idaho.

Northwest further states the estimated average daily and annual quantities to be 500 MMBtu and 185,000 MMBtu, respectively. Service under § 284.223(a) commenced on December 21, 1988, as reported in Docket No. ST89–2014–000, it is stated.

Comment date: March 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

22. Natural Gas Pipeline Company of America

[Docket No. CP89–782–000]

February 13, 1989.

Take notice that on February 8, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–782–000 a request pursuant to §§ 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis for Natural Gas Clearinghouse, Inc. (NGC), a marketer of natural gas, under its blanket certificate issued in Docket No. CP86–582–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural states that it proposes to transport natural gas for NGC between receipt points in Louisiana, offshore Louisiana, Oklahoma, Texas, offshore Texas, Illinois, Kansas, New Mexico, Iowa, and Arkansas and the delivery point in Iowa.

Natural further states that the maximum daily, average and annual quantities that it would transport for NGC would be 75,000 MMBtu equivalent of natural gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS), 15,000 MMBtu equivalent of natural gas and 5,475,000 MMBtu equivalent of natural gas, respectively.

Natural indicates that in a filing made with the Commission on February 8, 1989, it reported in Docket No. ST89–2155 that transportation service for NGC had begun on January 1, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: March 30, 1989 in accordance with Standard Paragraph G at the end of the notice.

23. Northwest Pipeline Corporation

[Docket No. CP89–781–000]

February 13, 1989.

Take notice that on February 7, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89–781–000, a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations, for authorization to provide a transportation service for Texaco Inc. (Texaco), a producer of natural gas, under Northwest's blanket certificate issued in Docket No. CP86–578–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the commission and open to public inspection.

Northwest states that pursuant to an Agreement dated November 29, 1989, as amended November 29, 1988, it proposes to transport up to 2,000 MMBtu per day of natural gas for Texaco under Rate Schedule TI–1, for a term continuing on a month to month basis, subject to termination upon 30 business days witten notice by either party

Northwest will transport the subject gas through its transmission system from certain wells in La Plata County, Colorado to the Ignacio Plant delivery point located in La Plata County, Colorado and to the existing Ignacio, Colorado and LaJara, New Mexico interconnects with El Paso

Northwest also states that no construction of new facilities will be required to provide this transportation service.

Northwest further states that the maximum day, average day, and annual transportation volumes would be approximately 2,000 MMBtu, 1,600 MMBtu and 584,000 MMBtu, respectively.

Northwest advises that service under § 284.223(a) commenced December 2, 1988, as reported in Docket No. ST89–2092–000 (filed February 1, 1989).

Comment date: March 30, 1989, in accordance with Standard paragraph G at the end of this notice.

24. Transcontinental Gas Pipe Line

[Docket No. CP89–710–000]

February 13, 1989.

Take notice that on January 27, 1989, Transcontinental Gas Pipe Line Corporation (Applicant), Post Office Box 1396, Houston, Texas 77251, filed an application in Docket No. CP89–710–000 pursuant to the "Order Finding Niagara Import Projects Discrete" issued January 12, 1989, in *Northeast U.S. Pipeline Project*, Docket Nos. CP87–451–017, *et al.*, 46 FERC ¶ 61,013 (1989) and section 7(c) of the Natural Gas Act, 15 U.S.C. 717f, for a certificate of public convenience and necessity authorizing Applicant to provide firm transportation service for Northeast Energy Associates, a Limited Partnership (Northeast) and North Jersey Energy Associates, a Limited Partnership (North Jersey), (referred to collectively as the "Niagara Cogen Shippers"), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Applicant requests authorization to (1) render a firm, long-term transportation service for the Niagara Cogen Shippers of up to the dekatherm equivalent of 72,000 Mcf per day, and (2) construct, install and operate certain pipeline loop and related facilities on its Leidy Line and in the market area of its system. Applicant states that it will transport the following maximum daily quantities for each shipper from the PennEast Gas Service Company's interconnection with Applicant's Leidy Line in Pennsylvania for delivery at the indicated points of delivery:

Shipper	Delivery point	Quantity (Mcf/d)
Northeast Energy Associates, a Limited Partnership	Centreville, New Jersey interconnection with Algonquin Gas Transmission Company	48,817
North Jersey Energy Associates, a Limited Partnership	Sayerville, New Jersey	23,183

In order to provide additional capacity necessary to render the proposed firm transportation service, Applicant proposes to construct, install and operate the following facilities: (1) 6.79 miles of 36-inch diameter pipeline loop from M.P. 29.51 to M.P. 36.30 on Applicant's Leidy Line in Pennsylvania, and (2) a new meter station and tap on Applicant's Lower New York Bay

Lateral at Sayerville, New Jersey. Applicant states the proposed pipeline looping was initially proposed as part of Applicant's Open Season application in Docket No. CP88–177–000, *et al.*, which was revised by Applicant's application filed in Docket No. CP89–7–000 on October 3, 1988.

Applicant states that the proposed facilities are estimated to cost approximately $14.5 million. Such costs will be financed initially through short-term loans and funds on hand, with permanent financing to be arranged as part of Applicant's overall long-term financing program.

The rates proposed were developed utilizing a modified-fixed-variable rated design methodology and are determined by rolling in the costs of service for all incremental expansions of Applicant's Leidy Line. Based upon a cost of service for the first full year of operation of the proposed facilities, Applicant has derived initial monthly D–1 and D–2 demand rates of $1.39 and $.0458 per dekatherm of contract demand, respectively, and a commodity rate of $.0990 per dekatherm. In addition to the monthly demand and commodity charges, the proposed transportation agreement provides that shippers shall pay a Commodity Producer Settlement Payment (PSP) charge.

Comment date: March 6, 1989, in accordance with Standard Paragraph F at the end of this notice.

25. United Gas Pipe Line Company

[Docket No. CP89–798–000]

February 13, 1989.

Take notice that on February 9, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–798–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for The Resource Group (Resource Group), a marketer, under the blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated October 5, 1988, as amended on October 12, 1988, under its Rate Schedule ITS, it proposes to transport up to 10,300 MMBtu per day equivalent of natural gas for Resource Group. United states that it would transport the gas from an existing interconnection between United and Sea Robin Pipeline Company near Erath, Vermilion Parish, Louisiana, and deliver such gas to interconnections with (1) Columbia Gulf Transmission Company near Barron, Rapides Parish, Louisiana, (2) Texas Eastern Transmission Corporation at the West Monroe Junction, Ouachita Parish, Louisiana, and (3) Tennessee Gas Pipeline Company near West Monroe, Ouachita Parish, Louisiana.

United advises that service under § 284.223(a) commenced October 12, 1988, as reported in Docket No. ST89–1962 (filed January 26, 1989). United further advises that it would transport 10,300 MMBtu on an average day and 3,759,500 MMBtu annually.

Comment date: March 30,1989, in accordance with Standard Paragraph G at the end of this notice.

26. United Gas Pipe Line Company

[Docket No. CP89–538–000]

February 13, 1989.

Take notice that on January 5, 1989, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251, filed in Docket No. CP89–538–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Graham Marketing Company (Shipper) under the blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it proposes to transport for Shipper 123,600 dt on a peak day, 123,600 dt on an average day and 45,114,000 dt on an annual basis. United also states that pursuant to a Transportation Agreement dated November 9, 1988 between United and Shipper (Transportation Agreement) proposes to transport natural gas for Shipper from points of receipt located in various counties in Louisiana. The points of delivery and ultimate points of delivery are located in multiple state.

United further states that it commenced their service November 9, 1988, as reported in Docket No. ST89–1350–000.

Comment date: March 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

27. United Gas Pipe Line Company

[Docket No. CP89–787–000]

February 13, 1989.

Take notice that on February 8, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–787–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service on behalf of Texaco Gas Marketing, Inc. (Texaco), a marketer of natural gas, under its blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that pursuant to an Interruptible Gas Transportation Agreement dated July 22, 1988, as amended on December 9, 1988, December 13, 1988 and December 16, 1988, it would transport a maximum daily quantity of 103,000 MMBtu. United further states that it would utilize existing facilities to provide the proposed transportation service.

United states that it commenced the transportation of natural gas for Texaco on January 13, 1989, as reported in Docket No. ST89–1935–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: March 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

28. Colorado Interstate Gas Company

[Docket No. CP89–780–000]

February 13, 1989.

Take notice that on February 7, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89–780–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to establish a new delivery point for Public Service Company of Colorado (PSCo), an existing customer of CIG, under the certificate issued in Docket No. CP83–21–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

CIG states that it proposes to construct and operate a new 2-inch tap and meter run on its North Pueblo Lateral in Pueblo County, Colorado, to provide another point of delivery to PSCo. It is stated that the delivery point would be utilized by PSCo to serve the B. F. Goodrich Plant, an existing customer of PSCo. CIG further states that the volume of gas to be delivered, a maximum of 1,920 Mcf per day, is within the volumes that CIG is currently authorized to sell and deliver to PSCo. CIG states that there would be no change in PSCo's total daily or annual entitlement. In addition, CIG states that

it would experience no significant impact on its peak day or annual sales resulting from the addition of the proposed delivery point and the anticipated deliveries resulting from the proposal would be accommodated by CIG's existing transmission system without detriment or disadvantage to CIG's other customers. CIG further states that PSCo would reimburse CIG for the total cost of the proposed facilities.

Comment date: March 30, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3846 Filed 2-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-65-000]

The Inland Gas Co., Inc.; Proposed Changes in FERC Gas Tariff

February 13, 1989

On February 7, 1989, The Inland Gas Company, Inc. (Inland) filed with the Commission a general rate proceeding pursuant to section 4 of the Natural Gas Act. Inland states that the purpose of the filing is to establish rates and tariff provisions in order to provide open-access, nondiscriminatory transportation pursuant to Part 284 of the Commission's Regulations.

Inland states that they seek waivers of the Commission's Regulations or policies in order to impose volumetric surcharges on transportation rates in order to (1) recover a portion of the take-or-pay buy-out/buy-down and contract reformation costs billed to Inland by Tennessee Gas Pipeline Company (Tennessee) pursuant to Order No. 500, and (2) recover the costs associated with six months of excess demand charges from Tennessee rendered unnecessary by the switch of current sales customers to transportation service.

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. All such motions or protests should be filed on or before February 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Inland's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3755 Filed 2-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-38-000]

Ringwood Gathering Co.; Proposed Changes in FERC Gas Tariff

February 13, 1989.

Take notice that on February 6, 1989, Ringwood Gathering Company (Ringwood), 4828 Loop Central Drive, Loop Central Three, Suite 850, Houston, Texas 77081, filed Substitute Forty-Seventh Revised Sheet No. PGA-1 to its FERC Gas Tariff reflecting the removal effective March 1, 1989, of a surcharge adjustment due to the expiration of the current surcharge amortization period on February 28, 1989. Ringwood also has requested approval to continue its jurisdictional sales of 5 Mcfd under its contract with Williams Natural Gas at the contract rate notwithstanding that the surcharge removal causes Ringwood's Total Cost as shown on the tariff sheet to exceed such contract rate.

Copies of the filing were served upon Ringwood's jurisdictional customers and interested state agencies.

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 385.215, 385.211). All such motions or protests should be filed on or before February 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3756 Filed 2-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-38-001]

Ringwood Gathering Co.; Proposed Changes in FERC Gas Tariff

February 13, 1989.

Take notice that on February 6, 1989, Ringwood Gathering Company (Ringwood), 4828 Loop Central Drive,

Loop Central Three, Suite 850, Houston, Texas 77081, filed its Substitute Forty-Eighth Revised Sheet No. PGA–1 to its FERC Gas Tariff reflecting a current adjustment to its cost of gas computed under Ringwood's hybrid unit of sales/unit of purchase methodology in place until its next NGA Section 4 rate filing.

Copies of the filing were served upon Ringwood's jurisdictional customers and interested state agencies.

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 385.215, 385.211). All such motions or protests should be filed on or before February 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–3757 Filed 2–16–89; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Issuance of Decision and Orders; Week of October 17 Through October 21, 1988

During the week of October 17 through October 21, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

James R. Hutton, 10/17/88; KFA–0221

James R. Hutton filed an Appeal from a partial denial by the Assistant Manager for Administration of the Oak Ridge Operations Office (ORO) of the Department of Energy (DOE) of a Request for Information which he had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the ORO had not adequately described the documents withheld nor did it present an adequate justification for applying Exemption 5 of the FOIA to the documents. Accordingly, the matter was remanded for either release of the requested documents or a new determination that reasonably describes the subject matter contained in the withheld documents and further justifies the withholding of the documents.

Interlocutory Order

Economic Regulatory Administration, Kern Oil & Refining Company, 10/18/88; KRZ–0522, KRZ–0523, KRZ–0524

The Economic Regulatory Administration filed a Motion to amend the Proposed Remedial Order that was issued to Kern Oil & Refining Company, and to join three officers of Kern to this proceeding. The PRO alleges that Kern sold price controlled crude oil in transactions that were tied to reciprocal purchases, at a discount, of stripper well crude oil. The PRO alleges that these transactions evaded the firm's entitlements obligations in violation of the anti-circumvention rule. The DOE granted the ERA's Motion to add the allegation that the transactions also violate the normal business practices rule. In addition, the DOE stated that it would consider whether the transactions circumvented the price regulations applicable to Kern's sales of the crude oil.

The ERA sought to join Russell B. Newton, Larry D. Delpit, and Donald M. LeDoux to the proceeding and to hold them personally liable for Kern's alleged violations under the "tortious conduct" theory of liability. The ERA subsequently withdrew its request to join Newton because it found that the tortuous conduct theory was inapplicable to him. The DOE found, however, that Newton, the principal owner of the firm, should be joined under the trust fund and unjust enrichment theories of personal liability. The DOE also granted the ERA's Motion to join Delpit and LeDoux.

Refund Applications

Aminoil U.S.A., Inc/Warren Petroleum Co., 10/18/88; RF139–20

The DOE issued a Decision and Order concerning an Application for Refund filed by Warren Petroleum Company in the Aminoil U.S.A., Inc. special refund proceeding. The firm submitted information showing that it purchased 2,225,483 gallons of Aminoil NGLPs on a regular basis. The firm also submitted cost banks and market price data which indicated that it was forced to absorb Aminoil's alleged overcharges on these purchases. Therefore, the firm has shown that it was injured, to the full extent of its volumetric allocation of the consent order fund, by Aminoil's alleged overcharges. After examining the firm's application and supporting documentation, the DOE concluded that it should receive a refund totaling $29,869, representing $16,863 in principal and $13,006 in interest.

Aminoil U.S.A., Inc/White's LP Gas, Paul Summers Propane, 10/20/88; RF139–132, RF139–135

The DOE issued a Decision and Order concerning an Application for Refund filed by White's LP Gas and Paul Summers Propane in the Aminoil U.S.A., Inc. special refund proceeding. The firm submitted cost banks and market price data which indicated that they had to absorb Aminoil's price increases—including any alleged overcharges—in amounts which exceeded their respective maximum volumetric allocations of the Aminoil consent order fund. In view of this showing of injury and the firm's supporting documentation, the DOE concluded that the firms should receive refunds totalling $460,428, representing $259,943 in principal and $200,485 in interest.

Atlantic Richfield Company/E. Vanderhoof & Sons, et al., 10/18/88; RF304–700, et al.

The DOE issued a Decision and Order concerning fifty Applications for Refund from a consent order fund made available by Atlantic Richfield Company. As resellers/retailers applying for small claims refunds, those who have elected to limit their refunds to $5,000, and end-users, these firms were presumed to have been injured. The DOE concluded that these firms should receive refunds totalling $72,193, representing $57,641 in principal and $14,552 in accrued interest.

Atlantic Richfield Company/Hawthorne Car Wash, Incorporated, et al., 10/18/88; RF304–601, et al.

The DOE issued a Decision and Order concerning fifty-one Applications for Refund from a consent order fund made available by Atlantic Richfield Company. As resellers/retailers applying for small claims refunds and end-users, these firms were presumed to have been injured. The DOE concluded that these firms should receive refunds totalling $55,085, representing $43,983 in principal and $11,102 in accrued interest.

Atlantic Richfield Company/Riksen & Mattson Distributing Company, et al., 10/18/88; RF394–292, et al.

The DOE issued a Decision and Order concerning eight Applications for Refund filed by four companies from a consent order fund made available by Atlantic Richfield Company. As resellers/retailers applying for small

claims refunds, these firms were presumed to have been injured. The DOE concluded that these firms should receive refunds totalling $5,137, representing $4,101 in principal and $1,036 in accrued interest.

Bronxville Knolls Tower Corp., 10/18/88; RF272–74983

On October 7, 1988, the DOE issued a Decision and Order granting crude oil refunds to five applications. *Waste Management of Ohio et al.*, 17 DOE ¶ _____ (Case Nos. RF272–1962, *et al.* (October 7, 1988). The Appendix to this Decision & Order did not list gallonage and refund figures for one of the applicants, Bronxville Knolls Tower Corp. (RF272–1968) (Bronxville). Accordingly, the DOE issued a Supplemental Order granting Bronxville a refund of $97, based on purchases of 486,994 gallons of refined petroleum products.

Dallas Area Rapid Transit, 10/18/88; RF272–10496

Dallas Area Rapid Transit (DART) filed an application for refund in the Subpart V crude oil refund proceedings. A group of utilities, transporters and manufacturers filed objections to DART's application, claiming that the applicant should not be eligible to receive a refund because it was not an injured end/user. The objectors also claimed that as a governmental entity the applicant is ineligible for a refund from the twenty percent of the crude oil overcharge funds reserved to pay Subpart V claims. The DOE rejected both of the objectors' arguments. With respect to the latter, the DOE found that the Stripper Well Settlement Agreement does not prohibit a state, or a subdivision of a state, from filing a claim for direct restitution. With respect to the former argument, the DOE found that the objectors had not met the burden of going forward with evidence to rebut the end-user presumption of injury. Accordingly, the application was approved and DART was granted a refund of $5,558.

Dick Brothers, et al., 10/20/88; RF272–30327, et al.

The DOE issued a Decision and Order approving Applications for Refund submitted by ten claimants for crude oil overcharge funds collected by the DOE. The DOE found that the claimants, all commercial or agricultural end-users, met the eligibility requirements by supplying actual or estimated purchase volume information. The DOE granted the claimants refunds totalling $2,937 based on their purchases of 14,689,826 gallons or refined petroleum products.

Exxon Corporation/Cline's Exxon, et al., 10/18/88; RF307–700, et al.

The DOE issued a Decision and Order concerning 35 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either an end-user or a reseller whose allocable share is less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $25,321 ($22,289 principal plus $3,032 interest).

Exxon Corporation/Francisco Sandoval, et al., 10/18/88; RF307–3000, et al.

The DOE issued a Decision and Order concerning 51 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either an end-user or a reseller whose allocable share is less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $31,929 ($28,106 principal plus $3,823 interest).

Exxon Corporation/Hubert Heffner, et al., 10/19/88; RF307–306, et al.

The DOE issued a Decision and Order concerning 33 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either an end-user or a reseller whose allocable share is less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $22,274 ($19,609 principal plus $2,665 interest).

Exxon Corporation/McCurdy Bros., McCurdy Bros., Terrace Esso Servicenter, Jamestown Road Exxon, 10/19/88; RF307–2953, RF307–2954, RF307–2975, RF307–2976

The DOE issued a Decision and Order concerning four Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either an end-user or a reseller whose allocable share is less than $5,000. In addition, all applicants documented their Exxon purchases and were therefore presumed to have been injured. The sum of the refunds granted in this Decision is $2,407 ($2,118 principal plus $289 interest).

Exxon Corporation/Red Springs Fuel Oil Co., Inc., 10/19/88; RF307–491

The DOE issued a Decision and Order concerning an Application for Refund filed by Red Springs Fuel Oil Co. Inc., in the Exxon Corporation special refund proceeding. Red Springs, a retail and wholesale distributor that purchased directly from Exxon, documented purchases which would support a maximum refund of more than $5,000. However, pursuant to the procedures established in the Exxon proceedings, the applicant elected to limit its refund to the larger of $5,000 or 40 percent of its allocable share up to $50,000. In the present case, $5,000 was greater. Accordingly, the DOE granted a refund of $5,680 ($5,000 principal plus $680 interest).

Exxon Corporation/Ricbon Service Station, Inc., et al., 10/19/88; RF307–2311, et al.

The DOE issued a Decision and Order concerning 40 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either an end-user or a reseller whose allocable share is less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $30,153 ($26,545 principal plus $3,608 interest).

Exxon Corporation/Springhill Exxon, et al., 10/19/88; RF307–751, et al.

The DOE issued a Decision and Order concerning 38 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either an end-user or a reseller whose allocable share is less than $5,000. The DOE determined that each applicant was eligible to receive a refund to its full allocable share. The sum of the refunds granted in this Decision is $26,794 (23,586 principal plus $3,208 interest).

Exxon Corporation/W. Neil Brownlee, et al., 10/19/88; RF307–301, et al.

The DOE issued a Decision and Order granting refunds to 47 applicants from funds obtained through a consent order entered into with the Exxon Corporation (consent order no. REXL00201Z). The applicants were either end-users or resellers and retailers of Exxon products and based their claims on actual purchase volume data supplied by Exxon. Each sought refunds of less than $5,000, and were therefore presumed to have been injured. The refunds granted in this Decision, included accrued interest, total $45,237.

Getty Oil Company/Curby Hardware, Inc., et al., 10/18/88; R265–2761, et al.

The DOE issued a Decision and Order concerning 15 Applications for Refund filed by resellers or retailers of products covered by a Consent Order that the DOE entered into with the Getty Oil Company. Each applicant documented its volume of purchases from Getty during the consent order period. Ten of the applicants were eligible for refunds of less than $5,000 and the remaining five applicants elected to limit their claims to $5,000. The total amount of the refunds approved in the Decision and Order is $120,000, representing $58,583 in principal and $61,617 is accrued interest.

Getty Oil Company/Woerner Oil Company, Inc., 10/19/88; RF265–1716

The DOE issued a Decision and Order concerning an Application for Refund filed by Woerner Oil Company, Inc. (Woerner), in the Getty Oil Company special refund proceeding. Woerner, a reseller of motor gasoline, showed that during the consent order period it maintained banks of unrecovered costs and documented the volume and cost of its Getty motor gasoline purchases. Using the competitive disadvantage methodology, the DOE determined that Woerner's refund should be limited to the 160,609,436 gallons of motor gasoline that the firm purchased during (a) the portion of the consent order period prior to November 1, 1973, and (b) the period after April 1, 1975, during which the firm had banked costs at least equal to its volumetric share. The total refund approved in this Decision is $502,868, representing $245,090 in principal and $257,778 in accrued interest.

Getty Oil Company/Union Oil Co. of Maine, 10/18/88; RF265–1319

The DOE issued a Decision and Order concerning an Application for Refund filed by a reseller of No. 2 heating oil in the Getty Oil Company special refund proceeding. The applicant documented purchases of 12,993,904 gallons of No. 2 heating oil from Getty and elected to limit its claim on the basis of the level-of-distribution presumption of injury methodology. The total refund approved in this Decision is $20,381, representing $9,914 in principal and $10,467 in accrued interest.

Getty Oil Company/Yutan Oil Company, 10/20/88; RF265–2705

The DOE issued a Decision and Order concerning an Application for Refund filed by a retailer of motor gasoline in the Getty Oil Company special refund proceeding. The applicant documented purchases of Getty motor gasoline which would form the basis for a refund of less than $5,000 and therefore was presumed to have been injured. The total refund approved in this Decision is $2,660, representing $1,294 in principal and $1,366 in accrued interest.

Gulf Oil Company/Buckley & Scott, Inc., et al., 10/18/88; RF300–1102, et al.

The DOE issued a Decision and Order concerning six Applications for Refund filed in the Gulf Oil Company special refund proceeding. Each of the Applicants claimed a refund of more than $5,000 and elected to have their claims evaluated under the 40 percent injury presumption. Therefore, each applicant is eligible to receive a refund equal to 40 percent of its allocable share or $5,000, whichever is greater (excluding interest). The sum of the refunds granted in this Decision, including accrued interest, is $58,517.

Gulf Oil Company/Frank W. Hinson, et al., 10/18/88; RF300–1315, et al.

The DOE issued a Decision and Order concerning 50 Applications for Refund filed in the Gulf Oil Company special refund proceeding. Each of the applicants documented the volume of their Gulf purchases and were either end-users or resellers and retailers seeking refunds of less than $5,000. The sum of the refund granted in this Decision, including accrued interest, is $83,932.

Gulf Oil Company/Michael A. Galati, et al., 10/20/88; RF300–1203, et al.

The DOE issued a Decision and Order concerning 48 Applications for Refund filed in the Gulf Oil Company special refund proceeding. Each of the Applicants requested a refund of less than $5,000 and are therefore eligible to receive a small claims refund without providing a detailed demonstration of injury. The sum of the refund granted in this Decision, including accrued interest, is $73,509.

Gulf Oil Company/Robert Isom, et al., 10/18/88; RF300–1104, et al.

The DOE issued a Decision and Order concerning 30 Applications for Refund filed in the Gulf Oil Company special refund proceeding. Each of the Applicants documented Gulf purchases during the consent order period which would support refunds of $5,000 or less. Therefore, under the small claims presumption, each applicant was presumed to have been injured and eligible for a small claims refund. The sum of the refunds granted in this Decision, including accrued interest, is $47,869.

Gulf Oil Company/Ronnie's Cateret Gulf, Inc., et al., 10/17/88; RF300–1372, et al.

The DOE issued a Decision and Order concerning 25 Applications for Refund filed in the Gulf Oil Company special refund proceeding. Each applicant documented its Gulf purchases and was either an end-user or a reseller requesting a refund of less than $5,000. The sum of the refunds granted in this Decision, including accrued interest, is $42,181.

Gulf Oil Company/William George Co., et al., 10/17/88; RF300–1201, et al.

The DOE issued a Decision and Order concerning 23 Applications for Refund filed in the Gulf Oil Company special refund proceeding. Each Applicant documented its Gulf purchases, claimed a refund of less than $5,000 and was therefore presumed to have been injured and entitled to a refund. The sum of the refunds granted in this Decision, including accrued interest, is $22,525.

Mobil Oil Corporation/Farmers Union Central Exchange, Inc., 10/17/88; RR225–26, RR225–27, RR225–28, and RR225–29

The OHA issued a Decision and Order granting in part a Motion for Reconsideration filed by Farmers Union Central Exchange, Inc. (Cenex) from a decision rejecting its claim for a refund based upon purchases of Pacific Supply Cooperatives, an entity acquired by Cenex after the Mobil Consent Order period. Cenex had claimed that: (i) it acquired Pacific Supply Cooperatives' right to receive the Mobil refund when it purchased some of that firm's assets in 1977; and (ii) its corporate by-laws prohibited Cenex from complying with OHA's prior order to direct part of the refund to current Cenex members who were members of Pacific before 1977. The OHA reaffirmed its prior holding that a sale of assets does not constitute a transfer of rights to Subpart V refunds unless the underlying sales agreement specifically includes the rights to refunds among those assets being transferred. Furthermore, OHA did not accept Cenex's contention that its by-laws barred the refund to former Pacific members. Nevertheless, Cenex was ordered to return the portion of the Mobil refund earmarked for Pacific and to provide OHA with the names, addresses and purchase volumes of all current Cenex members who had been Pacific members during the control period so DOE could make those refunds directly.

Petrolane-Lomita Gasoline Co./ International Drilling & Energy Corp., 10/20/88; RF208–14

International Drilling & Energy Corporation (IDEC) filed an Application for Refund from consent order funds made available by Petrolane-Lomita Gasoline Company. In its application, IDEC alleged that Petrolane violated DOE allocation regulations by failing to supply IDEC with the volumes of propane that it was entitled to receive during the period August 4, 1975 through January 1981. IDEC also requested a refund based on the volumes of propane that another firm, Lemens Company, was entitled to receive from Petrolane during the period August 19, 1973, through August 3, 1975. IDEC claimed that because it purchased some of Lemens assets in 1978, it succeeded to the right to receive Lemens' base period allocation of propane from Petrolane and therefore also acquired the right to any refund related to Petrolane's alleged allocation violations in supplying Lemen's. In considering the IDEC application, the DOE found first that under the applicable allocation regulations, IDEC could not succeed to Lemens' base period allocation of propane from Petrolane simply by virtue of purchasing some of Lemens' assets. The DOE concluded that since IDEC had not established that it had a supplier/purchaser relationship with Petrolane, it was not entitled to a refund for alleged violations by Petrolane pertaining to Lemens' propane allocation. The DOE found that for the period August 4, 1975 through January 27, 1981, IDEC had established a supplier/purchaser relationship with Petrolane. However, the DOE determined that since IDEC had failed to show that it filed a contemporaneous complaint alleging the allocation violations, it had not met the standards established for receiving a refund on this basis. Accordingly, the IDEC refund application was denied.

Standard Oil Co. (Indiana)/Maryland, et al., 10/20/88; RQ251–482, et al.

The DOE issued a Decision and Order approving a Motion for Modification and a second-stage refund application submitted by the State of Maryland in the Standard Oil Co. (Indiana), National Helium Corp., Coline Gasoline Corp., and Perry Gas Processors, Inc., special refund proceeding. Maryland requested the use of its allotted share of *Amoco II* funds, which amount to $714,669 ($618,761 in principal plus $95,908 in interest), to fund a homeless shelter energy grant program and an Energy Bank expansion program. Maryland also requested permission to modify its use of *National Helium, Coline,* and *Perry Gas* funds previously approved in *National Helium Corp./Maryland,* 13 DOE ¶ 85,385 (1986) and *National Helium Corp./Maryland,* 15 DOE ¶ 85,148 (1986). Specifically, Maryland requested the use of $141,258 of those funds in three programs, a ridesharing service program, a ridesharing and transit service program, and a shuttle bus service program. After reviewing the State's submissions, the DOE found that the homeless shelter energy grant program, the Energy Bank expansion program, the ridesharing service program and the ridesharing and transit service program to be restitutionary and thus approved those programs. However, DOE found that the shuttle bus program could not be approved since the State had not convincingly demonstrated the need for such a program nor shown that the program could not be implemented with known funding.

Standard Oil Co. (Indiana)/Nebraska, 10/19/88; RM21–124, RM251–125

The DOE issued a Decision and Order approving a Motion for Modification and a second-stage refund application submitted by the State of Nebraska in the Standard Oil Co. (*Indiana*) special refund proceeding. *Standard Oil Co. (Indiana),* 11 DOE ¶ 85,185 (1983) (*Amoco I*) and *Standard Oil Co. (Indiana),* 14 DOE ¶ 85,161 (1986) (*Amoco II*). Nebraska requested the use of $87,504, plus $3,702 in accrued interest, for a statewide energy management education program. Of the $87,504 requested, $15,753 was previosuly approved in *Standard Oil Co. (Indiana)/Nebraska,* 12 DOE ¶ 85.115 (1984) (*Nebraska I*) and $69,501 remained from funds approved in *Standard Oil Co. (Indiana)/Nebraska, 15 DOE ¶ 85,043 (1986) (Nebraska III*). The State also requested $2,250 for administrative expenses. The DOE determined that the proposed program would provide energy-related restitution to the State's business and industrial sectors as well as the citizens of Nebraska injured by crude oil overcharges. Therefore, DOE authorized the use of previously approved *Amoco I* and *Amoco II* funds for this plan.

Standard Oil Co. (Indiana) Standard Oil Co. (Indiana)/Coline Gasoline Corp./National Helium Corp./ Belridge Oil Co./Perry Gas Processors, Inc./New Mexico, 10/ 18/88; RQ21–472, RQ251–473, RQ2–474, RQ3–475, RQ8–476, RQ184–477

The DOE issued a Decision and Order approving the second-stage refund application filed by the State of New Mexico in the Standard Oil Co. (Indiana), Coline Gasoline Corp., National Helium Corp., Belridge Oil Co., and Perry Gas processors, Inc. special refund proceedings. New Mexico rquested permission to use $205,424 in second-stage refund monies for the promotion of ridesharing programs. The OHA found that these programs would provide restitution to injured consumers of petroleum products. Accordingly, the DOE granted New Mexico $205,424.

Standard Oil Co. (Indiana)/Washington National Helium Corp./Washington Standard Oil Co. (Indiana)/ Staqndard Oil Co. (Indiana)/ Perry Gas Processors, Inc., Inc./Palo Pinto Oil & Gas/Washington Sate Indian Tribes, 10/17/88; RM21–119, RM3–120, RQ21–465, RQ251–466, RQ5–467, RQ183–468

The DOE issued a Decision and Order granting a Motion for Modification filed by the State of Washington in the Standard Oil (Indiana) (Amoco I) and the National Helium Corp. (National Helium) second-stage refund proceedings. Washington also filed a second stage-refund application on behalf of the Washington State Indian Tribes in the Amoco I, Standard Oil Co. (Indiana) (Amoco II), Perry Gas Processors, Inc. (Perry Gas), and Palo Pinto Oil & Gas (Palo Pinto) proceedings. In its application, Washington requested permission to use its previously approved Amoco II and National Helium monies for four new programs: a program to provide cash rebates to owners of oil heated homes who install insulation and increase furnace efficiency; a plan to publish and distribute energy conservation educational materials; a program to provide supplemental training to Energy Code officials; and a program to pay an energy consultant to aid new building owners to make their buildings more energy efficient. The Washington State Indian Tribes proposes to spend $6,459 from the Amoco I, Amoco II, and Palo escrow accounts to weatherize the homes of low-income Indians. The DOE found that each of these progams would either promote energy conservation or reduce energy costs or both. Accordingly, Washington receives permission to modify its previously approved plans and to implement the weatherization progam for the Washington State Indian Tribes.

Suburban Propane Gas Corporation Colonial Metals Company, 10/17/ 88; RF299–49

The DOE issued a Decision and Order granting an Application for Refund filed by Colonial Metals Company, in the Suburban Propane Gas Corporation

special refund proceeding. According to the procedures set forth in *Suburban Propane Gas Corporation*, 16 DOE ¶ 85,382 (1987), Colonial was found to be eligible for a refund based on the volume of commercial butane it purchased from Suburban. The total refund approved in this Decision was $600, representing $511 in principal plus $89 in accrued interest.

Suburban Propane Gas Corporation/ Consolidated Rail Corporation, 10/ 20/88; RF299–51

The DOE issued a Decision and Order granting an Application for Refund filed by Consolidated Rail Corporation, a purchaser of refined petroleum products, in the Suburban Propane Gas Corporation special refund proceeding. According to the procedures set forth in *Suburban Propane Gas Corporation*, 16 DOE ¶ 85,382 (1987), Conrail was found to be eligible for a refund based on the volume of propane it purchased from Suburban. The total refund approved in this Decision was $3,622, representing $3,069 in principal plus $553 in accrued interest.

Suburban Propane Gas Corporation/ Permian Petroleum Company, 10/ 17/88; RF299–43

The DOE issued a Decision and Order granting an Application for Refund filed by Permian Petroleum Company, in the Suburban Propane Gas Corporation special refund proceeding. According to the procedures set forth in *Suburban Propane Gas Corporation* 16 DOE ¶ 85,382 (1987), Permian was found to be eligible for a refund based on the volume of commercial butane it purchased from Suburban. The total refund approved in this Decision was $14,447, representing $12,305 in principal, plus $2,142 in accrued interest.

Tucson Unified School District, U.S.D. #341, West Ottawa Public Schools, 10/17/88; RF272–11712, RF272–11716, RF272–11727

The DOE issued a Decision and Order granting three Applications for Refund from crude oil overcharge funds based on the Applicants' purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant is a public school district that used petroleum products for its transportation program. The total refunds granted in this Decision, including accrued interest, are $1,147.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of applicants	Total refund
Kathryn A. Smith, et al.	RF272–30201	10/20/88	12	$1,310
Pepsi Cola Bottling Co.	RF272–50	10/20/88	23	2,607
Rensselaer County Hgwy. Dept. et al.	RF272–9987	10/19/88	186	17,883

Dismissals

The following submissions were dismissed:

Name	Case no.
Bailey Station Gulf	RF300–7724
BFI	RF300–7028
California Highway Patrol	RF272–8726
Circle K. Corporation	RF300–8465
	RF300–9252
City of Griffin	RF272–69050
Cox Trailer, Inc	RF300–9866
David Warner Bunch	RF272–74016
Dick's Exxon	RF307–256
El Toro Grocery	RF307–2935
Farmer	RF300–8443
Ficdor Farms	RF300–9841
Francis Sales and Service	RF265–2766
George's Exxon	RF307–1089
Jack L. Becker	RF304–59
Johnie Johnson Exxon	RF307–1032
Independent Oil Company	RF310–8
Iredell Oil Company	RF300–9940
Manatee Community College	RF272–74533
Manhattan College	RF272–58465
Mays R.M. Oil Co. et al	RF310–5
Michael Oil Company	RF300–7655
	RF300–7662
	RF300–7663
	RF300–7664
	RF300–7665
Mooney's Gulf Service	RF300–10464
NYC Health & Hospital Corp	RF272–64990
Ohio Dept. of Transportation	RF272–64022
Ozark Border Electric Cooperative.	RF272–55113
Pennsylvania Power & Light Company.	RF300–8903
Penokee Farmers Union Coop	RF272–59706
Quivira Mining Company	RF272–13093
SAC Osage Electric Cooperative	RF272–48771
Safeway Stores, Inc	RF272–69183
Skylake Gulf	RF300–7718
Stevens Aviation	RF300–8518
	RF300–9861
Stones Tire & Supply	RF300–2434
Swords Service Station	RF300–7312
Teds APCO Service et al	RF310–15
University Gulf	RF300–9895
W.A. Norman et al	RF300–8984
Willis L. Miller, Jr	RF307–4775

Appendix

Case number	Name of applicant
RF300–8984	W.A. Norman
RF300–8985	W.D. Brooks, Inc.
RF300–8986	W.E. Ingram
RF300–8988	William C. Ebert
RF300–8989	Younce Gulf Service, Inc.
RF300–8990	Young Lobster Pound
RF300–8992	State of North Carolina
RF300–8994	St. Johnsbury Trucking Co.
RF300–8995	Smiser Freight Service
RF300–8996	Smiser Freight Service
RF300–8997	Smiser Freight Service
RF300–8998	U.S. Air, Inc.
RF300–8999	Schrof Oil Company
RF300–9000	Robert Witthuhn
RF300–9001	Vern's E-Z-Go Station
RF300–9002	Reynold's Petroleum Sales
RF300–9003	Republic Airlines, Inc.
RF300–9004	Red's Self Serve
RF300–9006	R.I. Wright
RF300–9007	Pawlak's Gulf Service
RF300–9008	Paul's Clawson Auto Wash
RF300–9009	Patrick Gedig
RF300–9010	Patricia Malek
RF300–9012	Ott's Gulf Service
RF300–9013	Nancy Simmons
RF300–9014	Northwest Airlines, Inc.
RF300–9015	Nancy B. Finch
RF300–9016	Morris Rosenthal
RF300–9018	Metro-Dade Cnty Board
RF300–9020	Medlock Gulf
RF300–9021	Manchester's Gulf
RF300–9023	M.W. McCurdy & Company
RF300–9024	M. Morneault's Gulf, Inc.
RF300–9025	Lodi Truck Service, Inc.
RF300–9026	Lewis Brothers
RF300–9027	Kenneth Veselak
RF300–9028	Keith's Gulf Service
RF300–9029	Junior's Gulf Service
RF300–9030	John Mooney
RF300–9031	John L. Baltz
RF300–9032	John D. Glover & Sons
RF300–9033	Jimmie Ballard
RF300–9035	James Sabel
RF300–9036	Jack P. Tyke Gulf
RF300–9037	J.V. Gander Distributor
RF300–9038	J.P. Tyke Gulf
RF300–9039	ITT Continental Baking Co.
RF300–9041	Horn's Motor Express, Inc.
RF300–9044	H.S. Shuler Co. Dist.
RF300–9045	Herbert Green
RF300–9046	Greenwood Petroleum
RF300–9047	Gray Beitzel
RF300–9048	Franklin Road Gulf
RF300–9051	East Race Gulf
RF300–9052	E.R. Rogers

Case number	Name of applicant
RF300-9054	David R. Hassa
RF300-9055	Cranford's Gulf Service
RF300-9056	Coy W. Nutt's Southside
RF300-9057	Container Transport, Inc.
RF300-9059	Colonial Tank Transport
RF300-9061	Byron McCrary
RF300-9062	Burgess & Cook
RF300-9063	Brecksville Auto Wash
RF300-9064	Blue Bell Gulf
RF300-9066	Arnold P. Freedman
RF300-9067	Antley's Grocery
RF300-9068	A.L. Cook & Son Gulf
RF300-9069	A.N. Rusche Distributing
RF300-9432	A.N. Rusche Distributing
RF300-9433	A.L. Cook & Son Gulf
RF300-9434	Antley's Grocery
RF300-9436	Arnold P. Freedman
RF300-9437	Blue Bell Gulf
RF300-9438	Brecksville Auto Wash
RF300-9439	Burgess & Cook
RF300-9440	Byron McCrary
RF300-9442	Colonial Tank Transport
RF300-9444	Container Transport, Inc.
RF300-9445	Coy W. Nutt's Southside
RF300-9446	Cranford's Gulf Service
RF300-9447	David R. Hassa
RF300-9449	E.R. Rogers
RF300-9450	East Race Gulf
RF300-9453	Franklin Road Gulf
RF300-9454	Gary Beitzel
RF300-9455	Greenwood Petroleum
RF300-9456	H.S. Shuler Co. Dist.
RF300-9457	Herbert Green
RF300-9460	Horn's Motor Express, Inc.
RF300-9462	ITT Continental Baking Co.
RF300-9463	J.P. Tyke Gulf
RF300-9464	J.V. Gander Distributor
RF300-9465	Jack P. Tyke Gulf
RF300-9467	James Sabel
RF300-9468	Jimmie Ballard
RF300-9472	Junior's Gulf Service
RF300-9474	Kenneth Veselak
RF300-9477	Lodi Truck Service, Inc.
RF300-9479	M.W. McCurdy & Company
RF300-9489	Northwest Airlines, Inc.
RF300-9493	Patrick Gedig
RF300-9500	Republic Airlines, Inc.
RF300-9508	St. Johnsbury Trucking Co.
RF300-9510	State of North Carolina
RF300-9512	U.S. Air, Inc.
RF300-9515	W.D. Brooks, Inc.
RF300-10032	Braxton's Gulf

Dismissals

RF310-5	Total/Mays R.M. Oil Company
RF310-15	Total/Teds APCO Service
RF310-20	Total/South Grant APCO
RF310-25	Total/Oliver APCO Service Station
RF310-29	Total/Al and Terrys APCO
RF310-31	Total/Firestone Store
RF310-34	Total/Georges Service Station
RF310-36	Total/Ed Weise APCO
RF310-37	Total/AL & Terry's APCO
RF310-38	Total/Moris Oil Company
RF310-51	Total/Altman Service Station
RF310-52	Total/Clares Total
RF310-57	Total/Dales Total Service
RF310-72	Total/Rays APCO
RF310-77	Total/Rons Sport Shoppe
RF310-79	Total/Pappys Part Store
RF310-81	Total/Quality Oil Company

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commerically published loose leaf reporter system.

Dated: February 10, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89-3648 Filed 2-16-89; 8:45 am]

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Issuance of Decisions and Orders; Week of December 5 through December 9, 1988

During the week of December 5 through 9, 1988, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Implementation of Special Refund Procedures

Crown Central Petroleum Corp., 12/5/88; KEF-0044

The DOE issued a Decision and Order implementing Special Refund Procedures for the distribution of $8,300,000 (plus accrued interest) received pursuant to a Consent Order entered into by the Crown Central Petroleum Corporation and the DOE on April 29, 1986. The DOE determined that the consent order funds should be distributed to certain purchasers of covered refined petroleum products from Crown during the period August 20, 1973 through January 27, 1981. The Decision established presumptions of injury applicable to certain classes of purchasers. In addition, specific information to be included in all Applications for Refund is set forth in the Decision.

Supplemental Order

Herbert L. Tanner P.A.D., Inc., 12/8/88; KFX-0059

The DOE issued a Supplemental Order in which all OHA personnel who participated in the initial investigation of P.A.D., Inc., and Herbert L. Tanner, including OHA Director George B. Breznay, recused themselves from the P.A.D., Inc./Tanner disciplinary proceeding. The OHA Director delegated authority to conduct the P.A.D., Inc. and Tanner Show Cause Proceeding to OHA Assistant Director Roger Klurfeld, who had no previous involvement with the P.A.D., Inc./Tanner disciplinary proceeding.

Refund Applications

Aminoil U.S.A., Inc./Fred G. McKenzie Company, 12/7/88; RF139-159

The DOE issued a Decision and Order concerning an Application for Refund filed by Fred G. McKenzie (McKenzie) in the Aminoil U.S.A., Inc., special refund proceeding. Based upon McKenzie's initial submission, it appeared that the firm had been a spot purchaser. The applicant was notified of this preliminary determination, but was unable to rebut the spot purchaser presumption or otherwise establish that it was not, in fact, a spot purchaser. After examining the firm's application and supporting documentation, the DOE concluded that McKenzie's application should be denied.

Atlantic Richfield Company/Blu-Gas Service, Inc., et al., 12/7/88; RF304-615, et al.

The DOE issued a Decision and Order concerning nineteen applications for refund filed in the Atlantic Richfield Company special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were end-users or resellers/retailers requesting refunds of $5,000 or less. Therefore, each applicant was presumed injured. The refunds granted in this decision totalled $33,776, including $7,076 in accrued interest.

Atlantic Richfield Company/John D. Yanarella, et al., 12/7/88; RF304-1469, et al.

The DOE issued a Decision and Order concerning nine applications for refund filed in the Atlantic Richfield Company special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were end-users or reseller/retailers requesting refunds of less than $5,000. Therefore, each applicant was presumed injured. The refunds granted in this decision totalled $9,719 including $2,037 in accrued interest.

Buildex, Inc., et al., 12/5/88; RF272-6677, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to nine applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used various actual records and/or conservative estimates to report their gallonage claims. Each applicant was an end-user of the products it claimed and was

therefore presumed by the DOE to be injured. The sum of the refunds granted in this Decision is $1,729. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Cole Brothers High Acres Sanitary Landfill, 12/5/88; RF272-31521, RF272-33394.

The DOE issued a Decision and Order denying a refund of Cole Brothers and High Acres Sanitary Landfill in the Subpart V crude oil refund proceeding. The DOE found that the parent firms to each of these companies has received refunds from the Surface Transporter Escrow Account and waived all rights to a refund for these firms in the Subpart V proceeding. Accordingly, these applications were denied.

Duane Hemmah Robert Anderson John Sullivan, 12/6/88; RC272-2, RC272-3, and RC272-4

The DOE issued a Supplemental Decision and Order to 3 claimants, Duane Hemmah (RF272-33686), Robert Anderson (RF272-33670), and John Sullivan (RF272-33545) who were granted refunds in *Glen Tofsrud* et al., 18 DOE ¶ xx, Case Nos. RF272-33510 *et al.* (November 18, 1988). Each of these claimants had previously been granted equal refunds based on the same gallonage in other Decisions. Accordingly, the DOE rescinded the duplicate refunds granted in *Glen Tofsrud.*

Exxon Corp./Bypass Exxon et al., 12/7/88; RF307-304 et al.

The DOE issued a Decision and Order granting refunds to 49 applicants from a consent order fund obtained from Exxon Corp. Because the Applicants claimed refunds of less than $5,000 each, they were not required to demonstrate that they were injured by Exxon's alleged overcharges. Each Applicant documented its purchase volume of Exxon products, and submitted other information sufficient to demonstrate its eligibility for a refund. The total of the refunds granted in this Decision is $40,163 ($35,133 principal and $5,030 interest).

Exxon Corporation/Forrest City Exxon et al., 12/9/88; RF307-4600 et al.

The DOE issued a Decision and Order concerning 56 Applications for Refund filed in the Exxon Corportation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE found that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $29,210 ($25,553 principal and $3,657 interest).

Exxon Corporation/Jackson Center Exxon, et al., 12/7/88; RF307-3369 et al.

The DOE issued a Decision and Order concerning 49 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $39,489 ($34,546 principal plus $4,943 interest).

Exxon Corporation/Jenney Oil Co. et al., 2/7/88; RF307-1895 et al.

The DOE issued a Decision and Order concerning an Application for Refund filed by Jenney Oil Company (Jenny) in the Exxon Corporation special refund proceeding. The firm purchased directly from Exxon and was a reseller of Exxon products. The firm's allocable share exceeded $5,000. In accordance with the procedures established in the Exxon proceeding, Jenney elected to receive as its refund the larger of $5,000 or 40 percent of its allocable share up to $50,000. In the present case $5,000 is larger. Accordingly, the refund granted in this Decision is $5,716 ($5,000 principal plus $716 interest).

Exxon Corp./Kustra's Filling Station et al., 12/6/88; RF307-3417 et al.

The DOE issued a Decision and Order granting refunds to 50 applicants from a consent order fund obtained from Exxon Corp. Because the Applicants claimed refunds of less than $5,000 each, they were not required to demonstrate that they were injured by Exxon's alleged overcharges. Each Applicant documented its purchase volume of Exxon products, and submitted other information sufficient to demonstrate its eligibility for a refund. The total of the refunds granted in this Decision is $34,287 ($29,995 principal and $4,292 interest).

Exxon Corporation/Samuel Gerdano et al., 12/6/88; RF307-3196 et al.

The DOE issued a Decision and Order concerning 48 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant is eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $39,789 ($34,809 principal plus $4,980 interest).

Exxon Corporation/West Oil Co. et al., 12/5/88; RF307-1100 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by West Oil Company and three other applicants in the Exxon Corporation special refund proceeding. Each firm purchased directly from Exxon and was a reseller of Exxon products. Each firm's allocable share exceeded $5,000. Instead of making an injury showing to receive its full allocable share, each applicant chose to receive the $5,000 threshold or 40% of its allocable share, whichever was greater. In this case, each applicant received $5,716 (5,000 principal plus $716 interest). The total amount of the refunds granted in this Decision is $22,864 ($20,000 principal and $2,864 interest).

G&T Trucking et al., 12/9/88; RF272-31784 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 12 applicants based on their respective purchases of refined petroleum products during the period August 19, 1983, through January 27, 1981. Each applicant was a member of the trucking industry and used petroleum products in the fueling of its fleet, and each determined its volume claim either by consulting actual purchase records or by reasonably estimating its consumption. Each applicant was an end-user of the products it claimed and was therefore presumed by the DOE to have been injured. The sum of the refunds granted in this decision is $4,540. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Gallup Construction Co., Inc., et al., 12/5/88; RF272-30374 et al.

The DOE issued a Decision and Order approving Applications for Refund submitted by twenty-three claimants for crude oil overcharge funds collected by the DOE. The OHA found that the claimants, all end-users, met the eligibility requirements by supplying their actual or estimated purchase volume information for their commercial or agricultural activities. OHA granted the claimants a total refund of $2,090 based on their purchases of 10,458,609 gallons of refined petroleum products.

Getty Oil Company/Dan's Getty, 12/05/88; RF265-912, RF265-913

The DOE issued a Decision and Order concerning two Applications for Refund filed by a retailer of motor gasoline and diesel fuel covered by a Consent Order that the DOE entered into with Getty Oil Company The applicant submitted information indicating the volume of its Getty gasoline and diesel purchases and was eligible for a refund below the $5,000 small claims threshold. The total refund approved in this Decision is $4,106, representing $1,993 in principal and $2,113 in accrued interest.

Getty Oil Company/Ortman's Gas-Mart, 12/5/88; RF265–2743

Ortman's Gas-Mart (Ortman's) filed an Application for Refund seeking a portion of the fund obtained by the DOE through a consent order entered into with the Getty Oil Company. Ortman's documented the volume of Getty motor gasoline which it purchased during the consent order period. Under the procedures outlined in *Getty Oil Company* 15 DOE ¶ 85,064 (1968), the applicant was eligible for a refund below the small claims threshold of $5,000. The total amount of this refund is $3,775, representing $1,832 in principal and $1,943 in accrued interest.

Gulf Oil Corporation/Buh, Inc., et al., 12/6/88; RF300–721 et al.

The DOE issued a Decision and Order concerning six Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, is $38,436.

Gulf Oil Corporation/County of Orangeburg, et al., 12/07/88; RF300–5600 et al.

The DOE issued a Decision and Order concerning 85 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each applicage tion was approved using a presumption of injury standard. The sum of the refunds granted in this Decision is $200,577.

Gulf Oil Corporation/Donald Knotts, et al., 12/8/88; RF300–668 et al.

The DOE issued a Decision and Order concerning 11 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes both principal and interest, is $70,466.

Gulf Oil Corporation/Fredonia Valley Quarries et al., 12/7/88; RF300–4556 et al.

The DOE issued a Decision and Order concerning 149 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes both principal and interest, is $217,433.

Gulf Oil Corporation/Hindle & Simonian, et al., 12/6/88; RF300–3300, et al.

The DOE issued a Decision and Order concerning 97 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $152,164.

Gulf Oil Corporation/Keigans Service Station, et al., 12/08/88; RF300–5416, et al.

The DOE issued a Decision and Order concerning Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $372,828.

Gulf Oil Corporation/Lyle's Gulf et al., 12/9/88; RF300–6400, et al.

The DOE issued a Decision and Order concerning 44 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. A number of the applicants had erroneously marked on their Gulf refund application that they were Gulf consignees. Telephone conversations with these applicants revealed that they were not consignees as that term was used in *Gulf Oil Corporation*, 16 DOE ¶ 85,381 (1987). Accordingly, the DOE granted these applicants a refund for their full allocable share. The sum of the refunds granted in this Decision is $89,738.

Gulf Oil Corporation/Maxwell's Gulf Service, et al., 12/6/88; RF300–3400, et al.

The DOE issued a Decision and Order concerning 70 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $115,134.

Gulf Oil Corporation/Thomas & Howard Co., et al., 12/8/88; RF300–900, et al.

The DOE issued a Decision and Order concerning 78 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $90,937.

Gulf Oil Corporation/Town of Pembroke, et al., 12/6/88 ; RF300–3203, et al.

The DOE issued a Decision and Order granting 14 Applications for Refund in the Gulf Oil Corporation refund proceeding. The 14 firms were end-users during the refund period and each Applicant was granted a refund under the small claims presumption of injury. The applicants were approved a total refund of $32,157.

Howard University, 12/9/88; RF272–2366

The DOE issued a Decision granting Howard University (Howard) a Subpart V crude oil refund. Howard demonstrated that it was an end-user of the petroleum products that form the basis of its refund. Howard also provided invoices from its fuel oil purchases to substantiate the gallonage figure it claims. Because of the end-user presumption of injury, Howard was not required to submit a detailed demonstration of injury and is eligible to receive its full allocable share. Accordingly, Howard was granted a refund of $7,921, which is based on its purchases of 39,604,984 gallons of refined petroleum products. Howard will automatically be granted additional refunds as additional crude oil refund monies become available.

L.A. Dreyfus Company, et al., 12/7/88; RF272–6678, et al.

The DOE issued a Decision granting refunds from crude oil overcharge funds to five applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used various actual records and/or conservative estimates to support their gallonage claims. Each applicant was an end-user of the products it claimed and was therefore presumed by the DOE to have been injured. The sum of the refunds granted in this Decision is $5,579. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Mistletoe Express Service University of Cincinnati Hospital Cedar Chemical Corp., 12/7/88; RF272–24027, RF272–24032, RF272–25212

The DOE issued a Decision and Order granting Applications for Refund filed by three purchasers of refined petroleum products in the Subpart V Crude Oil

refund proceeding. Mistletoe Express Service was found to be eligible for a refund based on an estimated purchase volume of 18,043,557 gallons. The University of Cincinnati Hospital's eligible purchase volume was 18,131,076 gallons, and Cedar Chemical Corporation's was 13,981,940 gallons. The refunds approved in this Decision were $3,608 for Mistletoe, $3,626 for Cincinnati, and $2,796 for Cedar.

Mitchell Gardens #2 Co-op Corp. et al., 12/6/88; RF272–12505 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to nine applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant was found to be an end-user of the petroleum products it claimed and was therefore presumed injured. Each applicant documented its claim either by actual purchase records or by estimating its consumption. The sum of the refunds granted in this Decision is $1,530. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Mobil Oil Corporation/Atchison, Topeka and Santa Fe Railroad Company, 12/5/88; RF225–5301

The DOE issued a Decision and Order concerning an Application for Refund filed by the Atchison, Topeka and Santa Fe Railroad Company (ATSF) in the Mobil Oil Corporation (Mobil) special refund proceeding. In its Application for Refund, ATSF claimed that it had been disproportionately overcharged by Mobil and attempted to show disproportionate injury in order to receive an above volumetric refund on the basis that it had been placed in the incorrect class of purchaser by Mobil.

In its Application, ATSF stated that upon the expiration of a January 2, 1973, contract with Mobil on January 1, 1974, Mobil transferred ATSF from the railroad class of purchaser, in which ATSF had been correctly placed, into its consumer class of purchaser. ATSF further asserted that the May 15, 1973, selling price for this class was substantially higher than the May 15, 1973, selling price of Mobil's railroad class of purchaser, and that in transferring ATSF into this class of purchaser Mobil violated the Mandatory Petroleum Price Regulations.

In considering ATSF's Application, the DOE found that ATSF had not submitted any credible evidence to show that Mobil had placed it in the incorrect class of purchaser. Without such information, the DOE was unable to accept ATSF's class of purchaser violation claim, and its above-volumetric refund claim was therefore denied. After a review of the documented information included in ATSF's Application, however, the DOE determined that the firm be granted a refund based upon the full volumetric refund factor established in the Mobil proceeding. The total refund granted to ATSF in this Decision was $66,738, representing $53,337 principal and $13,401 in accrued interest.

Sauvage Gas Company/Vanguard Petroleum Corp. Liquid Petroleum Corp. NGL Supply, Inc., 12/8/88; RF308–2, RF308–3, RF308–4

The DOE issued a Decision and Order concerning applications for refund filed by Vanguard Petroleum Corporation, Liquid Petroleum Corporation and NGL Supply, Inc., in the Sauvage Gas Company refund proceeding. All three applicants unsuccessfully attempted to show that they were not spot purchasers of Sauvage petroleum products. In addition, the DOE determined that the firms failed to rebut the presumption that spot purchasers were not injured by Sauvage's alleged violations. Accordingly, the three applications were denied.

Waste Management of Ohio, 12/7/88; RC272–12

The DOE issued a Decision concerning five Applications for Refund in the Subpart V crude oil refund proceedings. *Waste Management of Ohio, et al.* 18 DOE ¶ ____ (Case Nos. RF272–1962, *et al.*) (October 7, 1988). It has come to our attention that one of the applicants in that Decision, Waste Management of Ohio (Case No. RF272–1962) (Waste) should not have been granted a refund. Waste is affiliated with Waste Management of North America (WMNA), a company which previously received a refund from the Surface Transporters Escrow. WMNA signed a waiver and release which waived its right and its affiliates rights to any future crude oil refund monies, including the OHA's crude oil Subpart V proceedings. Therefore, Waste is ineligible to participate in the OHA's crude oil Subpart V proceedings and its crude oil refund of $101 must be recinded. The DOE ordered that Waste return the $101 granted to it in the October 7, 1988 Decision.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of applicants	Refund
Christensen Ranch et al	RF272-10581	12/9/88	129	$46,390
Don Bridges et al	RF272-22011	12/8/88	153	52,803
Lauderdale Farm, Inc. et al	RF272-32101	12/9/88	44	8,023
The Frog, Switch, & Manufacturing Co. et al	RF272-13598	12/7/88	24	14,140

Dismissals

The following submissions were dismissed:

Name	Case No.
Bethany Service Center	RF307-206
Bill's MP&G	RF304-34
Carl & Dot Enterprises	RF304-81
Carmona's ARCO Service	RF304-3406
Chaney & Son	RF307-233
City of Revere	RF304-4864

—Continued

Name	Case No.
Clintondale Fuel Co	RF265-1370
Dale Gas and Oil Co., Inc	RF265-376
	RF265-377
	RF265-400
Dan's Getty	RF265-115
Dave's ARCO, Inc	RF304-3498
Entrada ARCO	RF304-1374
Franlkin Hill's Exxon	RF307-222
Gaeta Enterprises, Inc	RF304-515
Gerber's ARCO	RF304-161
Holt Peterson	RF304-2352

—Continued

Name	Case No.
Intaloc Aluminum Corp	RF304-701
Jack's ARCO	RF304-53
John's ARCO	RF304-3534
King Arthur ARCO	RF304-57
Luke's S. Hostetter, Inc	RF304-6416
Lutz Servicenter	RF307-6740
Mayton Brothers ARCO	RF304-584
McLean Trucking Company	RF300-9022
McNutt Service Station	RF304-3484
Miami Aviation Corporation	RF307-3218
Parkway ARCO	RF304-2226

—Continued

Name	Case No.
Ralph's Getty	RF265-794
Reese's Auto Sales, Inc.	RF304-3761
Reliable Gas Service	RF307-1048
Rice Hill ARCO	RF304-1568
T. H. Abbott	RF307-6292
The C&P Telephone Company of Virginia.	RF300-1997
Thornston's ARCO	RF304-3846
Ward's Gulf Service	RF300-10283
Westmore Fuel Company, Inc	RF307-3706

Copies of the full text of these decisions and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

February 10, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89-3849 Filed 2-16-89; 8:45 am]

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Office of Hearings and Appeals Issuance of Decisions and Orders; Week of December 26 through December 30, 1988

During the week of December 26 through December 30, 1988 the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

James R. Hutton, 12/30/88; KFA-0234

James R. Hutton filed an Appeal from a denial by the Assistant Manager for Administration of the Oak Ridge Operations Office (Oak Ridge) of the Department of Energy (DOE) of a Request for Information which he had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that Oak Ridge had properly withheld the requested employee award nominations at Oak Ridge pursuant to Exemption 5 of the FOIA. Accordingly, the Appeal was denied.

Implementation of Special Refund Proceedings

New York Petroleum, Inc., Chevron U.S.A. Inc., Patton Oil Company, Ladd Petroleum Corporation, 12/28/88; KFX-0052, KFX-0100, KFX-0107, and KEF-0112

The DOE issued a Decision and Order implementing procedures for the distribution of $7.2 million (plus accrued interest) in crude oil overcharge funds obtained from four firms pursuant to court approved settlements, adjudications or DOE consent orders. The DOE determined that the funds should be distributed in accordance with the Department's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges. Accordingly, 80 percent of the money in these cases was divided equally between the states and federal government. Twenty percent of the funds was reserved for direct restitution to injured parties submitting claims to the OHA under 10 CFR Part 205, Subpart V. The specific information to be included in the applications for refund and the standards by which Subpart V crude oil refund claims will be evaluated are set forth in the Decision. The Decision also includes a discussion of the presumption of injury for end-users. All applications must be submitted by October 31, 1989.

Refund Applications

Atlantic Richfield Company/City of Revere, et al., 12/29/88; RF304-477, et al.

The DOE issued a Decision and Order concerning twenty-five Applications for Refund filed by twenty-five claimants from a consent order fund made available by Atlantic Richfield Company. As resellers/retailers applying for small claims refunds and end users, these firms were presumed to have been injured. The DOE concluded that these firms should receive refunds totalling $43,192, representing $34,061 in principal and $9,131 in accrued interest.

Atlantic Richfield Company/Felger Bros., et al., 12/29/88; RF304-1144, et al.

The DOE issued a Decision and Order concerning five Applications for Refund filed by three claimants in the Atlantic Richfield Company special refund proceeding. All of the applicants were reseller/retailers that applied for small claims presumption refunds. In addition, each applicant documented the volume of its purchases from ARCO and, therefore, was presumed to have been injured and entitled to a refund. The DOE concluded that the applicant should receive a refund totalling $11,109, representing $8,761 in principal and $2,348 in accrued interest.

Atlantic Richfield Company/Herman Oil Company, Roy Barnes, 12/28/88; RF304-1159, RF304-1238

The DOE issued a Decision and Order concerning two Applications for Refund filed by Herman Oil Co. and Roy Barnes in the Atlantic Richfield Company (ARCO) special refund proceeding. The applications indicated that they were both consignee/agents of ARCO. Under the procedures for distributing ARCO funds, consignees are presumed not to have been injured by any alleged overcharges. Because the applications made no attempt to rebut this presumption, the DOE concluded that the firms were not injured, and denied their Applications for Refund.

Atlantic Richfield Company/Hiller ARCO, 12/28/88; RF304-3741

The DOE issued a decision concerning an application for refund filed in the Atlantic Richfield Company special refund proceeding by Herbert L. Tanner, president of P.A.D., Inc., on behalf of Darrel L. Smith, owner of Hiller ARCO. The DOE determined that Mr. Smith had filed an application in the ARCO proceeding on his own behalf and had not authorized the Tanner/P.A.D. filing. Therefore, the Tanner/P.A.D. application filed for Hiller ARCO on behalf of Mr. Smith was dismissed with prejudice.

Atlantic Richfield Company/Manis Auto Service et al., 12/28/88; RF304-460, et al.

The DOE issued a Decision and Order concerning four Applications for Refund filed by four claimants from a consent order fund made available by Atlantic Richfield Company. As resellers/retailers applying for small claim refunds, these firms were presumed to have been injured. The DOE concluded that these firms should receive refunds totalling $3,306, representing $2,608, in principal and $698 in accrued interest.

Copper Range Company, 12/29/88; RF272-11295, RD272-11295

The OHA granted a refund to the Copper Range Company, a copper producer that purchased refined petroleum products during the period August 19, 1973 through January 27, 1981. A group of thirty states and two territories of the United States filed a consolidated pleading objecting to and commenting on Copper's Refund Application. The states opposed the receipt of any refund by the applicant. The only evidence that the states

submitted was an affidavit by an economist stating that virtually every industry was able to pass through costs to its customers. OHA determined that the evidence offered by the states was insufficient to rebut the presumption of end-user injury and granted a refund. In addition, the States filed a Motion for Discovery which OHA denied.

Dorchester Oil Corp./Blackmore Oil Co., 12/30/88; RF253–41

The DOE issued a Decision and Order concerning an Application for Refund submitted by Blackmore Oil Co. in the Dorchester Oil Corporation special refund proceeding. Blackmore adequately established the amount of Dorchester product it purchased during the consent order period. Blackmore was not required to submit a detailed, demonstration of injury because its refund claim was less than the established $5,000 small claims threshold. Accordingly, Blackmore was granted a total of $4,697, representing $3,288 in principal and $1,409 in interest accrued on that principal.

Exxon Corporation/J.J. Bingham Exxon et al., 12/28/88; RF307–14 et al.

The DOE issued a Decision and Order concerning 8 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $5,340 ($4,643 principal plus $697 interest).

Exxon Corporation/Westmore Fuel Company, Inc., 12/28/88; RF307–7030 et al.

The DOE issued a Supplemental Decision and Order to Westmore Fuel Company, Inc. (Westmore) in the Exxon proceeding based on the refund the firm received in *Exxon Corp./Shark Hills Exxon*, 18 DOE ¶ 85,251 (1988). In that Decision the DOE granted Westmore (Case No. RF307–3706) a refund of $2,131 based on its purchases of refined petroleum products. However, through a computer search for duplicates, the OHA found that Westmore had previously been granted a refund in the Exxon proceeding under Case No. RF307–759 based on the exact same purchase volumes. Accordingly the duplicate refund that was inadvertently granted to Westmore was rescinded.

Gulf Oil Corporation/Anthony Cafarella, et al., 12/29/88; RF300–607, et al.

The DOE issued a Decision and Order concerning 60 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each applicant was approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes both principal and interest, is $165,372.

Gulf Oil Corporation/Bodenhamer Butane & Propane Frederick C. Zubrickie John & Frank Stokes, 12/30/88; RF300–5531, RF300–5594, and RF300–10642

The DOE issued a Decision and Order concerning three Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $2,603.

Gulf Oil Corp./Cecil Rogers & Bobby Viadact Gulf, et al., 12/30/88; RF300–7459, et al.

The DOE issued a Decision and Order concerning 9 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $21,870.

Gulf Oil Corporation/Dow Chemical Company, et al., 12/28/88; RF300–4932, et al.

The DOE issued a Decision and Order concerning Applications for Refund submited in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $158,454.

Gulf Oil Corporation/Oakwood Oil Co., Inc., et al., 12/30/88; RF300–627, et al.

The DOE issued a Decision and Order concerning 8 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes both principal and interest, is $102,609.

Gulf Oil Corporation/Ray Carltons Gulf, et al., 12/30/88; RF300–7378, et al.

The DOE issued a Decision and Order concerning 6 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is $11,881.

Hoyle Lowdermilk Co., Tectonic Construction Co., Hoyle Lowdermilk, Inc., 12/28/88; RF272–32425, RF272–32454, and RF272–32482

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to Hoyle Lowdermilk Co., Tectonic Construction Co., and Hoyle Lowdermilk, Inc., heavy and highway construction contractors which used petroleum products to fuel their vehicles and equipment. While each of these firms is affiliated with each other through a parent company, H–E Lowdermilk Co., their volume claims are separate and distinct from each other. The total volume for which refunds are approved in this Decision is 4,985,706 gallons of refined petroleum products. The sum of the refunds granted is $997 ($541 for Hoyle Lowdermilk Co., $108 for Tectonic Construction Co., and $348 for Hoyle Lowdermilk, Inc.).

Larry Rinderer, et al., 12/28/88; RC272–10, et al.

The DOE determined that four claimants had received duplicate refunds in the Subpart V crude oil refund proceedings. Each applicant submitted two refund applications to the OHA and received a refund for both applications. Accordingly, the DOE issued a Supplemental Order rescinding the second refund granted to each applicant.

Murphy Oil Corporation/Delmar H. Isaacson, et al., 12/28/88; RF309–201 et al.

The DOE issued a Decision and Order granting 15 Applications for Refund filed in the Murphy Oil Corporation special refund proceeding. Each of the Applicants purchased directly from Murphy and was either a reseller whose allocable share was less than $5,000 or an end-user of Murphy products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Murphy escrow account. The sum of the refunds granted in the Decision was $9,803 ($8,739 in principal plus $1,064 in interest).

Standard Oil Co. (Indiana)/Belridge Oil Co./Palo Pinto Oil and Gas/Standard Oil Co. (Indiana)/Vickers Energy Corp./OKC Corp./Oklahoma, 12/30/88; RM21–136, RM8–137, RM5–138, RQ251–489, RQ1–490, and RQ13–491

The DOE issued a Decision and Order approving the Motion for Modification and second-stage refund application filed by the State of Oklahoma in the

Standard Oil Co. (Indiana), Belridge Oil Co., Palo Pinto Oil and Gas, Vickers Energy Corp., and OKC Corp. special refund proceedings. Oklahoma requested permission to use $64,936 in previously allocated funds, plus $1,748,531 in second-stage refund monies to help finance operating expenses for a fleet of mass transit vans, to employ a coordinator for a fleet of Salvation Army vehicles, and to subsidize rural public transportation services. The DOE found that these programs would provide restitution to injured consumers of petroleum products. Accordingly, the DOE granted Oklahoma's Motion for Modification, and allocated $1,748,531 in second-stage funds to the state.

CRUDE OIL END-USERS

[The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders]

Name	Case No.	Date	No. of applicants	Total refund
McWaters Trucking, Inc., et. al	RF272-22909	12/28/88	136	$56,274

DISMISSALS

[The following submissions were dismissed]

Name	Case No.
E.L. Morgan Company	RR239-1, RS239-1.
Kraft, Inc.	RF272-14954.
Pre-Fab Transit	RF272-65097.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

February 10, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89-3850 Filed 2-16-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3523-8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 30, 1989 through February 3, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5074

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** dated April 22, 1988, (53 FR 13318).

Draft EISs

ERP No.: D-CDB-C89028-NY, Rating EC2, Steeplechase Amusement Park Development, Construction and Operation, UDAG, Brooklyn, Kings County, NY. **SUMMARY:** EPA has concerns about the proposed project's impacts on air quality, ground water, water resources, and cultural resources. Accordingly, EPA has requested that additional information on these issues be included in the final EIS.

ERP No.: DR-FAA-K51031-CA, Rating EU2, Fremont General Aviation Reliever Airport Development Approval, Alameda and Fremont Counties, CA. **SUMMARY:** EPA's believe that the proposed project is environment environmentally unsatisfactory because the loss of wetlands is significant from regional/national perspectives. The project may not comply with the EPA's section 404(b)(1) Guidelines, which regulate the discharge of dredged or fill materials into waters of the United States, included wetlands. The project could be a potential candidate for referral to the Council on Environmental Quality should these issues not be adequately resolved.

ERP No.: D-FHW-C40123-NY, Rating EC2, NY-96 Improvement, Meadow Street in the City of Ithaca to Duboise Road in the Town of Ithaca, Funding, Tompkins County, NY. **SUMMARY:** EPA has concerns about the proposed project's impacts on wetlands, water resources, slope stabilities, hazardous waste site, and noise levels. Additionally, the secondary impacts and induced development associated with the project are not adequately addressed in this document. Accordingly, EPA has requested that additional information on these impacts and their mitigation be included in the final EIS.

ERP No.: D-FHW-D40238-MD, Rating EC2, US-29 Improvements, Sligo Creek Parkway to the Patuxent River Bridge, Funding and 404 Permit, Montgomery County, MD. **SUMMARY:** EPA feels more information regarding the Light Rail Alternative is needed. EPA also has concerns about potential noise and surface water impacts, the taking of a Hardwood Forest, and agricultural land.

Dated: February 14, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-3852 Filed 2-16-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3523-7]

Environmental Impact Statements; Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5075.

Availability of Environmental Impact Statements Filed February 6, 1989, Through February 10, 1989, Pursuant to 40 CFR 1506.9

EIS No. 890030, Draft, EPA, TX, Freeport Harbor and Jetty Channels Ocean Dredged Material Disposal Site (ODMDS) Designation, TX, Due: April 3, 1989, Contact: Norm Thomas (214) 655-2260.

EIS No. 890033, DSuppl, COE, MN, Bassett Creek Watershed Flood Control Plan, Additional Information and Changes in the Original Plan, Implementation, Hennepin County, MN, Due: April 3, 1989, Contact: Charles E. Workman (612) 220-0264.

EIS No. 890032, Final FHW, WA, WA-20 Widening, Weeman Bridge to Winthrop, Funding and Possible 404 Permit, Okanogan County, WA, Due: March 20, 1989, Contact: P.C. Gregson (206) 753-2120.

EIS No. 890033, Final, FHW, GA, Georgia Project F-111-1(16) Spur Construction, Abercorn Street/GA-204 to GA-21/I-516/Lynes Parkway,

404 Permit, USGC Permit and Funding, Chatham County, GA. Due: March 20, 1989, Contact: Ruben S. Thomas (404) 347–4751.

EIS No. 890034, Final AFS, WV, VA, Appalachian Integrated Pest Management (AIPM) Gypsy Moth Demonstration Project, Implementation, WV and VA, Due: March 20, 1989, Contact: David P. Smith (404) 347–4338.

EIS No. 890035, Final, BLM, OR, Western Oregon Program, Management of Competing Vegetation, Implementation, OR, Due: April 17, 1989, Contact: Renee McCray (202) 653–8830.

EIS No. 890036, Final, UAF, WY, TX, LA, AR, WA, ND, MT, MO, MI, Peacekeeper Rail Garrison Deployment Program, Implementation, F.E. Warren AFB, WY; Barksdale AFB, LA; Dyess AFB, TX; Fairchild AFB, WA; Minot AFB, ND; Eaker (formerly Blytheville) AFB, AR; Grand Forks AFB, ND; Little Rock AFB, AR; Malmstrom AFB, MT; Whiteman AFB, MO, and Wurtsmith AFB, MI, Due: March 20, 1989, Contact: Lt. Col. Thomas Bartol (714) 382–6631.

Amended Notices

EIS No. 890018, Draft, BOP, IL, Greenville Federal Correctional Institution, Construction and Operation, Bond Co., MI, Due: March 20, 1989, Contact: William J. Patrick (202) 274–3232.

This EIS NOA should have appeared in the 2–3–89 FR. The 45-day NEPA review period is calulated from 2–3–89.

Dated: February 14, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89–3853 Filed 2–16–89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

Baltimore Federal Financial, FSA, Baltimore, MD; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c (c)(2)(1982), as amended, the Federal Home Loan Bank Board was duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Baltimore Federal Financial, FSA, Baltimore, Maryland, on February 7, 1989.

Dated: February 8, 1989.

By the Federal Home Loan Bank Board.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 89–3829 Filed 2–16–89; 8:45 am]

BILLING CODE 6720-01-M

Deseret Federal Savings and Loan Association, Salt Lake City, UT; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c(c)(2)(1982), as amended, the Federal Home Loan Bank Board was duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Deseret Federal Savings and Loan Association, Salt Lake City, Utah on February 10, 1989.

Dated: February 14, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–3830 Filed 2–16–89; 8:45 am]

BILLING CODE 6720-01-M

Midwest Federal Savings and Loan Association, Minneapolis, MN; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c(c)(2)(1982), as amended, the Federal Home Loan Bank Board was duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Midwest Federal Savings and Loan Association, Minneapolis, Minnesota on February 10, 1989.

Dated: February 14, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–3831 Filed 2–16–89; 8:45 am]

BILLING CODE 6720-01-M

American Savings, a Federal Savings and Loan Association, Stockton, CA; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for American Savings, a Federal Savings and Loan Association, Stockton, California on December 27, 1988.

Dated: February 14, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–3832 Filed 2–16–89; 8:45 am]

BILLING CODE 6720-01-M

Manhattan Beach Savings and Loan Association; Manhattan Beach, CA; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(D) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(D) (1982), the Federal Home Loan Bank Board duly replaced the Federal Savings and Loan Insurance Corporation ("FSLIC") as Conservator for Manhattan Beach Savings and Loan Association, Manhattan Beach, California, ("Association") with the FSLIC as sole receiver for the Association on February 10, 1989.

Dated: February 14, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–3833 Filed 2–16–89; 8:45 am]

BILLING CODE 6720-01-M

Southern Federal Savings Bank, Thomasville, GA: Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(1) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Southern Federal Savings Bank, Thomasville, Georgia, on January 19, 1989.

Dated: February 14, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–3834 Filed 2–16–89; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 89-05; No. 102-008454]

The Guam Rate Agreement; Order of Investigation and Hearing

Agreement No. 102-008454, the Guam Rate Agreement ("Agreement"), was originally approved by the Federal Maritime Board, pursuant to section 15 of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. app. 814, on April 28, 1960. The Agreement authorizes discussion and agreement on rates, charges, classifications, practices and related tariff matters in the domestic offshore trade between the United States and Guam (Mariana Islands), Midway, Wake, Eniwetok and Kwajalein (Marshall Islands) (the "Trade"). The Agreement has been in effect continuously since 1960, and has been subject to three modifications. The latest modification was approved December 13, 1967.

Since 1960, several different carriers and different combinations of carriers have been parties to the Agreement.

In June 1988, the Guam Chamber of Commerce ("GCC") filed a petition with the Federal Maritime Commission ("Commission") requesting that the Commission investigate the Agreement. The petition alleged that the Agreement is "grossly discriminatory" and "serves to preclude any concept of rate competition and is thereby detrimental to commerce." The parties to the Agreement filed in opposition to the petition. The Honorable Ben Blaz, Member of Congress for Guam, and Tucor Services, Inc. filed in support of the petition. By separate order served this date, the Commission has denied the petition of GCC for failure to provide the required factual support for the allegations made by petitioner.

Nevertheless, the Commission recognizes that the Agreement has never been subject to formal Commission review under current standards for approval of a section 15 agreement. Moreover, certain subsidiary questions with regard to the present use and effect of the Agreement have been raised by the public, *e.g.*, (1) whether household goods traffic in the Trade is subject to any undue or unreasonable prejudice or disadvantage in violation of section 16 First of the 1916 Act, 46 U.S.C. app. 815; (2) whether freight-all-kinds ("FAK") traffic in the Trade receives any undue or unreasonable preference or advantage in violation of section 16 First; (3) whether the parties' use of independent action under the Agreement has been responsive to the needs of shippers in the Trade; and (4) whether the Agreement is in compliance with Commission regulations under 46 CFR Part 560 regarding agreement reports. Therefore, the Commission on its own motion has determined that the continued approval of the Agreement should be made the subject of a formal investigation pursuant to section 15 of the 1916 Act.

Now, therefore, it is ordered, That an investigation and hearing is instituted pursuant to sections 15, 16, and 22, Shipping Act, 1916, to determine whether Agreement No. 102-008454 should receive continued approval, or be disapproved, or modified; and if modified, what modifications should be imposed. This proceeding shall determine whether the Agreement, at this time, (1) operates to the detriment of the commerce of the United States; (2) is contrary to the public interest; (3) is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors; or (4) is otherwise in violation of the Shipping Act, 1916. As they may relate to making a determination of the section 15 issues, such of the aforementioned subsidiary questions as may be placed in issue in the proceeding also may be addressed;

It is further ordered, That any amendment to Agreement No. 102-008454 which may hereafter be offered is made part of this proceeding;

It is further ordered, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Adminstrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That the present parties signatory to Agreement No. 102-008454, American President Lines, Ltd. and Sea-LandService, Inc., shall be Respondents in this proceeding;

It is further ordered, That the Commission's Bureau of Hearing Counsel is designated a party to this proceeding;

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy be served upon all parties of record;

It is further ordered, That persons other than Respondents and Hearing Counsel having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all future notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502-118, and shall be served on parties of record;

It is further ordered, That pursuant to the terms of Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by February 14, 1990, and the final decision of the Commission shall be issued by June 14, 1990.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89-3809 Filed 2-16-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Joseph Polack et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice

or to the offices of the Board of Governors. Comments must be received not later than March 3, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Joseph Polack, Omaha, Nebraska; to acquire 5.82 percent of the voting shares of Thurman State Corporation, Lincoln, Nebraska, and thereby indirectly acquire American National Bank, Bedford, Iowa, and United National Bank of Iowa, Sidney, Iowa.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Albert N. and Emma L. Roberts, Polson, Montana; to acquire an additional 2.16 percent of the voting shares of Flathead Lake Bancorporation, Inc., Polson, Montana, and thereby indirectly acquire First Citizens Bank of Polson, Polson, Montana.

2. Philip R. Sandquist, Bozeman, Montana; Thomas J. Kamp, Manhattan, Montana; and Cornelius A. Dogterom, Bozeman, Montana; to each acquire an additional 1.10 percent of the voting shares of Bozeman Holding Company, Bozeman, Montana, and thereby indirectly acquire First Security Bank of Bozeman, Bozeman, Montana.

Board of Governors of the Federal Reserve System, February 13, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-3716 Filed 2-16-89; 8:45 am]

BILLING CODE 6210-01-M

Security Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 10, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. Security Bancorp, Inc., Canton, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Security State Bank, Canton, Georgia, a *de novo* bank.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Community Illinois Corporation, Rock Falls, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Community State Bank of Rock Falls, Rock Falls, Illinois.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. NNB Bancshares, Gladstone, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Northland National Bank, Gladstone, Missouri. Comments on this application must be received by March 3, 1989.

Board of Governors of the Federal Reserve System, February 13, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-3717 Filed 2-16-89; 8:45 am]

BILLING CODE 6210-01-M

U.S. Bancorp; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 3, 1989.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. U.S. Bancorp Portland, Oregon; to acquire the Colorado Division of Far West Federal Mortgage, Portland, Oregon, and thereby engage in mortgage banking activities pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 13, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-3718 Filed 2-16-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse and Mental Health Administration

Institutional Clinical Training

AGENCY: National Institute of Mental Health, ADAMHA, HHS.

ACTION: Notice of Restricted Eligibility.

SUMMARY: The National Institute of Mental Health (NIMH) announces the availability of Institutional Clinical Training grants for the purpose of improving the preparation of personnel

to provide services to persons with major mental disorders. These grants will be made under the authority of section 303 of the Public Health Service (PHS) Act which authorizes funds for clinical training in the mental health disciplines.

There are two parts to this Request for Applications (RFA): I. General Professional Training Programs and II. Professional Training for Racial/Ethnic Minority and Disadvantaged Students. Their goals are to recruit and prepare mental health professionals in social work psychology, psychiatry, psychiatric nursing, and marriage and family therapy for enhanced services to the chronically mentally ill, seriously disturbed children and adolescents, and aging persons with severe mental disorders; and to recruit minority and disadvantaged persons into the mental health disciplines. Support under these grants, comprised principally of traineeship support augmented by very limited faculty support, emphasizes the preparation of clinicians for work in publicly funded mental health settings.

In fiscal year 1989, NIMH will fund approximately 30 to 35 3-year awards under this RFA at an annual cost of approximately $80,000 per grant. NIMH is limiting potential applicants for these grants to accredited professional educational programs, primarily university-based, in the five disciplines referenced above. This limited eligibility is based on several factors. Accredited schools and departments in the several mental health disciplines offer the strongest assurance of high-quality professional education essential to the improvement of services to the mentally ill populations toward whom the RFA is directed. These educational programs have long experience in the preparation of professional personnel for services to the priority population. Such educational programs have also demonstrated a capacity to train personnel for publicly funded mental health services. Finally, NIMH has found from long experience with the support of clinical training efforts in the disciplines that the eligible educational programs are those most relevant to the nation's mental health needs ard offer the greatest potential for and probability of responding to the priority service populations of concern to the Institute.

In making application for training grants under this RFA, the applicant must designate the type of grant (Institutional Clinical Training) being requested. A college or university may submit an application for each of the two programs offered in this RFA on behalf of each of the institution's accredited schools and departments of psychology, social work, psychiatry, psychiatric nursing or marriage and family therapy.

For a copy of the Request for Applications (MH 89-04) or additional program guidance, potential applicants should contact: Neilson F. Smith, Ph.D., Acting Chief, Education and Training Branch, Division of Education and Service Systems Liaison, National Institute of Mental Health, Parklawn Building, Room 7C06, 5600 Fishers Lane, Rockville, MD 20857, (Telephone: 301/443-2120).

(The Catalog of Federal Domestic Assistance Number for this program is 13.244)

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89-3727 Filed 2-16-89; 8:45am]

BILLING CODE 4160-20-M

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Obstetrics-Gynecology Devices Panel

Date, time and place. March 6 and 7, 1989, 9 a.m., Conference Rms. D and G, respectively, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 5 p.m.; Colin M. Pollard, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

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 committee contact person before February 24, 1989, 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 committee discussion. The committee will review, discuss, and make recommendations on two premarket approval applications (PMA's) for home uterine activity monitors for women at high risk of preterm labor. The panel will also make a recommendation on the classification of the short-sized condoms that just cover the glans penis. The committee will also review, discuss, and make recommendations on a PMA for a hysteroscopic insufflation medium.

General and Plastic Surgery Devices Panel

Date, time, and place. March 10, 1989, 2 p.m., Conference Rm. 1200-A, Silver Spring Plaza Bldg., 8757 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. This meeting will be held through a telephone conference call. A speaker phone will be provided in the conference room to allow public participation in the meeting. Open public hearing, 2 p.m. to 3 p.m., unless public participation does not last that long; open committee discussion, 3 p.m. to 4 p.m.; Paul F. Tilton, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7238.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

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 contact person before March 1, 1989, 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 committee discussion. The committee will discuss and vote on a PMA for a nylon surgical suture. The committee may also discuss and make a recommendation on a reclassification petition for suction lipectomy systems.

Board of Tea Experts

Date, time, and place. March 13 and 14, 1989, 10 a.m., Rm. 700, 850 Third Ave., Brooklyn, NY.

Type of meeting and contact person. Open public hearing, March 13, 1989, 10 a.m. to 11 a.m.; open committee discussion, 11 a.m. to 4:30 p.m.; open committee discussion, March 14, 1989, 10 a.m. to 4:30 p.m.; Robert H. Dick, New York Regional Laboratory, Food and Drug Administration, 850 Third Ave., Brooklyn, NY 11232, 212–965–5739.

General function of the committee. The committee advises on establishment of uniform standards of purity, quality, and fitness for consumption of all teas imported into the United States under 21 U.S.C. 42.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The committee will discuss and select tea standards.

Science Advisory Board to the National Center for Toxicological Research

Date, time, and place. March 23, 1989, 9 a.m., Bldg. 13, Conference Rm., National Center for Toxicological Research (NCTR), Jefferson, AR.

Type of meeting and contact person. Open board discussion, March 23, 1989, 9 a.m. to 10:45 a.m.; open public hearing, 11 a.m. to 12 m.; open board discussion, 1 p.m. to 6 p.m.; Ronald F. Coene, NCTR (HFT–2), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3155.

General function of the board. The board advises the Director, NCTR in establishing and implementing a research program that will assist the Commissioner of Food and Drugs in fulfilling his regulatory responsibilities. The board provides extra-agency review in ensuring that research programs at NCTR are scientifically sound and pertinent to its stated goals and objectives.

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 a formal presentation should notify the contact person before March 6, 1989, 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.

Agenda—Open board discussion. The board will review the research programs of caloric restriction and human risk assessment. A final agenda will be available on March 20, 1989, by notifying the contact person.

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 scientific meeting involved. There are no closed portions for the meetings 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 public 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, Rm. 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, Rm. 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.

The Commissioner approves the scheduling of meetings at locations outside of the Washington, DC, area on the basis of the criteria of 21 CFR 14.22 of FDA's regulations relating to public advisory committees.

Dated: February 13, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–3732 Filed 2–16–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88N–0319]

Blood Collection Kits Labeled for Human Immunodeficiency Virus Type 1 (HIV–1) Antibody Testing; Home Test Kits Designed to Detect HIV–1 Antibody; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an open public meeting to discuss blood collection kits and home test kits that are designed to detect antibody to human immunodeficiency virus type 1 (HIV–1). HIV–1 has been identified as the etiologic agent responsible for acquired immunodeficiency syndrome (AIDS). FDA is also inviting written comments on the kits and their use. The

proceedings of the meeting and the written comments will be considered in the development of final policy and regulatory decisions for the matters addressed in this notice.

DATES: The meeting will be held on April 6, 1989, at 8:30 a.m. Requests to make a presentation should be received no later than March 30, 1989. Written comments should be submitted by May 5, 1989.

ADDRESSES: The meeting will be held at the National Institutes of Health, Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD 20205. Written comments or requests for a copy of the agenda may be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Regarding the meeting: Debbie Henderson, Center for Biologics Evaluation and Research (HFB-4), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-496-0561.

Regarding this notice: Mary Gustafson, Center for Biologics Evaluation and Research (HFB-240), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-443-5433.

SUPPLEMENTARY INFORMATION:

I. Background

As a result of the recognition of AIDS and the identification of the etiologic agent, HIV-1 (formerly known as human T-lymphotropic virus type III and lymphadenopathy associated virus), there has been extensive interest in the development of in vitro diagnostic tests for detecting evidence of infection with the virus.

Tests utilizing enzyme linked immunoassay (ELISA) and Western blot technologies for detecting antibody to HIV-1 have been approved by FDA. Nine manufacturers currently hold licenses issued under section 351 of the Public Health Service Act (the PHS act) (42 U.S.C. 262) for the test reagent to be used in test systems to detect antibody to HIV-1 in human serum and plasma samples. The test is used as an aid in the diagnosis of HIV-1 infection and for screening blood. In the **Federal Register** of January 5, 1988 (53 FR 111), FDA published a final rule requiring that each unit of human blood and blood components intended for transfusion or for use in preparing a product be tested and found negative by an approved HIV-1 antibody test.

In 1986 and 1987, FDA received several submissions under section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(k)), notifying the agency of manufacturers' intent to market blood collection kits labeled for HIV-1 antibody testing. Such blood collection kits for nonprofessional use have sometimes been referred to as "AIDS home test kits." The proposed blood collection kits provide instructions and equipment for sample collection, packaging for shipment of the sample to a laboratory for HIV-1 antibody testing and a confidential mechanism for receiving the results of testing.

In receiving the manufacturers' submissions, FDA agreed with the manufacturers that these blood collection kits are medical devices subject to the act. However, FDA determined that blood collection kits labeled for HIV-1 antibody testing are not substantially equivalent to devices marketed prior to May 28, 1976, or to devices classified as class I or II since that date, and therefore are classified by statute in class III and are subject to premarket approval under section 515 of the act (21 U.S.C. 360e). FDA has since received applications for premarket approval and numerous inquiries concerning the marketing of these blood collection kits.

In March 1988, FDA began to notify applicants for premarket approval of home blood collection kits that the agency was limiting the marketing of blood collection kits at this time to those intended for professional use only. FDA's response to the applications and inquiries was developed through consultation with the Public Health Service and private sector advisory groups. Under FDA's policy on these kits, applications for premarket approval are accepted only when they meet the following criteria:

1. Kits are labeled and marketed for professional use only within a health care environment (e.g., hospitals, medical clinics, doctor's offices, sexually transmitted disease clinics, HIV-1 counseling and testing centers, and mental health clinics;

2. Kits provide for the collection of a venipuncture or other appropriately validated sample by one who is recognized by a State or local authority to perform such procedures;

3. The testing sequence for all samples collected with the kits includes use of a licensed screening test for HIV-1 antibody and, for those samples testing positive by the screening test, the use of an additional more specific test (i.e., Western blot or comparable test). It is recommended that a licensed test which is more specific for HIV-1 antibody be utilized. However, the agency may accept a properly validated unlicensed test until licensed tests are more widely available;

4. The instructions for sample collection, storage, shipping, and testing conform with, or are validated as the equivalent to, the package insert instructions for the specific licensed HIV-1 antibody test kid used to test samples; and

5. All results of testing are reported directly to a professional health care provider for reporting and interpretation of the result to the person requesting the test, as well as for counseling of the individual.

As with any new product, FDA expects that some developmental phase will be needed. If a blood collection kit labeled for HIV-1 antibody testing is developed according to the criteria in 1 through 5 above and to the requirements of 21 CFR 809.10(c), an investigational device exemption (IDE) pursuant to 21 CFR Part 812 will not be required during the developmental stages of the kit. (See also 21 CFR 812.2(c)(3).)

If a blood collection kit labeled for HIV-1 antibody testing is developed under an investigation not incorporating the criteria in 1 through 5 above, FDA views the investigation as requiring an IDE.

A kit for testing at home to detect HIV-1 antibody would include a biological product as defined under section 351 of the PHS act. A manufacturer or sponsor investigating or developing such a kit would be required to have an approved investigational new drug application (IND) and the kit would be subject to licensure under the PHS act.

II. Public Meeting Topics

The public meeting will provide a forum to discuss FDA's policy described above, the following topics, and other topics that may be suggested later:

A. Topic 1: Blood Collection Kits

1. *Collection and shipping of blood samples by laypersons.* Improper sample collection, preparation, and shipment could adversely affect the accuracy of HIV-1 antibody test results. In addition, it is possible, although most unlikely, that improper sample collection and transport might result in transmission of infection or injury. Therefore, comments are solicited on the ability of laypersons to safely and adequately collect and package these samples for shipment.

2. *Return of test results directly to the person from whom the sample was collected.* Some manufacturers have proposed systems in which the HIV-1 antibody test results would be returned

directly to the person from whom the sample was collected. The results of in vitro diagnostic tests often require interpretation (e.g., under what circumstances false-negative or false-positive results might occur) and must be integrated into an overall assessment of a person's medical status. Before returning the results of testing for evidence of infection with HIV–1 to any person other than a health professional, adequate instructions for interpretation of the test results would have to be developed. Comments are solicited on whether such information could be adequately provided.

3. *Counseling outside of a medical health care environment.* This topic is related to the issue of proper interpretation of and followup on test results. There is agreement among medical experts that adequate counseling regarding the test results should be part of HIV–1 testing. Comments are solicited regarding the ability to provide effective pre- and post-test counseling in a setting outside the health care environment.

4. *Availability of blood collection systems.* The availability of blood collection systems as over-the-counter (OTC) devices could increase the number of samples tested by making systems more readily available. Comments are solicited on whether blood collection systems should be available as OTC devices.

B. Topic 2: Kits for Collection and Home Testing of Blood for Evidence of HIV–1 Infection

Some have discussed the possibility of developing test kits with which laypersons could not only obtain their own specimen at home, but also perform testing for evidence of HIV–1 infection. FDA invites comments on issues related to these types of kits. Such issues would include whether the kits should be made available OTC, whether laypersons can reliably and safely perform the test, whether laypersons can adequately interpret the test results, and whether that interpretation in the absence of a medical professional is appropriate.

The agenda of the public meeting will provide an opportunity for all interested persons to make their views known to FDA and to allow thorough discussion of the issues. However, FDA requests that interested persons intending to make formal presentations notify the information contact person (identified above) no later than March 30, 1989, so that the available time may be allotted among the persons making the requests.

Interested persons may submit written comments or requests for a copy of the agenda for the meeting to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments on matters discussed in this notice and presented at the meeting or written comments received by May 5, 1989, will be considered in developing a final policy. Comments and requests for an agenda are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 6, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89–3734 Filed 2–16–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 84N–0241]

Availability of 1988 Revision of the National Shellfish Sanitation Program Manual of Operations, Parts I and II

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the 1988 revision of the National Shellfish Sanitation Program Manual of Operations, Part I, "Sanitation of Shellfish Growing Areas" and Part II, "Sanitation of the Harvesting, Processing, and Distribution of Shellfish." This project was initiated in cooperation with the Interstate Shellfish Sanitation Conference (ISSC) to help assure that only safe and sanitary shellfish are offered for sale in interstate commerce.

ADDRESS: Copies of the Manual may be purchased from the ISSC at a cost of $10 per copy, which includes postage. Prepaid requests with checks payable to the Interstate Shellfish Sanitation Conference should be sent to: Interstate Shellfish Sanitation Conference, P.O. Box 32777, Phoenix, AZ 85064.

FOR FURTHER INFORMATION CONTACT: David M. Dressel, Center for Food Safety and Applied Nutrition (HFF–344), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0149.

SUPPLEMENTARY INFORMATION: FDA is responsible for the Federal administration of the National Shellfish Sanitation Program (NSSP), which is a voluntary program involving State shellfish control agencies, the shellfish industry, and FDA. Seven foreign countries also participate in the NSSP through international bilateral agreements.

The NSSP is concerned with the sanitary control of fresh and fresh frozen molluscan shellfish (oysters, clams, and mussels) offered for sale in interstate commerce. The program has been in existence since 1925. In the interest of assuring uniform administrative and technical controls, the NSSP has developed and maintained recommended shellfish control practices. These control practices have been published in the form of a manual of operations.

In 1982, interested State officials and members of the shellfish industry formed the ISSC, whose purpose is to provide a formal structure wherein State regulatory authorities can establish updated guidelines for shellfish controls that will assure sources of safe and sanitary shellfish. The ISSC has established uniform procedures for the application of these guidelines. Those persons interested in obtaining additional information about the ISSC should contact Kenneth Moore, Chairman, Interstate Shellfish Sanitation Conference, c/o South Carolina Dept. of Health and Environmental Control, 2600 Bull St., Columbia, SC 29202.

FDA and the ISSC entered into a memorandum of understanding (MOU) in March 1984 (49 FR 12751; March 30, 1984). This agreement states, among other things, that FDA will provide technical assistance to the ISSC, including cooperative efforts to develop or revise program criteria and guidelines.

Based on the MOU, FDA developed draft revisions of the NSSP Manual of Operations, Parts I and II, in cooperation with the ISSC. FDA announced the availability of the 1986 revision of Part I on June 5, 1987 (52 FR 21375). The initial working draft of Part II was made available for comment on September 11, 1985 (50 FR 37055), with a revised second draft being made available for further comment on July 11, 1986 (51 FR 25261). Based on the comments received, and in consideration of the comments and views expressed on Parts I and II by State regulatory officials, industry representatives, and other interested parties at the ISSC's, 1987 and 1988 annual meetings in Austin, TX, and Denver, CO, respectively, FDA has developed, in final form, the 1988 revision of the NSSP Manual of Operations, Part I, "Sanitation of Shellfish Growing Areas" and Part II, "Sanitation of the Harvesting, Processing, and Distribution of Shellfish."

The revised manual provides guidance and procedures governing (1) the sanitation of shellfish growing areas and (2) the harvesting, processing, and distribution of shellfish. Major topics include: general administrative and laboratory procedures; growing area surveys and classifications; contingency plans for the control of marine biotoxins; and the accepted sanitary procedures for the harvesting, handling, shucking, and packing of shellfish.

Dated: February 13, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-3733 Filed 2-16-89; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Cancer Institute; Meeting of the President's Cancer Panel

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the President's Cancer Panel, National Cancer Institute, March 6, 1989, at Howard University Cancer Research Center, Armour J. Blackburn University Center, 2400 Sixth Street NW., Washington, DC 20059.

This meeting will be open to the public on March 6 from 9:00 a.m. to 12:30 p.m. Attendance will be limited to space available. Agenda items will include reports by the Chairman, President's Cancer Panel, the Director, NCI, members of the staff of Howard University and others.

Dr. Elliott Stonehill, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 11A29, National Institutes of Health, Bethesda, Maryland 20892 (301/496-1148) will provide a roster of the Panel members, and substantive program information upon request.

Dated: February 10, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-3778 Filed 2-16-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Child Health and Human Development; Changes in Meetings

Notice is hereby given of a change in the meeting of the Population Research Committee, National Institute of Child Health and Human Development, March 2-3, 1989, Executive Plaza North, Conference Room H, 6130 Executive Blvd., Bethesda, Maryland, which was published in the **Federal Register** on January 11, 1989 (54 FR 1005-6). This committee was to have met March 2-3, 1989 but has been changed to meet only on March 2, 1989. The meeting will be open to the public on March 2, from 9:00 a.m. to 10:00 a.m. The meeting will be closed March 2 from 10:00 a.m. until adjournment.

Notice is hereby given of a change in the meeting of the Mental Retardation Research Committee, National Institute of Child Health and Human Development, March 9-10, 1989, Executive Plaza North, Conference Room G, 6130 Executive Blvd., Bethesda, Maryland, which was published in the **Federal Register** on January 11, 1989 (54 FR 1005-6). This committee was to have met March 9-10, 1989 but has been changed to meet March 8-10, 1989. The meeting will be open to the public on March 8, from 9:00 a.m. to 10:00 a.m. The meeting will be closed March 8 from 10:00 a.m. until 5:00 p.m., March 9 a.m. from 9:00 until 5:00 p.m., and March 10 from 9:00 a.m. until adjournment.

Dated: Februrary 10, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-3779 Filed 2-16-89; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on Februray 3, 1989.

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

1. 1989 Teenage Attitudes and Practices Survey (TAPS) (Pretest and Full Survey)—NEW—The Teenage Attitudes and Practices Survey will provide current baseline data on a national household sample of 12,000 teenagers between the ages 12 and 18. Data on prevalence and predictors of smoking uptake will be used to monitor adolescents' smoking behavior and to measure the effectiveness of intervention activities. Respondents: Individuals and households; Number of Respondents: 12,370; Responses Per Respondent: 1; Average Burden Per Response: .309 hours; Estimated Annual Burden: 3,826 hours.

2. Menstrual Tampons User Labeling; Proposed Ranges of Absorbency (21 CFR 801.430 (e) and (f)) NPRM.—NEW—The proposed regulation requires that menstrual tampons be labeled consistently so that purchasers can compare absorbency between brands. It also specifies testing requirements to assure that each production run, lot or batch, is in compliance. Respondents: Businesses or other for-profit; Estiamted Annual Burden: The agency is currently unable to estimate the burden associated with these requirements. Therefore, we request comment from the public regarding the burden of the new labeling and testing requiremens. Please provide comments to: Dockets Management Branch (HFA-30), Food and Drug Administration, Rom 4-62, 5600 Fishers Lane, Rockville, MD. 20857, 301-443-7542; Public Reading Room, 301-443-1251.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: February 13, 1989.

Steven A. Grossman,

Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 89-3781 Filed 2-16-89; 8:45 am]

BILLING CODE 4160-17-M

Health Resources and Services Administration; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority to the Administrator, Health Resources and Services Administration, on February 2, 1989, by the Assistant Secretary for Health, the Administrator has delegated all of the authorities under Title III, Part H, of the Public Health Service Act, as amended, pertaining to Organ Transplants to the Director, Bureau of Maternal and Child Health and Resources Development, with authority to redelegate, excluding the authorities to issue regulations, to submit reports to Congress or a congressional committee, to establish advisory committees or councils, or to appoint members to advisory committees or councils. Further excluded was the authority under

section 373(b) (42 U.S.C. 274b) pertaining to the Bone Marrow Registry.

Redelegation

These authorities may be redelegated.

Effective Date

This delegation became effective on February 2, 1989.

Date: February 2, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-3804 Filed 2-16-89; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-89-1939]

Submission of Proposed Information Collection to the Office of Management and Budget

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: February 9, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Lenders Request for Termination of Home Mortgage Insurance.

Office: Administration.

Description of the Need for the Information and Its Proposed Use: This report will notify HUD whenever a mortgage is paid in full, voluntarily terminated, or that a property will not be conveyed to HUD for insurance benefits. The information collected will be used to delete a case from the insurance-in-force files and to discontinue billing the mortgage for insurance premiums.

Form Number: HUD-27050.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Form HUD-27050	8,500		45		.25		96,187

Total Estimated Burden Hours: 96,187.

Status: Revision.

Contact:

Bobby Fenner, HUD, (202) 755-5256

John Allison, OMB, (202) 395-6880

Date: February 9, 1989.

Proposal: Housing Development Grant Program Project Settlement Procedures.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The information collection will enable HUD to fulfill program regulations to close out the Federal financing for project activities, and to verify that Federal funds were used in accordance with the Grant Agreement and that all participants met their obligations.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: One-Time Only.

Estimated Burden Hours:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Grant Application	65		1		16		1,040

Total Estimated Burden Hours: 1,040.

Status: Extension.

Contact:

Freda Nicolosi, HUD, (202) 755-6142

John Allison, OMB, (202) 395-6880

Date: February 9, 1989.

Proposal: Supplemental Assistance for Facilities to Assist the Homeless.

Office: Policy Development and Research.

Description of the Need for the Information and Its Proposed Use: The information collected will be used to provide grants and interest-free advances to stimulate community-wide

innovative efforts to assist homeless families and individuals.

Form Number: None.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: Other.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Comprehensive Applications	250		1		100		25,000
Environmental Review	60		1		14		840
Supplement Applications	30		1		52		1,560

Total Estimated Burden Hours: 27,400.

Status: Revision.

Contact:

Edwin A. Stromberg, HUD, (202) 426–1520

John Allison, OMB, (202) 395–6880

Date: February 9, 1989.

[FR Doc. 89–3773 Filed 2–16–89; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–89–1940]

Submission of Proposed Information Collection to the Office of Management and Budget

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: February 10, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Processing of Applications for FY 1989 Funds for Public Housing Resident Management (FR–2519).

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: The information collected will be used to provide grants to non-profit organizations to encourage increased resident management of public housing projects.

Form Number: None.

Respondents: Non-Profit Institutions.

Frequency of Submission: Other.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	150		1		16		2,400

Total Estimated Burden Hours: 2,400.

Status: New.

Contact:

Janice Rattley, HUD, (202) 755–1800

John Allison, OMB, (202) 395–6880

Date: February 10, 1989.

[FR Doc. 89–3774 Filed 2–16–89; 8:45 am]

BILLING CODE 4210–27–M

Office of Housing

[Docket No. N–89–1933]

Submission of Proposed Information Collection to the Office of Management and Budget

AGENCY: Office of Housing, HUD.

ACTION: Notice. Correction of Notice published on February 13, 1989.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for emergency processing, an information collection package with respect to Flexible Subsidy Program—Capital Improvement Loan Program. This Notice republishes a Notice published on February 13, 1989 (54 FR 6618) to correct the statement of the date upon which OMB was requested to complete its paperwork review. The date OMB is to complete its review is February 24, 1989.

The information collection requirements in this package are the result of reinstatement of a previously approved collection for which approval has expired (Section 201 of the Housing and Community Development Amendments of 1978, Pub. L. 95–557, (Approved October 31, 1978), and the amendments to the Flexible Subsidy Program of 1983, 1987 and that contained in section 1011 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. 100–628 (approved November 7, 1988). The Department was attempting, under section 1011 of the 1988 McKinney Act, to implement the capital improvement loan component of the program by February 6, 1989. In order to meet this statutory deadline, the Department requested OMB to complete its paperwork review of the Flexible Subsidy Program—Capital Improvement Loan Program interim rule by February 24, 1989. Any control number issued by OMB to cover this emergency situation would be valid for no more than 90 days.

To ensure that the public has an adequate opportunity to comment on these information collection requirements, HUD also intends to submit the Flexible Subsidy Program—Capital Improvement Loan Program interim rule to OMB for regular paperwork review. The public will than have an additional 60-day period in which to comment on the paperwork requirements.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Date: February 13, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Flexible Subsidy Program—Capital Improvement Loan Program (FR 2541).

Office: Housing.

Description of the Need for the Information and its Proposed Use: This information collection is necessary to enable the Department to assist owners in restoring or maintaining the financial soundness, improving management and maintaining the low to moderate income character of the troubled projects. Without this information collection there would be a greater number of defaults on insured loans and consequently greater losses to HUD's insurance fund.

Form Numbers:

HUD–9823A, Requisition for Advance of Flexible Subsidy Funds
HUD–9823B, Request for Transfer of Funds from Project Improvement Account
HUD–9824A, Quarterly Performance Report Management Improvement and Operating (MIO) Plan
HUD–9835, Project Improvement Program, Action Items
HUD–9835A, Project Improvement Program, Management Objectives
HUD–9835B, Project Improvement Program, Sources and Uses of Funds

Respondents: State or local governments, businesses or other for profit, non-profit institutions, small businesses or organizations.

Frequency of Submission: Monthly, quarterly, annually.

Reporting Burden:

Form No.	No. of respondents	Frequency of response	Hours per response	Annual burden
9823A	40	12	¼ hr.	120
9823B	40	4	¼ hr.	40
9824A	40	4	1 hr.	160
9835	40	1	4 hrs.	160
	57	1	2 hrs.	114
	3	1	4 hrs.	12
9835A	40	1	4 hrs.	160
	3	1	4 hrs.	12
9835B	40	1	1 hr.	40
	60	1	1 hr.	[1] 60
				878

[1] Total estimated burden hours.

Status: New collection and revision of a previously approved collection for which approval has expired.

Contact: James J. Tahash, HUD, (202) 426–3944
John Allison, OMB, (202) 395–6880

Dated: February 13, 1989.

[FR Doc. 89–3775 Filed 2–16–89; 8:45 am]
BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-010-09-4322-02]

Boise District Grazing Advisory Board

AGENCY: Boise District, Bureau of Land Management, Idaho.

ACTION: Notice of meeting.

SUMMARY: The Boise District Grazing Advisory Board will meet Wednesday, March 8 to discuss range improvement funding proposals for Fiscal Year 1989. A public comment period will be from 2:00 to 3:00 p.m.

DATE: The meeting will be held March 8, beginning at 9:00 a.m. in the conference room of the Boise District Office.

ADDRESS: The Boise District Office is located at 3948 Development Avenue, Boise, Idaho, 83705.

FOR FURTHER INFORMATION CONTACT: Fred Schley, Boise District BLM, (208) 334-9303.

Date: February 8, 1989.

[FR Doc. 89-3738 Filed 2-16-89; 8:45 am]

BILLING CODE 4310-GG-M

[Alaska AA-48533-Z]

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48533-Z has been received covering the following lands:

Fairbanks Meridian, Alaska

T. 21 S., R. 8 E.,
Sec. 2, NW¼SE¼.
(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from May 1, 1988, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48533-Z as set out in section 31 (d) and (e) of the Material Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective May 1, 1988, subject to the terms and conditions cited above.

Dated: February 8, 1989.

Kay F. Kletka,

Chief, Branch of Mineral Adjudication.

[FR Doc. 89-3736 Filed 2-16-89; 8:45 am]

BILLING CODE 4310-JA-M

[AZ-920-09-4212-13; A-22792-B]

Arizona; Exchange of Public and Private Lands in Pinal and Yavapai Counties

February 10, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of land.

SUMMARY: This action informs the public of the completion of an exchange between the United States and M&B Investments, and Arizona General Partnership. The United States transferred 4,717.03 acres in Pinal County and M&B Investments conveyed 7,891.20 acres in Yavapai County.

FOR FURTHER INFORMATION CONTACT: Angela Mogel, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 241-5534.

SUPPLEMENTARY INFORMATION: Recently, the Bureau of Land Management transferred the following described land by Patent No. 02-89-0012, pursuant to the Federal Land Policy and Management Act of October 21, 1976:

Gila and Salt River Meridian, Arizona

T. 5 S., R. 5 E.,
Sec. 13 lots 1 to 7, incl., SW¼NE¼, S½NW¼, SW¼, W½SE¼;
Sec. 14, losts 1 to 4, incl., S½N½, S½;
Sec. 15, lots 1 to 4, incl., S½N½, S½;
Sec. 16, lots 1 to 3, incl., S½N½, N½SE¼;
Sec. 21, NE¼, S½;
Sec. 22, lots 1 to 4, incl., NW¼;
Sec. 23, lots 1 to 4, incl., S½N½;
Sec. 24, lots 1 to 5, incl., S½NE¼, SE¼NW¼, SW¼.
T. 5 S., R. 6 E.,
Sec. 17, W½;
Sec. 18, lots 1 to 5, incl., SE¼NW¼, E½SW¼, SE¼.

The areas described comprise 4,717.03 acres in Pinal County.

The deed to the United States transferred the following described land:

Gila and Salt River Meridian, Arizona

T. 9 N., R. 1 E.,
Sec. 24, all.
T. 9 N., R. 3 E.,
Sec. 4, lot 3;
Sec. 20, SE¼NE¼.
T. 9½ N., R. 2 E.,
Sec. 21, lot 1, SE¼, except metes and bounds description;
Sec. 22, lots 1 and 2, S½, except metes and bounds description;
Sec. 27, lots 1 to 4, incl., S½N½, except metes and bounds description.
T. 10 N., R. 2 E.,
Sec. 8, W½;
Sec. 14, SW¼SW¼, W½SE¼SW¼;
Sec. 16, W½SW¼;
Sec. 21, NE¼;
Sec. 22, all;
Sec. 23, W½W½, W½E½W½;
Sec. 26, NW¼, N½SW¼, SW¼SW¼;
Sec. 27, all, except metes and bounds description;
Sec. 28, E½, E½W½, except metes and bounds description;
Sec. 33, E½, E½W½, except metes and bounds description;
Sec. 34, all, except metes and bounds description.
T. 10 N., R. 3 E.,
Sec. 4, lots 1 to 3, incl., lots 5 to 10, incl., S½NE¼, S½SW¼, SE¼;
Sec. 8, all, except metes and bounds description;
Sec. 9, all, except metes and bounds description;
Sec. 11, N½SE¼;
Sec. 12, N½SW¼;
Sec. 25, all.
T. 10 N., R. 4 E.,
Sec. 34, exchange survey 667.

The areas described comprise 7,891.20 acres in Yavapai County.

The purpose of this notice is to inform the public and interested State and local government officials of the exchange of public and private land.

The land conveyed to the United States in this exchange will be administered by the Bureau of Land Management.

Marsha L. Luke,

Acting Chief, Branch of Lands Operations.

[FR Doc. 89-3735 Filed 2-16-89; 8:45 am]

BILLING CODE 4310-32-M

[ID-942-09-4730-12]

Idaho; Filing of Plats of Survey

The plat of survey of the following described land, was officially filed in the Idaho State Office, Bureau of Local Management, Boise, Idaho, effective 10:00 a.m., February 10, 1989.

The plat representing the dependent resurvey of a portion of the west boundary and subdivisional lines; the subdivision of certain sections, and an informative traverse of a portion of the shoreline of Wilson Lake Reservoir, T. 9 S., R. 20 E., Boise Meridian, Idaho, Group No. 631, was accepted February 8, 1989.

This survey was executed to meet certain administrative needs by this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of

Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

February 10, 1989.

[FR Doc. 89-3739 Filed 2-16-89; 8:45 am]

BILLING CODE 4310-GG-M

Bureau of Reclamation

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations

AGNECY: Bureau of Reclamation, Interior.

ACTION: Notice of proposed contractural actions pending through March 1989.

Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273), and to § 426.20 of the rules and regulations published in the **Federal Register** dated December 6, 1983, Vol. 48, page 54785, the Bureau of Reclamation will publish notice of proposed or amendatory repayment contract actions or any contract for the delivery of water for irrigation or other uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. The Bureau of Reclamation announcements of repayment and water service contract actions will be published in newspapers of general circulation in the areas determined by the Bureau of Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation requirements do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. The Secretary of the Interior of the district may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act if the Bureau determines that the contract action may or will have "significant" environmental effects.

Pursuant to the "Final Revised Public Participation Procedures" for water service and repayment contract negotiations, published in the **Federal Register** dated February 22, 1982, Vol. 47, page 7763, a tabulation is provided below for all proposed contractural actions in each of the five Reclamation regions. Each proposed action listed is, or is expected to be, in some stage of the contract negotiation process during January, February, or March of 1989. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the Regional Directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved. The identity of the approving officer, and other information pertaining to a specific contract proposal, may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region.

This notice is one of a variety of means being used to inform the public about proposed contractual actions. Individual notices of intent to negotiate, and other appropriate announcements, are made in the **Federal Register** for those actions found to have widespread public interest. When this is the case, the date of publication is given.

Acronym Definitions Used Herein

(FR) Federal Register
(ID) Irrigation District
(IDD) Irrigation and Drainage District
(M&I) Municipal and Industrial
(D&MC) Drainage and Minor Construction
(R&B) Rehabilitation and Betterment
(O&M) Operation and Maintenance
(CAP) Central Arizona Project
(CUP) Central Utah Project
(CVP) Central Valley Project
(P-SMBP) Pick-Sloan Missouri Basin Program
(CRSP) Colorado River Storage Project
(SRPA) Small Reclamation Projects Act
(BCP) Boulder Canyon Project

Pacific Northwest Region

Bureau of Reclamation, 550 West Fort Street, Box 043, Boise, Idaho 83724, telephone (208) 334-1161.

1. Cascade Reservoir water users, Boise Project, Idaho: Repayment contracts for irrigation and M&I; 29,221 acre-feet of stored water in Cascade Reservoir.

2. Brewster Flat ID, Chief Joseph Dam Project, Washington: Amandatory repayment contact; land reclassification of approximately 360 acres to irrigable; repayment obligation to increase accordingly.

3. Individual irrigators, M&I, and miscellaneous water users, Pacific Northwest Region, Idaho, Oregon, and Washington: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Long-term contracts for similar service for up to 1,000 acre/feet of water annually.

4. Rogue River Basin water users, Rogue River Basin Project, Oregon: Water service contracts; $5 per acre-foot or $50 minimum per annum, terms up to 40 years.

5. Willamette Basin water users, Willamette Basin Project, Oregon: Water service contracts; $1.50 per acre-foot or $50 minimum per annum, terms up to 40 years.

6. IDs and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97-293).

7. Fifty-nine Palisades Reservoir Spaceholders, Minidoka Project, Idaho-Wyoming: Contract amendments to extend term for which contract water may be subleased to other parties.

8. South Columbia Basin ID, Columbia Basin Project, Washington: Supplemental repayment contract for Irrigation Block 24; 1,892 irrigable acres.

9. City of Cle Elum, Yakima Project, Washington: Amendatory or replacement M&I water service contract; 2,200 acre-feet (1,350 gallons per minute) annually for a term of up to 40 years.

10. Three IDs, Flathead Indian Irrigation Project: Repayment of costs associated with rehabilitation of irrigation facilities.

11. Baker Valley ID, Baker Project, Oregon: Irrigation water service contract on a surplus interruptible basis to serve up to 13,000 acres; sale of excess capacity in Mason Reservior (Phillips Lake) for a term of up to 40 years.

12. Crooked River Project, Oregon: Irrigation repayment or water service contracts with several individuals and with North Unit ID for a total of up to 25,000 acre-feet of storage space in Prineville Reservoir.

13. Various Projects, Pacific Northwest Region: R&B contracts for replacement of needle valves at storage dams.

14. Palisades Water Users, Inc., Minidoka-Palisades Project, Idaho: Repayment contract for an additional 500 acre-feet of storage in Palisades Reservoir.

15. Willow Creek Project, Oregon: Repayment or water service contracts for a total of up to 3,500 acre-feet of storage space in Willow Creek Reservoir.

16. Roza ID, Yakima Project, Washington: Proposed supplementary deferment contract. Defer 1 year (2 installments) of construction payments because of cost incurred by the district to obtain additional water supplies in anticipation of drought.

17. Vale Oregon ID, Vale Project, Oregon: Supplementary deferment

contract to defer the 1988 construction installment under authority of the Act of September 21, 1959. The district has experienced a significant reduction in water supply for the 1988 season.

18. Four Project Spaceholders, Minidoka-Palisades Project, Idaho-Wyoming: Contract amendments to provide for rental of water to other parties.

19. Medford ID, Rogue River Basin Project, Oregon: Amendatory repayment contract to provide that the district's total annual payments under the repayment contract and the 1988 loan prepayment arrangement do not exceed the level intended at the time the repayment contract was executed.

Mid-Pacific Region

Bureau of Reclamation (Federal Office Building) 2800 Cottage Way, Sacramento, California 95825, telephone (916) 978–5030.

1. Tuolumne Regional Water District, CVP, California: Water service contract, up to 9,000 acre-feet from New Melones Reservoir.

2. Calaveras County Water District, DVP, California: Water service contract; 1,000 acre-feet from New Melones Reservoir; FR notice published February 5, 1982, Vol. 47, page 5473.

3. Individual irrigators, M&I, and miscellaneous water users, Mid-Pacific Region, California, Oregon, and Nevada: Temporary (interim) water service contracts for available project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; Temporary Warren Act contracts for use of project facilities for terms up to 1 year; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

Note. Copies of the standard form of temporary water service contract for the various types of service are available, upon written request, from the Regional Director at the address shown above.

4. Friant Unit Contractors, CVP, California: Renewal of existing long-term water service contracts with numerous contractors on the Friant-Kern Canal whose contracts expire 1989–1995. Water quantities in existing contracts range from 1,200 to 175,440 acre-feet.

5. San Luis Water District, CVP, California: Amendatory water service contract providing for a change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

6. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

7. State of California, CVP, California: Contract(s) for, (1) sale of interim water to the Department of Water Resources for use by the State Water Project Contractors, and (2) acquisition of conveyance capacity in the California Aqueduct for use by the CVP, as contemplated in the Coordinated Operation Agreement.

8. Madera ID, Madera Canal, CVP, California: Warren Act contract to convey and/or store nonproject Soquel water through project facilities.

9. County of Tulare, CVP, California: Amendatory water service contract, to provide an additional 1,908 acre-feet and reallocate 400 acre-feet of water from the Ducor ID for a total increase of 2,308 acre-feet.

10. Shasta Dam Area Public Utilities District, CVP, California: Renewal of M&I water supply contract. Less than 6,000 acre-feet.

11. U.S. Fish and Wildlife Service, CVP, California: Long-term contract for water supply for Federal refuge in Grasslands area of California.

12. City of Redding, CVP, California: Amendatory M&I water supply contract.

13. City of Dos Palos, CVP, California: Contract for the use of surplus capacity in the San Luis Canal. The contract will allow the exchange of water with Central California ID and transportation to a new point of delivery. The result will be a significant improvement in quality of water made available to the city's water users.

14. North Kern Water Storage District, Buena Vista Water Storage District, Tulare Lake Basin Water Storage District, and Hacienda Water District, Kern River Project, California: Amendatory contract to provide storage space for M&I water.

15. Contra Costa Water District, CVP, California: Amendatory water service contract to add an additional point of delivery to accommodate the district's proposed Los Vaqueros Project. Amendment will also conform contract to current water ratesetting policies.

16. East Bay Municipal Utility District, CVP, California: Temporary M&I water service contract for 75,000 acre-feet of water for up to one year.

17. East Bay Municipal Utility District, CVP, California: Amend Contract No. 14–06–200–5128A to provide for the current CVP water rates to conform the contract with the provisions of sections 105 and 106 of Pub. L. 99–546.

18. San Juan Suburban Water District, CVP, California: Amend Contract No. 14–06–200–152A to provide for the current CVP water rates to conform the contract with the provisions of sections 105 and 106 of Pub. L. 99–546.

19. Centerville Community Services District, CVP, California: Water service contract for up to 1,560 acre-feet of M&I water annually.

20. Shasta County Water Agency, CVP, California: Amendatory water service contract to provide for reduction in annual entitlement.

21. Westpac Utilities, Washoe Project, California/Nevada: Water exchange contract to facilitate the repair of the contractor's storage facilities without a loss of water storage.

22. Kern County Water Agency, CVP, California: Temporary agricultural water supplies of up to 100,000 acre-feet for 1 year.

23. Friant Unit, CVP, California, amendatory contracts to include the provision of the Act of July 2, 1956 (70 Stat. 483), in existing water service contracts with Porterville ID, Lindsay-Strathmore ID, Linemore ID, Southern San Joaquin Municipal Utility District and Orange Cove ID.

24. California Department of Corrections, CVP, California: Water service for up to 1,000 acre-feet of water annually to serve the Sierra Conservation Center (a State prison) near Jamestown, California.

Upper Colorado Region

Bureau of Reclamation, P.O. Box 11568 (125 South State street), Salt Lake City, Utah 84147, telephone (801) 524–5435.

1. Individual irrigators, M&I, and miscellaneous water users, Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

(a) The Benevolent and Protective Order of the Elks, Lodge No. 1747, Farmington, New Mexico: Navajo Reservoir water service contract; 20 acre-feet per year for municipal use; contract term for 40 years from execution.

(b) The town of Lake City, Colorado: Blue Mesa Reservoir water service contract; 25 acre-feet per year to support present diversion rights for municipal use; contract term for 40 years from execution.

(c) Mt. Crested Butte Water and Sanitation District, Colorado: Blue Mesa Reservoir water service contract; 25 acre-feet per year to support present diversion rights for municipal use; contract term for 40 years from execution.

2. Revised Hydrological Determination: A hydrologic

determination was last made for the Upper Colorado River in December 1984 with the principal conclusion that the Upper Basin could support a depletion level of at least 5.8 million acre-feet. Upon the request of the secretary of the New Mexico Interstate Stream Commission, a review of water availability in the Upper Basin has been undertaken with regard to the water supply available for use in New Mexico.

3. La Plata Conservancy District, Animas-La Plata Project, New Mexico: Repayment contract; 9,900 acre-feet per year for irrigation. Contract terms consistent with binding cost-sharing agreement, dated June 30, 1986.

4. San Juan Water Commission, Animas-La Plata Project, New Mexico: M&I repayment contract; 30,800 acre-feet per year. Contract terms consistent with binding cost-sharing agreement, dated June 30, 1986.

5. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado: Repayment contract for 26,500 acre-feet per year for M&I use and 2,600 acre-feet per year for irrigation use in Phase One and 3,300 acre-feet in Phase Two Contract terms to be consistent with binding cost-sharing agreement and water rights settlement agreement, in principle.

6. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado and New Mexico: Repayment contract for 6,000 acre-feet per year for M&I use in Colorado; 26,400 acre-feet per year for irrigation use in Colorado; and 900 acre-feet per year for irrigation use in New Mexico. Contract terms to be consistent with binding cost-sharing agreement and water rights settlement agreement.

7. Navajo Indian Tribe, Animas-La Plata Project, New Mexico: Repayment contract; 7,600 acre-feet per year for M&I use.

8. Grand Valley Water Users Association, Orchard Mesa ID, Grand Valley Project, Colorado: Contract to continue O&M of Grand Valley powerplant.

9. Ute Mountain Ute Indian Tribe, Dolores Project, Colorado: Agreement for 1,000 acre-feet per year for M&I use and 22,900 acre-feet per year for irrigation.

10. Uintah Water Conservancy District, Jensen Unit, CUP, Utah: Amendatory repayment contract to reduce M&I water supply and corresponding repayment obligation.

11. Florida Water Conservancy District, Florida Project, Colorado: Lease of power privileges to develop the hydroelectric power potential of the Florida Project.

12. Vermejo Conservancy District, Vermejo Project, New Mexico: Amendatory contract to relieve the district of further repayment obligation, presently exceeding $2 million, pursuant to Pub. L. 96–550.

13. Rio Grande Water Conservation District, Alamosa, Colorado: Contract for the district to be the vender of the Closed Basin Division, San Luis Valley Project, surplus water if available.

14. Conejos Water Conservancy District, San Luis Valley Project, Colorado: Amendatory contract to place operation, maintenance, and replacement costs on a variable basis commensurate with the availability of project water.

15. Weber Basin Water Conservancy District, Weber Basin Project, Utah: Repayment contract for R&B of the A. V. Watkins Dike.

16. Ogden River Water User Association, Ogden River Project, Utah: Repayment contract for R&B of portions of the Pineview Dam, Ogden Canyon Conduit, Ogden-Brigham Canal and South Ogden Highline Canal.

17. Miscellaneous M&I and irrigation water users in New Mexico, San Juan-Chama Project, New Mexico-Colorado: Repayment contracts for remaining project water allocated in 1975 or before. Contract amounts vary from 60 to 5,165 acre-feet.

Lower Colorado Region

Bureau of Reclamation, P.O. Box 427 (Nevada Highway and Park Street), Boulder City, Nevada 89005, telephone (702) 293–8536.

1. Amendment to Contract No. 176r–696 between the Bureau of Reclamation and the Department of the Army to increase the maximum amount of water delivered to the Yuma Proving Grounds from 55 acre-feet to 975 acre-feet, pursuant to the recommendation of the Arizona Department of Water Resources.

2. Agricultural and M&I water users, CAP, Arizona: Water service subcontracts; a certain percent of available supply for irrigation entities and up to 640,000 acre-feet per year for M&I use.

3. Southern Arizona Water Rights Settlement Act: Sale of up to 28,200 acre-feet per year of municipal effluent to the city of Tucson, Arizona.

4. Contracts with five agricultural entities located near the Colorado River, BCP, Arizona: Water service contracts for up to 1,920 acre-feet per year total.

5. Gila River Indian Community, CAP, Arizona: Water service contract for delivery of up to 173,100 acre-feet per year.

6. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

7. Indian and non-Indian agricultural and M&I water users, CAP, Arizona: Contracts for repayment of Federal expenditures for construction of distribution systems.

8. State of Arizona, BCP: Contract for a yet undetermined amount of Colorado River water for M&I use on State-owned land.

9. Contract with the State of Arizona, BCP: For a yet undetermined amount of Colorado river water for agricultural use and related purposes on State-owned land.

10. Contract with four individual holders of miscellaneous present perfected rights to Colorado River water totalling 4.5 acre-feet, pursuant to the January 9, 1979, Supplemental Decree of the United States Supreme Court in Arizona v. California (439 U.S. 419).

11. Ak-Chin Farms, Maricopa, Arizona: Repayment contract for $6 million SRPA escalation/supplemental loan.

12. Contracts for delivery of surplus water from the Colorado River, when available, with Emilio Soto and Sons, for 1,836 acre-feet per year; Kennedy Livestock, for 480 acre-feet per year.

13. Imperial ID and/or the Coachella Valley Water District, BCP, California: Contract providing for exchange of up to 10,000 acre-feet of water per year from a well field to be constructed adjacent to the All-American Canal for an equivalent amount of Colorado River water and for O&M of the well field, Lower Colorado Water Supply Project, California.

14. Lower Colorado Water Supply Project, California: Water service and repayment contracts with nonagricultural users in California for consumptive use of up to 10,000 acre-feet of Colorado River water per year in exchange for an equivalent amount of water to be pumped into the All-American Canal from a well field to be constructed adjacent to the canal.

15. Golden Shores Water Conservation District, BCP, Arizona: M&I water service for lands within the district and adjacent areas for delivery of up to 2,000 acre-feet of Colorado River water per year pursuant to the recommendation of the Arizona Department of Water Resources.

16. Hutchison Present Perfected Rights contract amendment to reflect the transfer of part of the right to Winterhaven, California, Supreme Court Decree in Arizona v. California and BCP.

17. Winterhaven Present Perfected Rights contract for a portion of

Hutchison Present Perfected Rights transfer to Winterhaven, Supreme Court Decree in Arizona v. California and BCP.

18. County of San Bernardino, San Bernardino, California: Repayment contract for $28.6 million SRPA loan.

19. Wellton-Mohawk IDD and Gold Dome Mining Corporation (Corporation), Gila Project, Arizona: Contract for delivery of 6.14 acre-feet of water per year to the Corporation through Wellton-Mohawk Division facilities.

20. Ak-Chin Farms, Maricopa, Arizona: Contract for the O&M of on-reservation conveyance facilities associated with delivery of water to the southeast corner of the reservation; Ak-Chin Indian Community Water Rights Settlement Act.

21. Wellton-Mohawk IID, Gila Project, Arizona: Exchange agreement providing for a reduction in Wellton-Mohawk IDD's contractual right to consumptively use 22,000 acre-feet of Colorado River water per year, providing for discharge of the IDD's repayment obligation and exemption from the full cost pricing and acreage limitation provisions of Federal Reclamation law; Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988.

22. Water delivery contracts with seven Phoenix area cities providing for the delivery of up to 27,000 acre-feet per year through the CAP; Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988.

23. Agreements with seven Phoenix area cities providing for the lease of the Salt River Pima-Maricopa Indian Community's CAP entitlement of 13,300 acre-feet per year to the cities; Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988.

24. Salt River Pima-Maricopa Indian Community, CAP, Arizona: Amendatory water delivery contract providing for extension of the contract term and authorizing the Community to lease its CAP water to the Phoenix area cities; Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988.

25. Salt River Pima-Maricopa Indian Community, Salt River Project, Arizona: Amendatory agreement to increase the Community's allotment to Bartlett Dam water from the Salt River Project; Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988.

26. Roosevelt Water Conservation District, Salt River Project, Arizona: Agreement assigning a portion of the District's CAP agricultural water to seven Phoenix area cities; Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988.

27. Roosevelt Water Conservation District, Salt River Project, Arizona: Agreement to extend the term of the District's water salvage contract; Salt River Pima-Maricopa Indian Water Rights Settlement Act of 1988.

28. Queen Creek ID, CAP, Arizona: Amendatory and supplemental contract providing for the District to construct a portion of its CAP distribution system with not to exceed $200,000 of Federal funds pursuant to the Drainage and Minor Construction Act.

Great Plains Region

Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone (406) 657–6413.

1. Individual irrigators, M&I, and miscellaneous water users, Great Plains Region, Montana, Wyoming, North Dakota, South Dakota, Colorado, Kansas, Nebraska, Oklahoma, and Texas: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Fort Shaw ID, Sun River Project, Montana: R&B loan repayment contract; up to $1.5 million.

3. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

4. Oahe Unit, P–SMBP, South Dakota: Cancellation of master contract and participating and security contracts in accordance with Public Law 97–293 with South Dakota Board of Water and Natural Resources and Spink County and West Brown ID.

5. Owl Creek ID, Owl Creek Unit, P–SMBP, Wyoming: Amendatory water service contract to reflect reduced water supply benefits being received from Anchor Reservoir.

6. Green Mountain Reservoir, Colorado—Big Thompson Project: Water service contract; proposed contract negotiations for sale of water from the marketable yield to water users within the Colorado River Basin of Western Colorado.

7. Ruedi Reservoir, Fryingpan—Arkansas Project, Colorado: Water service contract; second proposed contract negotiations for sale of water from the regulatory capacity of Ruedi Reservoir.

8. Fryingpan—Arkansas Project, Colorado: East Slope Storage system consisting of Pueblo Reservoir, Twin Lakes, and Turquoise Reservoir; Contract negotiations for temporary and long-term storage and exchange contracts.

9. Cedar Bluff ID No. 6 and the State of Kansas, Cedar Bluff Unit, P–SMBP, Kansas: Repayment contract; Negotiate contract with the State of Kansas for use of all or part of the conservation pool of Cedar Bluff Reservoir for recreation, and fish and wildlife purposes for payment of the irrigation district's cost obligation. Amend the Cedar Bluff ID's contract to relieve it of all contract obligations.

10. Northern Colorado Water Conservancy District and the Municipal Subdistrict, Colorado—Big Thompson Project, Colorado: Contract for storage and conveyance of water for the Windy Gap Project; Amendatory contract to make administrative and technical revisions to conform the contract terms and conditions to the Windy Gap Project as actually constructed and operated.

11. Department of Natural Resources and Conservation, SRPA, Montana: Grant and loan contract for rehabilitation of Middle Creek Dam to meet required safety criteria and to increase reservoir storage capacity by 1,917 acre-feet which will be utilized for irrigation and municipal purposes.

12. Garrison Diversion Unit, P–SMBP, North Dakota: Repayment contract; Renegotiation of the master repayment contract with Garrison Diversion Conservancy District to bring the terms in line with the Garrison Diversion Unit Reformulation Act of 1986. Negotiation of repayment contracts with irrigators and M&I users.

13. Gray Goose ID, Gray Goose Unit, P–SMBP, South Dakota: Contract negotiations to integrate Gray Goose ID into the P–SMBP as authorized pursuant to section 1120 of the Water Resource Development Act of January 21, 1986 (Pub. L. 99–662).

14. Hilltop ID, Hilltop Unit, P–SMBP, South Dakota: Contract negotiations to integrate Hilltop ID into the P–SMBP as authorized pursuant to section 1120 of the Water Resource Development Act of January 21, 1986 (Pub. L. 99–662).

15. PacifiCorp, formerly Pacific Power and Light Company, Glendo Unit, P–SMBP, Wyoming: Contract negotiations for renewal of water storage contract for 2,000 acre-feet of nonproject industrial water.

16. Corn Creek ID, Glendo Unit, P–SMBP, Wyoming: Repayment contract for 10,350 acre-feet of supplemental irrigation water from Glendo Reservoir

17. Lavaca-Navidad River Authority, Palmetto Bend Project, Texas: Amendatory contract to increase repayment ceiling to cover repairs to a drop structure.

18. Hildalgo County ID No. 1, Lower Rio Grande Valley, Texas: Supplemental SRPA loan contract for approximately $13,205,000. The contracting process is dependent upon final approval of the supplemental loan report.

19. Foss Reservoir Master Conservancy District, Washita Basin Project, Oklahoma: Amendatory repayment contract for remedial work.

20. Arbuckle Master Conservancy District, Arbuckle Project, Oklahoma: Contract for the repayment of costs incurred by the United States for the construction of the Sulphur, Oklahoma, pipeline and pumping plant (if constructed).

21. Arbuckle Master Conservancy District, Arbuckle Project, Oklahoma: Amendatory contract for revised repayment schedule to reflect credit for project lands transferred to National Park Service under Pub. L. 94–235 for the Chickasaw National Recreation Area.

22. Highland-Hanover ID, Boysen Unit, P–SMBP, Wyoming: R&B loan repayment contract; $300,000.

23. Upper Bluff ID, Boysen Unit, P–SMBP, Wyoming: R&B loan repayment; $220,000.

Opportunity for public participation and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

(1) Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

(2) Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of the Bureau of Reclamation.

(3) All written correspondence regarding proposed contracts will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

(4) Written comments on proposed contract or contract action must be submitted to the appropriate Bureau of Reclamation officials at locations and within the time limits set forth in the advance public notices.

(5) All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

(6) Copies of specific proposed contracts may be obtained from the appropriate Regional Director or his designated public contract as they become available for review and comment.

(7) In the event modifications are made in the form of proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the 60-day comment period is necessary.

Factors which shall be considered in making such a determination shall include, but are not limited to: (i) The significance of the impact(s) of the modification, and (ii) the public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Date: February 10, 1989.

C. Dale Duvall,

Commissioner of Reclamation.

[FR Doc. 89–3745 Filed 2–16–89; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1 Parent corporation and address of principal office: Gardner Industries, Incorporated, 686 Port Washington Boulevard, Port Washington, New York 11050.

2. Wholly owned subsidiaries which will participate in the operations and their states of incorporation:

(a) Gardner Asphalt Corp., Alabama;

(b) Gardner-Overall, Inc., North Carolina;

(c) Gardner-Overall, Inc., Ohio;

(d) Gardner Asphalt Corporation, Delaware;

(e) Gardner Asphalt Corp. of Delaware, Delaware;

(f) Gardner Asphalt Corp. of Kansas, Delaware;

(g) Gardner Asphalt Co., Florida;

(h) Gardner Asphalt Corp. of New Jersey, New Jersey;

(i) American Lava Coatings Corp., New York;

(j) Gardner Asphalt Corp. (a/k/a-d/b/a "Pro-Seal"), Illinois;

(k) APOC of Colorado, Inc., California;

(l) Asphalt Products Oil Corp. (a/k/a-d/b/a "APOC"), California;

(m) GAC Trucking Co., Inc., Florida;

(n) GAC Transco, Inc. (d/b/a "Transco"), North Carolina.

B. 1. Parent corporation, address of principal office and State of Incorporation:

Sara Lee Corporation, Three First National Plaza, Chicago, Illinois 60602—Maryland.

2. Wholly owned subsidiaries which will participate in the operations, the address of their respective principal offices and their States of Incorporation:

Adams-Millis Corporation, 224 North Elm Street, High Point, North Carolina 27261–2650—North Carolina.

Aris Isotoner, Inc., 417 Fifth Avenue, New York, New York 10016—Delaware.

Bali Company, 3330 Healy Dr., Winston-Salem, North Carolina 27103—Delaware.

Bil Mar Foods, Inc., 8300 96th Avenue, Zeeland, Michigan 49464—Delaware.

Booth Fisheries Corporation, 1300 W. Higgins, Park Ridge, Illinois 60068—Delaware.

Bryan Foods, Inc., 1 Churchill Road, P.O. Box 1177, West Point, Mississippi 39773—Mississippi.

Capitol Foods Company, 6501 Fulton Industrial Blvd., Atlanta, Georgia 30336—Georgia.

Circle T Foods Company, Inc., 4560 Leston, Dallas, Texas 75247—Texas.

Coach Stores, Inc., 516 West 34th Street, New York, New York 10001—Delaware.

Coach Leatherware Company, Inc., 300 Chubb Avenue, Lyndhurst, New Jersey 07071—New Jersey.

Country Commons Inc., 500 Waukegan Road, Deerfield, Illinois 60015—Delaware.

Douwe Egberts Coffee Service, Inc., 990 Supreme Drive, Bensenville, Illinois 60106—Delaware.

Epic Company, Inc., Jimmy Dean Avenue, Osceola, Iowa 50213—Illinois.

Frigid Freeze Foods, Inc., 1025 Electric Road, Salem, Virginia 24153—Virginia.

The Fuller Brush Company, 5635 Hanes Mill Road, Winston-Salem, North Carolina 27106—Connecticut.

Fuller Brush Catalog, Inc., 5635 Hanes Mill Road, Winston-Salem, North Carolina 27106—North Carolina.

Gibbon Packing, Inc., P.O. Box 2006, Milwaukee, Wisconsin 53201—Connecticut.

Green Hill Incorporated, Rt. 11, Elliston, Virginia 24087—Virginia.

Hanes Menswear, Inc., 3334 Healy Drive, Winston-Salem, North Carolina 27103—Delaware.

Higdon Food Service, Inc., 1350 N.

10th St., Paducah, Kentucky 44002—Kentucky.
Illinois Fruit & Produce Corp., One Quality Lane, Streator, Illinois 61364—Illinois.
The Jimmy Dean Meat Company, Inc., 1341 W. Mockingbird Lane, Dallas, Texas 75247—Texas.
Kiwi Brands Inc., Route 662 North, Douglassville, Pennsylvania 19518—Delaware.
Landlock Seafood Company, Inc., 4119 Billy Mitchell Road, Addison, Texas 75001—Texas.
L'eggs Brands, Inc., P.O. Box 2495, 5660 University Parkway, Winston-Salem, North Carolina 27105—North Carolina.
Ozark Salad Company, Inc., 100 N. Youngman, Baxter Springs, Kansas 66713—Delaware.
Priddy's Quality Foods, Inc., 204 H N.E., Ardmore, Oklahoma 73401—Oklahoma.
PYA/Monarch, Inc., 107 Frederick Street, P.O. Box 1328, Greenville, South Carolina 29602—Delaware.
Rice Hosiery Corporation, 550 Fairfield Road, High Point, North Carolina—North Carolina.
Sara Lee Knit Products, Inc., 3334 Healy Drive, Winston Salem, North Carolina 27103—Delaware.
Schloss & Kahn, Inc., US Highway 80 & Newcomb Avenue, Montgomery, Alabama 36195—Delaware.
Seitz Foods, Inc., Box 247, St. Joseph, Missouri 64502—Delaware.
Sky Bros., Inc., Burns Avenue at Canan Station, Altoona, Pennsylvania 16603—Pennsylvania.
Sky Bros. of Lemoyne, Inc., 1135 North Plymouth St., Allentown, Pennsylvania 16103—Pennsylvania.
Standard Meat Company, 3709 East First Street, Forth Worth, Texas 76111—Texas.
Superior Coffee and Foods, Inc., 990 Supreme Drive, Bensenville, Illinois 60106—Illinois.
Wolferman's Inc., One Muffin Lane, North Kansas City, Missouri 64116—Delaware.

Noreta R. McGee,
Secretary.

[FR Doc. 89-3763 Filed 2-16-89; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier Applications To Consolidate, Merge, or Acquire Control

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. If the protest includes a request for oral hearing, the request shall meet the requirements of 49 CFR 1182.3 and shall include the required certification. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding.

In the absence of legally sufficient protests as the finance application or any application directly related thereto filed within 454 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Application(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notification of effectiveness of this decision-notice or the application of a non-complying applicant shall stand denied.

Findings

The finding for these applications are set forth at 49 CFR 1182.6.

MC-F-19352, filed February 6, 1989. John O. Loeb and Thomas E. Wyman—Control—Peaslee Transportation, Inc. (Peaslee) and Cheshire Transportation Company, Inc. (Cheshire). Representative: James M. Burns, Suite 304, 935 Main St., Springfield, MA 01103. John O. Loeb (Loeb) and Thomas E. Wyman (Wyman) (both non-carrier individuals) seek approval for their acquisition of control of Peaslee (MC-167553), a motor common carrier of passengers. Loeb and Wyman will control 80 percent and 20 percent, respectively, of the stock of Peaslee. Loeb and Wyman presently control Cheshire (MC-27518), a motor common carrier of passengers, in which they respectively have 80 percent fund 20 percent interests.

Noreta R. McGee,
Secretary.

[FR Doc. 89-3762 Filed 2-16-89; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 31332]

Amended Notice of Exemption; Emons Holdings, Inc. and Emons Development Corp.; Continuance in Control Exemption of St. Lawrence and Atlantic Railroad Co.

On October 14, 1988, a notice of exemption was served, allowing Emons Holdings, Inc. (Emons), to continue in control of the St. Lawrence & Atlantic Railroad Company (SL&A) upon the commencement of rail operations by SL&A. The notice was filed under the class exemption procedure, 49 CFR 1180.2(d).

By letter filed February 6, 1989, Emons and Emons Development Corp. (EDC) seek to amend the notice of exemption. Originally, Emons filed the notice of exemption in its own name alone because it intended to hold 100 percent of the stock of SL&A. Emons has since decided to have its already existing wholly owned subsidiary, EDC, hold 100 percent of the stock of SL&A. SL&A will be directly owned by EDC and indirectly owned by Emons. Emons and EDC request that the notice of exemption be amended to include EDC in the control exemption.

Emons control the Maryland and Pennsylvania Railroad Company (M&P), a Class III rail carrier, and EDC which owns Yorkrail, Inc., also a Class III carrier. SL&A's lines will not connect with those of M&P or Yorkrail, and the acquisition of control is not part of a series of anticipated transactions that could lead to a connection. The transaction involves no Class I carriers. Accordingly, continuance in control of SL&A by EDC directly and Emons indirectly comes within the class of transactions exempted from the prior approval requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to the use of this exemption, any employees affected by the continuance in control by Emons and EDC shall be protected pursuant to *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: R. Lawrence McCaffrey, Jr., Weiner, McCaffrey, Brodsky & Kaplan, P.C., Suite 800, 1350 New York Ave. NW., Washington, DC 20005-4797.

Dated: February 10, 1989.

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

Noreta R. McGee,

Secretary.

[FR Doc. 89-3764 Filed 2-16-89; 8:45 am]

BILLING CODE 7035-01-M

[Service Order No. 1506]

The New York, Susquehanna and Western Railway Corp. Authorized To Operate Tracks of Delaware and Hudson Railway Co., Debtor (Francis P. Dicello, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Service Order No. 1506, notice of hearing, and request for comment for extension beyond 30 days.

SUMMARY: This order authorizes the New York, Susquehanna and Western Railway Corporation (NYS&W) to operate without Federal subsidy or other federal compensation over tracks of the Delaware and Hudson Railway Company (D&H) for 30 days (*i.e.*, from February 14 through March 15, 1989), seeks comment on an extension of the authority beyond 30 days, and set the matter for hearing on March 7, 1989.

Under 49 U.S.C. 11123(a), the Commission may issue a service order for up to 30 days when it finds that a "failure in traffic movement exists which creates an emergency situation of such magnitude as to have substantial adverse effects on rail service in the United States or a substantial region of the United States," (emphasis added). Extension of the order requires that the Commission, after a hearing, certify the continued existence of the emergency.

DATES: Any interested party may file comments regarding this order and any extension of it by February 24, 1989. Responses to those statements must be filed by March 3, 1989. A hearing will be held on March 7, 1989, in Hearing Room A at the Interstate Commerce Commission Building.

EFFECTIVE DATE: This order shall become effective at 12:01 a.m., February 14, 1989, and shall remain in effect until 11:59 p.m. March 15, 1989, unless otherwise modified, amended, or vacated by order of this Commission.

ADDRESS: An original and 15 copies of comments referring to Service Order Number 1506 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar—(202) 275-7245 or Bernard Gaillard—(202) 275-7849. TDD for hearing impaired: (202) 275-1721.

SUPPLEMENTARY INFORMATION: Section 11123(a) of the Interstate Commerce Act authorizes the Commission to act in emergency situations where it finds that a "failure in traffic movement exists which creates an emergency situation of such magnitude as to have substantial adverse effects on rail service in the United States or a substantial region of the United States." The initial period for the service order may not exceed 30 days and the order may be extended only after the full Commission, after a hearing, certifies the continued existence of the transportation emergency.

On June 20, 1988, the D&H [1] filed a petition for Reorganization under Chapter 11 of the Bankruptcy Code, 11 U.S.C. 1161, *et seq.*, in the U.S. District Court for the District of Delaware (Bankruptcy Filing No. 88-342). Upon notification from D&H that it was terminating operations on June 23, 1988, by orders served June 22, and June 23, 1988, pursuant to the provisions of 49 U.S.C. 11125, the Commission found that D&H's impending cessation of service without authority met the statutory criteria for directed service and authorized the NYS&W to operate the entire 569 miles of D&H owned lines and 1,012 miles of D&H trackage rights. The orders specified that there would be no Federal subsidy or compensation under 49 U.S.C. 11125(b)(5). This authority expires February 13, 1989.[2]

On February 13,1989, NYS&W's authority to operate on the D&H system under service order No. 1504 will expire. Numerous shippers will be left without rail service.

The D&H Trustee has acknowledged D&H's continuing common carrier obligation, but has informed us that he is not prepared to resume operations of the D&H. Accordingly, an emergency exists affecting rail traffic to and from the Northeast.[3] This emergency also threatens to disrupt the competitive balance in the region.

NYS&W and Consolidated Rail Corporation (CR) have offered to continue operations of the D&H under 49 U.S.C. 11123 until the Trustee determines whether reorganization and resumed operations are possible.[4]

The NYS&W filed a petition for emergency service under section 11123 on February 8, 1989. The D&H Trustee supports the NYS&W's operation of D&H. On February 9, 1989, the Trustee sought and obtained an order from the bankruptcy court approving two agreements into which the Trustee has entered, one with the NYS&W and the other with NYS&W and CSX Transportation Inc., which provide for service by NYS&W over the D&H under the provisions of section 11123; *See Order Approving Terms and Conditions of Memorandum of Understanding with New York, Susquehanna and Western Railway Corporation and Agreement with NYS&W and CSX Transportation, Inc.*, U.S. Bankruptcy Court for the District of Delaware, Case No. 88-342-HSB, February 9, 1989. The Trustee believes that NYS&W, more than CR, maintains the competitive balance necessary for the region. On the limited record before us, it would appear that continued operations by NYS&W, rather than Conrail, would raise fewer competitive issues during the 30-day service period here authorized.

RLEA has filed a response to NYS&W's petition. RLEA argues that there is no emergency so as to justify service under section 11123, that there is no basis for an order by this Commission relieving the D&H Trustee and the NYS&W of existing collective bargaining agreements, and that we should not grant NYS&W's petition because it seeks to evade the bankruptcy laws and also because we lack authority to issue the order. The latter three arguments all deal with the effect of section 11123 on existing collective bargaining agreements.

RLEA premises its argument that no emergency exists on the statement that the elimination of competitive rail service in this region does not constitute an emergency: Conrail and other

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[1] The D&H is a northeastern regional railroad which operates over 1581 miles of track and handles a wide variety of traffic between points in the northeast and the midwest and between Canada and points in the southeastern portion of the United States.

[2] Finance Docket No. 31295, Directed Service Order No. 1504, was subsequently extended for a period of 10 days by Supplemental Order No. 2 in the same proceeding, served August 5, 1988, and for a period of 180 days by Supplemental Order No. 3, served August 17, 1988.

[3] The Department of Transportation of the State of New York (NYDOT), has indicated that the disruption of service would create a new emergency situation.

[4] Conrail reasserts its position that the Commission lacks authority to direct or authorize operations over the trackage rights D&H has on the Conrail system. That is not correct. As we indicated in Finance Docket No. 31295, Directed Service Order No. 1504, served August 17, 1988, the use of lines and trackage rights by a carrier as a substitute for D&H and with the permission of D&H so as to carry out D&H's common carrier obligation does not effect an assignment. NYS&W is simply operating for D&H and stands in D&H's shoes vis-a-vis trackage rights over Conrail.

carriers allegedly provide alternative bridge service through the region and local service at "all major cities served by D&H, except Oneonta, New York."

We cannot agree that the cessation of service on the D&H system does not constitute an emergency within the meaning of section 11123. The affected area is clearly a "substantial region of the United States." Aside from a loss of competitive rail service throughout the area, cessation of operations on the D&H would also mean a total loss of rail service to numerous shippers and receivers along the D&H system. Both the New York State Department of Transportation and the United States Department of Transportation have urged us to provide for service under section 11123 consistent with the terms of the two agreements among the Trustee, the NYS&W and CSX. Their filings also support the order.

RLEA also argues that nothing in section 11123 empowers us to relieve either D&H or the NYS&W of their existing collective bargaining agreements. The issue of the interplay between the Railway Labor Act and the Interstate Commerce Act in the context of section 11123 has not been addressed before, and the two days given to us to act before directed service ceases after February 13, 1989 do not permit that issue to be resolved here. This order is effective for only 30 days, during which time we will hold a hearing at which time the parties and all interested persons may address this question. The agreements submitted in support of the NYS&W's petition are established for a time period of 18 months. We will address the issue that RLEA raises concerning the impact of service under 11123 on its rights under the Railway Labor Act in any decision extending this emergency temporary service order as may be forthcoming.

It is the opinion of the Commission that the magnitude of this emergency situation adversely affects a substantial area in the northeastern region of the United States and the movement of traffic through major gateways to other regions of the United States and Canada. The operations of the D&H should be continued temporarily by another carrier, and the NYS&W, under the provisions of 49 U.S.C. 11123, can best provide for the continuation of emergency services. Prior notice of this action and public procedure are impractical and contrary to the public interest, and good cause exists for making this order effective upon less than 30 days' notice.

We find: That a failure in traffic movement exists and creates an emergency situation of such magnitude as to have a substantial adverse effect on rail service in a substantial region of the United States.

This action will not significantly affect either the quality of the human environment or energy conservation.

It is ordered:

49 CFR 1033.1506, The New York, Susquehanna and Western Railway Corporation authorized to operate over tracks of Delaware & Hudson Railway Company, debtor (Francis P. DiCello, Trustee).

(a) *Authority.* The NYS&W is authorized to operate over all tracks of the D&H and to operate as a substitute for D&H over 1,012 miles of trackage rights over which D&H presently has the right and obligation to operate.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign traffic.

(c) *Rates.* Inasmuch as this operation by NYS&W is due to D&H's cessation of service, the rates applicable to traffic moved by NYS&W over these lines shall be the rates applicable to traffic routed over D&H unless modified by NYS&W.

(d) *Employees.* In providing service under this emergency service order NYS&W shall comply with the requirements of section 11123(a)(3) with respect to the use of employees.

(e) *Compensation.* The D&H through its Trustee, has expressed its willingness to make its tracks available to permit interim service required to fulfill its common carrier obligation. In our prior order under section 11125, we noted that no compensation was contemplated for use of the D&H property over which directed service was directed. For purposes of this order, compensation accruing to D&H shall be on such terms as the parties may establish between themselves, or shall be subject to 49 U.S.C. 11123(b)(2). Compensation to Conrail for continued use of D&H's trackage rights shall be upon the terms provided in the various agreements.

(f) *Effective date.* This order shall be effective at 12:01 a.m., February 14, 1989.

(g) *Expiration date.* The provisions of this order shall expire at 11:59 p.m. on March 15, 1989, unless otherwise modified, amended, or vacated by order of this Commission.

(h) A hearing regarding service after the 30-day emergency period will be held on March 7, 1989, at the Commission's headquarters in Washington, DC.

This action is taken under authority of 49 U.S.C. 11123(a).

This order will be served on all parties to this proceeding including those listed in our June 22, 1988 decision in Finance Docket No. 31295, as well as the Trustee in Bankruptcy and the U.S. District Court for the District of Delaware (Bankruptcy Filing No. 88-342). This order shall also be served upon the Federal Railroad Administration, the Association of American Railroads as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, DC, and by filing a copy with the Director, Office of the **Federal Register**.

Decided: February 10, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-3765 Filed 2-16-89; 8:45 am]

BILLING CODE 7035-01-M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in the third floor conference room, 227 Public Ledger Building, 6th and Chestnut Streets, Philadelphia, Pennsylvania, on March 21, 1989, beginning at 8:30 a.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in Title 29 U.S. Code, section 1242(a)(1)(B).

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) has been made that the subject of the meeting falls within the exceptions to the open meeting requirement set forth in Title 5 U.S. Code, section 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Date: February 13, 1989.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 89-3695 Filed 2-16-89; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 26, 1989 a proposed consent decree in United States v. City of Bartlesville, and the State of Oklahoma, Civil Action No. 89–C–060 C, was lodged with the United States District Court for the Northern District of Oklahoma. The proposed consent decree concerns a complaint filed by the United States that alleged violations of section 301 of the Clean Water Act, 33 U.S.C. 1311, at the City of Bartlesville (the "City") wastewater treatment plant. The complaint alleged that the City discharged pollutants into navigable waters in excess of the limitations in the City's National Pollutant Discharge Elimination System ("NPDES") permit, violated Administrative Orders issued by EPA, violated its permit monitoring and reporting requirements, and failed to meet the pretreatment requirements in its NPDES permit. The State of Oklahoma was named as a party pursuant to section 309(e) of the Act, 33 U.S.C. 1319(e). The complaint sought injunctive relief to require the City to comply with its NPDES permit and the Administrative Orders and civil penalties for past violations. Among other things, the consent decree establishes interim effluent limitations, requires the City to comply with the final effluent limits and monitoring requirements in its NPDES Permit by July 1, 1989, and establishes stipulated penalties for violation of these limits. The City is also required to pay a civil penalty of $72,000 in settlement of the government's civil penalty claims.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to United States v. City of Bartlesville, and the State of Oklahoma, D.J. Ref. 90–5–1–1–3055.

The proposed consent decree may be examined at the office of the United States Attorney for the Northern District of Oklahoma, 3600 U.S. Courthouse, 333 West Fourth Street, Tulsa, Oklahoma 74103 and at the Region VI Office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.10 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–3742 Filed 2–16–89, 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Bureau of Labor Statistics
Employment, Wages, and Contributions Report (ES–202 Program)
1220–0012; BLS 3031
Quarterly
State or local governments
212 responses; 2,500 hours per response; No forms are used—data are submitted on magnetic tape

The Employment, Wages, and Contributions Report is a summary of employment, wage, and contributions data collected by State employment security agencies from employers subject to State unemployment insurance (UI) and Unemployment for Federal Employees (UCFE) laws. The data are used by Federal and State governments in the administration of unemployment programs, by the Bureau of Labor Statistics and Bureau of Economic Analysis for statistical purposes, by Federal agencies for administrative and research purposes, and by public and private researchers.

Employment and Training Administration
Employment Service Program Reporting System
1205–0240; ETA 9001, 9002, VETS 200, 300
Quarterly
State or local governments

Form #	Affected public	Respondents	Frequency	Average time per response
ETA 9001	State/local Govt	25	4	2 hrs.
ETA 9002	State/local Govt	54	4	2 hrs.
VETS 200 & 300	State/local Govt	54	4	2 hrs. 18 min.
Social/Child Care	State/local Govt	25	4	11 hrs.
Recordkeeping	State/local Govt	54	1	12 hrs.

2,876 total hours

Employment Service Program Reporting System is to provide data on State public employment service agency program activity and expenditures, including services to veterans, for use at the Federal level by the U.S. Employment Service and the Veterans Employment and Training Service in program administration and to provide reports to the President and Congress.

Signed at Washington, DC this 14th day of February, 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89-3835 Filed 2-16-89; 8:45 am]

BILLING CODE 4570-24-M

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Steering Subcommittee for the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, Time and Place: March 14, 1989, 9:30 a.m., Room S4215 A&B Frances Perkins, Department of Labor Building, 200 Constitution Avenue NW., Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(1). The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information contact: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523-6565.

Signed at Washington, DC this 13th day of February 1989.

Eugene K. Lawson,

Deputy Under Secretary, International Affairs.

[FR Doc. 89-3712 Filed 2-16-89; 8:45 am]

BILLING CODE 4510-28-M

Employment and Training Administration

Job Training Partnership Act Advisory Committee; Meeting

The Job Training Partnership Act (JTPA) Advisory Committee was established by Notice dated June 16, 1988, and published June 28, 1988, 53 FR 24379 to advise the Department of Labor on a comprehensive review of the JTPA Program. A review of experience to date of the JTPA program and request for comments on the issues to be addressed in the review were provided by Notice published August 12, 1988, 53 FR 30483. The Committee to date has met five times.

Notice is hereby given of the next meeting of the Advisory Committee:

Time and Place: March 14-15, 1989 at the Crystal City Hyatt Regency, 2799 Jefferson Davis Highway, Arlington, Virginia. The meeting will begin at 9 a.m. March 14 and adjourn at 3 p.m. March 15, 1989.

The meeting is open to the public.

For further information, contact Hugh Davies, Office of Job Training Programs, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room N-4709, Washington, DC 20210. Telephone: 202-535-0580.

Signed at Washington, DC, this 7th day of February 1989.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 89-3711 Filed 2-16-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,315]

Damson Oil Corp., Yatesboro, PA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated in response to a worker petition received on January 3, 1989 which was filed on behalf of workers at Damson Oil Corporation, Yatesboro, Pennsylvania.

An active certification covering the petitioning group of workers is currently in effect (TA-W-21,821; TA-W-21,821A-L). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 1st day of February 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-3704 Filed 2-16-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,173]

Diamond Tool and Horseshoe Co., Duluth, MN; Negative Determination Regarding Application for Reconsideration

By an application dated January 4, 1989, the AFL-CIO Directly Affiliated Union, Local #18650 requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on November 28, 1988 and will soon be published in the **Federal Register.**

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that the Department of Commerce reports that imports of consumer hand tools increased every year from 1983-1987. The union also claims that since combined tools sales do not exceed the company's 1984 levels the Department's denial is not justified.

In order for a worker group to be certified eligible for adjustment assistance each of the group eligibility requirements of section 222 of the Trade Act must be met. Although the decreased employment and production requirements are met, the contributed importantly test of the increased import requirement is not met. Increased imports, by themselves, would not form a sufficient basis to provide a

certification. The increased imports must contribute importantly to worker separations at the subject plant. This was not the case with employment and production declines at Duluth.

Investigation findings show that employment declines at Duluth are associated with a transfer of hand tool production to another domestic plant. The hand tools were previously drop-forged, machined and finished at Duluth but now are only drop-forged in Duluth. Employment and production declines at Duluth have been offset by increases in employment and production of hand tools at the company's sister plant in South Carolina. A domestic transfer of production would not form a basis for certification.

Further, events in 1984 are not relevant to employment and production declines under the current petition. Section 223(b)(1) of the Act does not permit the certification of workers laid off prior to one year of the date of the petition. The petition date in this case is September 20, 1988.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this February 3, 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-3709 Filed 2-16-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,834]

Exeter Drilling Northern, Inc., Denver, CO.; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 18, 1988 in response to a worker petition which was filed on behalf of workers at Exeter Drilling Northern, Incorporated, Denver, Colorado.

The retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988, do not apply to workers who are engaged in the production of crude oil or refined petroleum products if such workers were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions.

An active certification covering the petitioning group of workers is currently in effect (TA-W-21, 622). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 1st day of February 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-3703 Filed 2-16-89; 8:45 am]

BILLING CODE 4510-39-M

[TA-W-22,000]

William E. Goodwin, Oil City, PA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 18, 1988 in response to a worker petition received on November 18, 1988 on behalf of workers at William E. Goodwin, Oil City, Pennsylvania.

William E. Goodwin is a firm consisting of a single individual. Section 222 of the Trade Act specifies the group eligibility requirements for trade adjustment assistance benefits; the definition of "group," according to § 90.1 of the Rules and Regulations for administering the Trade Act, is three or more workers in a firm or an appropriate subdivision thereof. Since William E. Goodwin did not employ three workers, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 1st day of February 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-3705 Filed 2-16-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,108]

Houze Glass Corp., Point Marion, PA; Affirmative Determination Regarding Application for Reconsideration

After being granted a filing extension Local #547 of the American Flint Glass Workers together with the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of workers and former workers of Houze Glass Corporation, Point Marion, Pennsylvania. The negative determination was issued on November 21, 1988 and will soon be published in the **Federal Register.**

The company implies that the Department's survey was not adequate and submits additional customer information for the Department to use in determining whether the contributed importantly test was met.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application, is therefore, granted.

Signed at Washington, DC, this 9th day of February 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-3710 Filed 2-16-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21; 412 and TA-W-21, 412 A et al.]

Dual Drilling Co.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of Dual Drilling Co., headquartered in Dallas, Texas, all other locations in Texas, and operating at various locations in the following states:

TA-W-21, 412B; Louisiana
TA-W-21, 412C; Michigan
TA-W-21, 412D; Montana
TA-W-21, 412E; New Mexico
TA-W-21, 412F; North Dakota
TA-W-21, 412G; Oklahoma

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 20, 1988. The Certification will be published in the **Federal Register** soon.

The company provided new information indicating worker separations at other locations in seven states. Accordingly, the certification is changed to include all other locations of Dual Drilling Company where additional worker separations occurred.

The intent of the certification is to cover all workers of Dual Drilling Company who were adversely affected by increased imports of articles like or directly competitive with crude oil.

The amended notice applicable to TA-W-21, 412 is hereby issued as follows:

All workers of Dual Drilling Company, Dallas, Texas and all other workers of Dual Drilling Company in Texas and all workers of Dual Drilling Company in other locations in the States of Louisiana, Michigan, Montana, New Mexico, North Dakota and Oklahoma who became totally or partially separated from employment on or after October 1, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 7th day of February 1989.

Barbara Ann Farmer,

Director, Office of Program Management, UIS.

[FR Doc. 89-3706 Filed 2-16-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21, 182; 18ZA; 188; 188A]

G&A Contract Services, Inc. and Griffin-Alexander Drilling Co., Houston, TX and Lafayette, LA Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 6, 1988. The Certification will be published in the **Federal Register** soon.

The subject firms provided new information indicating worker separations at Lafayette, Louisiana. Accordingly, the certifications are changed to include the Lafayette, Louisiana location of both subject firms.

The intent of the certification is to cover all workers at the subject firms who were adversely affected by increased imports of articles like or directly competitive with crude oil.

The amended notice applicable to TA-W-21, 182 and TA-W-21, 188 is hereby issued as follows:

All workers of G&A Contract Services, Incorporated, Houston, Texas and Lafayette, Louisiana and Griffin-Alexander Drilling Company, Houston, Texas and Lafayette, Louisiana who became totally or partially separated from employment on or after October 1, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 7th day of February, 1989.

Barbara Ann Farmer,

Director, Office of Program Management, UIS.

[FR Doc. 89-3707 Filed 2-16-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,151; TA-W-21,151A; TA-W-21,151B]

Wilson Drilling Co., Lafayette, LA, Seminole, and Houston, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Workers Adjustment Assistance on November 8, 1988.

The company provided new information to the Department which shows additional locations of Wilson Drilling Company in Seminole and Houston, Texas where worker separations occurred that were not included in the original certification. Accordingly, the certification is changed to include all the other locations of Wilson Drilling Company in Seminole and Houston, Texas where additional worker separations occurred.

The intent of the certification is to cover all workers of Wilson Drilling Company in its locations in Lafayette, Louisiana; Seminole and Houston, Texas. The amended notice applicable to TA-W-21,151 is hereby issued as follows:

All workers of Wilson Drilling Company, Lafayette, Louisiana; Seminole and Houston, Texas who became totally or partially separated from employment on or after October 1, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this February 3, 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-3708 Filed 2-16-89; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is

encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wade Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume I:

Alabama:
AL89-30 ..... pp.60a-60b.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

Alabama:
AL89-23(Jan. 6, 1989)..... p. 46.
AL89-24(Jan. 6, 1989)..... p. 50.
AL89-25(Jan. 6, 1989)..... p. 52.
AL89-26(Jan. 6, 1989)..... p. 54.
AL89-28(Jan. 6, 1989)..... p. 58.
AL89-29(Jan. 6, 1989)..... p. 60.
District of Columbia:
DC89-1(Jan. 6, 1989) ..... pp. 78.80,84.
Georgia:
GA89-3(Jan. 6, 1989)..... pp. 212-214.
Pennsylvania:
PA89-8(Jan. 6, 1989)..... pp. 916-918.
Virginia:
VA89-18(Jan. 6, 1989)..... pp. 1176-1177.
West Virginia:
WV89-2(Jan. 6, 1969)..... p. 1213.

Volume II:

Iowa:
IA89-12(Jan. 6, 1989)..... p. 66.
Illinois:
IL89-19(Jan. 6, 1989)..... p. 240.
Indiana:
IN89-6(Jan. 6, 1989)..... pp. 314-315.
Louisiana:
LA89-5(Jan. 6, 1989)..... pp. 397, 406-414.
Missouri:
M089-2(Jan. 6, 1989)..... pp. 648-651.
M089-3(Jan. 6, 1989)..... p. 658.
M089-10(Jan. 6, 1989)..... p. 702.
Nebraska:
NE89-3(Jan. 6, 1989)..... p. 724.
NE89-10(Jan. 6, 1989)..... p. 740.
NE89-11(Jan. 6, 1989)..... p. 742.

Volume III:

North Dakota:
ND89-4(Jan. 6, 1989) ..... pp. 238-240.
Nevada:
NV89-1(Jan. 6, 1989) ..... pp. 241-249, pp. 259-261.
NV89-5(Jan. 6, 1989) ..... pp. 287-291, 293, pp. 304-305.
Washington:
WA89-5(Jan. 6, 1989)..... pp. 412-414.
WA89-8(Jan. 6, 1989)..... pp. 424-426.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 10th day of February 1989.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 89-3575 Filed 2-16-89; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-89-12-C]

Bitter Creek Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Bitter Creek Resources, Inc., P.O. Box 800, Reliance, Wyoming 82943 has filed a petition to modify the application of 30 CFR 75.303 (preshift examination) to its Stansbury Mine (I.D. No. 48-01012) located in Sweetwater County, Wyoming. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that within 3 hours immediately preceding the beginning of any shift, and before any miner in such shift enters the active workings of a coal mine, certified persons are required to examine the seals.

2. The Stansbury mine is a multi-seam operation. Past operations mined the No. 3 and No. 1 seams located above and connected to the No. 7 seam conveyor slope by two 300-ton storage bins. The No. 3 seam has been sealed from an entry directly above the No. 3 seam bin. In order to comply with the standard, examiners would have to climb approximately 65 feet up into the bin to reach the seal on top.

3. As an alternate method, petitioner proposes that—

(a) Remote monitors would be placed at specific locations to continuously monitor methane and oxygen deficiency, and to give early warning of any gas buildups. If any gases are detected, an audible and visual signal would be activated; and

(b) Visual inspection of the seals above the No. 3 seam bin would be conducted monthly. All sensors would also be visually inspected and calibrated during the monthly inspections.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 20, 1989. Copies of the petition are available for inspection at that address.

Date: February 10, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-3698 Filed 2-16-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-1-M]

Cominco Alaska Inc.; Petition for Modification of Application of Mandatory Safety Standard

Cominco Alaska Inc., 5660 "B" Street, Anchorage, Alaska 99518 has filed a petition to modify the application of 30 CFR 56.9300 (berms or guardrails) to its Red Dog Mine (I.D. No. 50-01545) located in Northwestern County, Alaska. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that berms or guardrails be provided and maintained on the banks of roadways where a drop-off exists of sufficient grade or depth to cause a vehicle to overturn or endanger persons in equipment.

2. Petitioner has developed and is constructing a lead, zinc, and silver open pit mine. This construction requires the multiple use of a road, between the millsite and the overburden dump, which is unbermed. To construct the concentrator, large modules weighing up to 1800 tons would be transported over the road. The movers which would be used travel very slowly and the use of berms would interfere with their clearance. Berms would also make it difficult to remove snow resulting from snow drifts.

3. As an alternate method, petitioner proposes that—(a) During construction, the speed limit along the overburden dump access road would be reduced to 30 miles per hour and posted at half-mile intervals and road markers with reflective yellow and silver tape would be placed along both shoulders; and

(b) Once operation begins, the overburden dump access road would be widened to a crown width of 60 feet and bermed along the downhill shoulder. The uphill shoulder slope would be flattened to 3:1 where the fill depth would be 10 feet or less and left unbermed. Where the uphill fill depth would be greater than 10 feet, the uphill shoulder would also be bermed, and the 30 m.p.h. speed limit would be increased to 50 m.p.h.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 20, 1989. Copies of the petition are available for inspection at that address.

Dated: February 9, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-3699 Filed 2-16-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-249-C]

KTK Mining and Construction Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

KTK Mining and Construction Company, Inc., Box 107 Arrowhead Estates, Pikeville, Kentucky 41501 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 3 Mine (I.D. No. 15-16308) located in Martin County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The No. 3 Mine is in the Stockton seam, which ranges drastically in height, and has ascending and descending grades.

3. The use of cabs or canopies on the mine's electric face equipment would result in a diminution of safety because the cabs or canopies would:

(a) Strike and dislodge roof support; and

(b) Restrict the equipment operator's vision.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 20, 1989. Copies of the petition are available for inspection at that address.

Dated: February 10, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-3700 Filed 2-16-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-250-C]

Spartan Sewell, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Spartan Sewell, Inc., P.O. Box 480, Fayetteville, West Virginia 25840 has filed a petition to modify the application of 30 CFR 75.305 to its Spartan Sewell Mine No. 1 (I.D. No. 46-02057) located in Fayette County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each return air split be examined in its entirety on a weekly basis.

2. Due to roof falls certain areas of the mine cannot be safely traveled.

3. As an alternate method, petitioner proposes to establish checkpoints where the airflow would be evaluated.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 20, 1989. Copies of the petition are available for inspection at that address.

Date: February 9, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-3701 Filed 2-16-89; 8:45am]

BILLING CODE 4510-43-M

[Docket No. M 89-7-C]

Utah Power & Light Co., Mining Division; Petition for Modification of Application of Mandatory Safety Standard

Utah Power & Light Company, Mining Division, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.1105 (housing

of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Cottonwood Mine (I.D. No. 42–01944), its Wilberg Mine (I.D. No. 42–00080), and its Deer Creek Mine (I.D. No. 42–00121) all located in Emery County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that underground transformer stations, battery charging stations, substations, compressor stations, shops, and permanent pumps be housed in fireproof structures or areas.

2. As an alternate method, petitioner proposes to use portable, submersible, permissible pumps for dewatering purposes in areas that may require pumping for an extended period of time.

3. In support of this request, petitioner states that—

(a) The permissible pumps are enclosed in fireproof structures by their design. They are totally enclosed in a permissible housing designed to contain excessive heat and/or flame and, prevent harmful gases and smoke from being released into the surrounding ventilation current. These permissible pumps are approved for use inby the last open crosscut and return aircourses and are designed to be placed directly in the water, often totally submerged; and

(b) The wet conditions in the mine require that numerous pumps be used along roadways, beltlines, bleeders, returns and escapeways to keep these walkways and travelways passable.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 20, 1989. Copies of the petition are available for inspection at that address.

Dated: February 9, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89–3702 Filed 2–16–89; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–89–4–C]

BethEnergy Mines, Inc.; Petition for Modification of Application of Mandatory Safety Standard

BethEnergy Mines, Inc., P.O. Box 143, Eighty Four, Pennsylvania 15330 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Livingston Portal, Eighty Four Complex (I.D. No. 36–00958) located in Washington County, Pennsylvania.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high-voltage cables and transformers not be located inby the last open crosscut and be kept at least 150 feet from pillar workings.

2. Petitioner operates permissible longwall face equipment with an a.c. power system limited to 1000 volts. When the 1000 volt system is used to supply power to the face conveyor, the following problems may arise:

(a) Very large and heavy cables are required in a 1000 volt system because of the amacity requirements. These large, heavy cables may cause congested work space and handling problems which may present a hazard;

(b) Motor overheating and a deficiency in the torque applied to the face conveyor may result because of the inability to properly regulate voltage; and

(c) The interrupting limits of the available circuit breakers at 1000 volts are more closely approached with a resulting decrease in the margin of safety factor.

3. As an alternate method, petitioner proposes to use 4160-volt alternating current to operate the permissible face equipment with specific equipment and conditions as outlined in the petition.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 20, 1989. Copies of the petition are available for inspection at that address.

Dated: February 13, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89–3838 Filed 2–16–89; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–88–252–C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Ireland Mine (I.D. No. 46–01438) located in Marshall County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Due to deteriorating roof and rib conditions certain areas of the return aircourse cannot be safely traveled. To restore these areas would expose miners to hazardous conditions.

3. As an alternate method, petitioner proposes to establish checkpoints where a certified person would test for methane and the quantity of air on a weekly basis.

4. In support of this request, petitioner states that—

(a) The person making the examination and tests would place his/her initials and the date and time at each station;

(b) If at any time the quantity of air at any checking station indicates a change of ten percent, an immediate investigation of the affected area would be conducted by the mine foreman and the results recorded in a book located on the surface; and

(c) The checking stations would be included as part of the ventilation plan with the location of air readings shown on the ventilation map.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson

Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 20, 1989. Copies of the petition are available for inspection at that address.

Dated: February 13, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-3836 Filed 2-16-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-10-C]

Cyprus Shoshone Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Cyprus Shoshone Coal Corporation, P.O. Box 830, Hanna, Wyoming 82327 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Shoshone No. 1 Mine (I.D. No. 48-01186) located in Carbon County, Wyoming. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high-voltage cables and transformers not be located inby the last open crosscut and be kept at least 150 feet from pillar workings.

2. As an alternate method, petitioner proposes to power its longwall mining equipment with 2400-volt alternating current with specific equipment and conditions as outlined in the petition.

3. In support of this request, petitioner states that—

(a) A decrease in current loads to obtain equivalent power output would reduce fire hazards due to heating of cables and other electrical components; and

(b) A decrease in current loads to obtain equivalent power output would reduce the number and/or size of cables needed to supply power to the system thus reducing the number of cables to be handled. In addition, since the circuit would no longer have to be split to maintain safe operation, there would be fewer components that would have to be maintained.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 20, 1989. Copies of the petition are available for inspection at that address.

Dated: February 13, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-3837 Filed 2-16-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-8-C]

Golden Oak Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Golden Oak Mining Company, Route 2, Box 177, Whitesburg, Kentucky 41858 has filed a petition to modify the application of 30 CFR 75.1405 (automatic couplers) to its Black Oak No. 5 Mine (I.D. No. 15-15288) located in Knott County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that track haulage cars be equipped with automatic couplers.

2. Due to four sharp curves along the track, automatic couplers would cause the haulage motor and flat car to derail.

3. As an alternate method, petitioner proposes that—

(a) A steel rail (40 lbs.) 10-feet long and plated, with an 1½ inch diameter hole in each end would be used to couple the haulage motor to a flat car;

(b) The coupling pin would be 1½ inches in diameter with a safety pin in the top of it to prevent it from popping out; and

(c) A safety chain of suitable strength and length would attach the haulage motor to the flat car.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 20, 1989. Copies of the petition are available for inspection at that address.

Dated: February 13, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-3839 Filed 2-16-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-13-C]

Island Creek Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Island Creek Coal Company, P.O. Box 11430, Lexington, Kentucky 40575 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Dobbin Mine (Potomac Division) (I.D. No. 46-05480) located in Grant County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries, and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes that belt haulage entries be used as intake aircourses in continuous and longwall mining sections.

3. In support of this request, petitioner proposes to install an early warning fire detection system utilizing a low-level carbon monoxide (CO) detection system in first and second mining areas where belt and/or track air is used at the face and at each belt drive tailpiece located in intake aircourses. The monitoring devices would be capable of giving warning of a fire for four hours should the power fail; a visual alert signal would be activated when the CO level is 10 parts per million (ppm) above ambient air and an audible signal would sound at 15 ppm above ambient air. All persons would be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The fire alarm signal would be activated at an attended surface location where there is two-way communication. The CO system would be capable of identifying any activated sensor and for monitoring electrical continuity and detecting electrical malfunctions.

4. The CO system would be visually examined at least once each coal-producing shift and tested for functional operation weekly to ensure the monitoring system is functioning

properly. The monitoring system would be calibrated with known concentrations of CO and air mixtures at least monthly.

5. If the CO monitoring system is deenergized for routine maintenance or for failure of a sensor unit, the belt conveyor would continue to operate and qualified persons would patrol and monitor the belt conveyor using hand-held CO detecting devices.

6. The details for the fire detection system would be included as part of the ventilation system methane and dust control plan.

7. This plan would increase the quantity of air that could be supplied to the face areas, and thereby provide increased protection to the miners against hazards created by accumulation of methane and other harmful gases, as well as respirable dust. Also, by using the belt entry as an intake, the velocity of air in the belt entry would be increased which would provide more positive ventilation and reduce the possibility of methane accumulation in the belt entry.

8. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 20, 1989. Copies of the petition are available for inspection at that address.

Dated: February 10, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-3840 Filed 2-16-89; 8:45 am]

BILLING CODE 4510-43-M

Mines Safety and Health Administration

[Docket No. M-89-9-C]

TwentyMile Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

TwentyMile Coal Company, P.O. Box 748, Oak Creek, Colorado 80467 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Foidel Creek Mine (I.D. No. 05-03836) located in Routt County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high-voltage cables and transformers not be located in by the last open crosscut and be kept at least 150 feet from pillar workings.

2. As an alternate method, petitioner proposes to power its longwall mining equipment with 2400-volt alternating current with specific equipment and conditions as outlined in the petition.

3. In support of this request, petitioner states that—

(a) A decrease in current loads to obtain equivalent power output would reduce fire hazards due to heating of cables and other electrical components; and

(b) A decrease in current loads to obtain equivalent power output would reduce the number and/or size of cables needed to supply power to the system thus reducing the number of cables to be handled. In addition, since the circuit would no longer have to be split to maintain safe operation, there would be fewer components that would have to be maintained.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 20, 1989. Copies of the petition are available for inspection at that address.

Date: February 13, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-3841 Filed 2-16-89; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Oregon State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of subpart D to Part 1952 containing the decision. The Oregon plan provides for the adoption of Federal standards by reference.

In response to Federal standards changes, the State has submitted by letter dated November 29, 1988 from John A. Pompei, Administrator, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard comparable to 29 CFR 1910.120, Hazardous Waste Operations and Emergency Response, as published in the **Federal Register** (51 FR 45663) dated December 19, 1986 and corrected by (52 FR 16241) dated May 4, 1987.

The State's rules pertaining to Hazardous Waste Operations, contained in OAR 437-02-100(17), were adopted by reference and became effective on November 17, 1988, pursuant to ORS 654.025(2), ORS 656.726(3), and ORS 183.335, as ordered and transmitted under Oregon APD Administrative Order 19-1988. On October 20, 1988. On October 20, 1988, the State mailed the Notice of Proposed Amendment of Rules to those on the Department of Insurance and Finance mailing list, established pursuant to OAR 436-01-000 and to those on the Department's distribution list as their interest appeared. No written comments or requests for a public hearing were received.

2. Decision

Having reviewed the State's submission in comparison with the Federal standard, it has been determined that the State standard is identical to the Federal standard.

3. Location of Supplement for Inspection and Copying

A copy of the standard, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Department of Insurance and

Finance, Labor and Industries Building, Salem, Oregon 97310; and the Office of State Programs, Occupational Safety and Health Administration, Room N-3476, 200 Constitution Avenue NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standard is identical to the Federal standard which was promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standard was adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective February 17, 1989.

(Section 18, Pub. L. 91-596, 84 Stat. (29 U.S.C. 667).

Signed at Seattle, Washington, this 30th day of December, 1988.

James W. Lake,

Regional Administrator.

[FR Doc. 89-3842 Filed 2-16-89; 8:45 am]

BILLING CODE 4510-26-M

Washington State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 26, 1973, notice was published in the **Federal Register** (38 FR 2421) of the approval of the Washington plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington plan provides for the adoption of State standards that are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards changes, the State has submitted by letter dated December 30, 1988, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard comparable to the Federal standard 29 CFR 1910.272, Grain Handling Facilities, as published in the **Federal Register** (52 FR 49625) on December 31, 1987, and subsequent corrective amendment at 53 FR 17695 dated May 18, 1988. The State standard, which is identical to the Federal standard, is contained in WAC 296-99. It was adopted on November 14, 1988, and became effective on December 14, 1988, pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08 as ordered and transmitted under Washington Administrative Order No. 88-25.

2. Decision

The above State standard has been reviewed and compared with the relevant Federal standard and OSHA has determined that the State standard is identical to the Federal standard.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during the normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Department of Labor and Industries, General Administration Building, Olympia, Washington 98501; and the Office of State Programs, Occupational Safety and Health Administration, Room N-3476, 200 Constitution Avenue NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Washington State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective February 17, 1989.

(Section 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Seattle, Washington, this 10th day of January 1989.

Richard L. Beeston,

Acting Regional Administrator.

[FR Doc. 89-3843 Filed 2-16-89; 8:45 am]

BILLING CODE 4510-26-M

Office of the Assistant Secretary for Veterans' Employment and Training

Annual Report From Federal Contractors (VETS-100) for 1989

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training.

ACTION: Notice.

SUMMARY: Notice is hereby given that the annual Report from Federal Contractors (VETS-100) is to be submitted to the address listed below.

DATE: The VETS-100 report for 1989 is due no later than March 31, 1989. There will be no extension of the deadline.

ADDRESS: Completed VETS-100 forms are to be mailed to the following address: U.S. Department of Labor, Office of Veterans' Employment and Training, P.O. Box 4228, Woodbridge, VA 22191.

FOR FURTHER INFORMATION CONTACT: The above office or telephone 1-800-535-2446 for questions or to request blank forms.

SUPPLEMENTARY INFORMATION: The VETS-100 is required from Federal contractors annually each March 31 in accordance with 41 CFR Part 61-250. Computer generated or otherwise reproduced VETS-100 forms are acceptable provided they conform to the facsimile in 41 CFR Part 61-250. Forms will be mailed to contractors who reported previously. Contractors who have already submitted reports for 1989 and receive additional forms should not submit duplicate reports.

Signed at Washington, DC this 10th day of February 1989.

Donald E. Shasteen,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 89-3844 Filed 2-16-89; 8:45 am]

BILLING CODE 4510-79-M

Wage and Hour Division

Certificates Authorizing the Employment of Learners at Special Minimum Wages

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act (52 Stat. 1062, as amended; U.S.C. 214), Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and Administrative Order No. 1-76 (41 FR 18949), the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the Act. The effective and expiration dates, number of learners and the principal product manufactured by the establishment are as indicated. Conditions on occupations, wage rates, and learning periods which are provided in certificates issued under the supplemental industry regulations cited in the captions below are as established in those regulations.

The following certificates were issued under the apparel industry learner regulations (29 CFR 522.1 to 522.9, as amended and 522.20 to 522.25, as amended).

Flushing Shirt Mfg. Co., Inc., Waynesburg, PA; 4-18-88 to 4-17-89; 10 learners for normal labor turnover purposes. (Men's and Ladies' Uniform Shirts).

Bland Sportswear, Inc., Bland, VA; 7-24-88 to 7-23-89; 10 learners for normal turnover purposes. (Ladies' Fleece Shirts and Children's Knit Fabric Shirts).

The learner certificates have been issued upon the representations of the employer which, among other things, were that employment of learners at special minimum rates is necessary in order to prevent curtailment of opportunities for employment and that experienced workers for the learner occupations are not available.

The certificates may be annulled or withdrawn as indicated therein in the manner provided in 29 CFR Part 528. Any person aggrieved by the issuance of these certificates may seek a review or reconsideration thereof on or before March 6, 1989.

Signed at Washington, DC this 9th day of February 1989.

Paula V. Smith,

Administrator.

[FR Doc. 89-3720 Filed 2-16-89; 8:45am]

BILLING CODE 4510-27-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 89-08]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); 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, Space Systems and Technology Advisory Committee.

DATE AND TIME: March 9, 1989, 8:30 a.m. to 4 p.m.

ADDRESS: National Aeronautics and Space Administration, Federal Building 10B, Room 625, 600 Independence Avenue, SW, Washington, DC 20546.

FURTHER INFORMATION CONTACT: Ms. Catherine L. Smith, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-9114.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee was established to provide overall guidance and direction to the space research and technology activities in the Office of Aeronautics and Space Technology (OAST). The Committee, chaired by Mr. Norman Augustine, is comprised of 20 members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including the Committee members and other participants).

Type of Meeting: Open.

Agenda:

March 9, 1989

8:30 a.m.—Opening Remarks.

8:45 a.m.—Budget Status for Fiscal Years 1989 and 1990.

9:15 a.m.—Current Program Status and Fiscal Year 1991 Plans.

1 p.m.—Ad Hoc Review Teams Status Reports.

2:30 p.m.—Discussion of SSTAC/Aerospace Research and Technology Subcommittee Recommendations.

3:45 p.m.—Summary Session.

4 p.m.—Adjourn.

February 13, 1989.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-3697 Filed 2-16-89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites pubic comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before April 3, 1989. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments:

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency

no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force (N1–AFU–89–7). HIV Testing Program administrative records.

2. Department of Defense Inspector General (N1–330–88–4). Records disposition schedule for routine administrative and housekeeping records. (Program records from this agency are permanent).

3. Department of Agriculture, Animal and Plant Health Inspection Service, Animal Damage Control Program (N1–463–88–1). Correspondence and background records filed separately from program case files proposed for permanent retention.

4. Department of Labor, Bureau of Labor Statistics (N1–257–88–6). Cell folders, transfer posting cards and printouts of the Wholesale Price Program, 1960–75.

5. National Labor Relations Board (N1–25–89–1). Routine electronic records created by personnel and payroll data systems.

Dated: February 13, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89–3766 Filed 2–16–89; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Overview) will be held on March 6, 1989, from 9:00 a.m.–5:30 p.m. in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will be guidelines and policy issues.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

February 14, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–3818 Filed 2–16–89; 8:45 am]

BILLING CODE 7537–01–M

Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Visual/Media/Design/Literary Section) to the National Council on the Arts will be held on March 7, 1989 from 9:00 a.m. – 6:00 p.m., March 8, 1989 from 9:00 a.m. – 6:00 p.m., and March 9, 1989 from 9:00 a.m. – 5:30 p.m. in Room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on March 7, 1989 from 9:00 a.m. – 10:30 a.m. and March 9, 1989 from 3:15 p.m. – 5:30 p.m. The topics for discussion will be guidelines and policy issues.

The remaining sessions of this meeting on March 7, 1989 from 10:30 a.m. – 6:00 p.m., March 8, 1989 from 9:00 a.m. – 6:00 p.m., and March 9, 1989 from 9:00 a.m. – 3:15 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

February 14, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–3819 Filed 2–16–89; 8:45 am]

BILLING CODE 7537–01–M

Inter-Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Folk Arts National Heritage Section) to the National Council on the Arts will be held on March 8–10, 1989, from 9:00 a.m.–5:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of

February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

February 13, 1989.

[FR Doc. 89–3820 Filed 2–16–89; 8:45 am]

BILLING CODE 7537-01-M

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Visual Artists Forums Section) to the National Council on the Arts will be held on March 7–8, 1989, from 9:00 a.m.–6:00 p.m. and March 9, 1989, from 9:00 a.m.–5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of Section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

February 13, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–3821 Filed 2–16–89; 8:45 am]

BILLING CODE 7537-01-M

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Art in Public Places Section) to the National Council on the Arts will be held on March 22–23, 1989 from 9:00 a.m.—6:00 p.m., and March 24 from 9:00 a.m. to 5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

For further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

February 14, 1989.

[FR Doc. 89–3822 Filed 2–16–89; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ATION: Notice of Permit Application Received Under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by March 20, 1989. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357–7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

Applicant

Dr. Polly A. Penhale, Division of Polar Programs, National Science Foundation, 1800 G Street NW., Washington, DC 20550

Activity for which permit requested

Take. Import. Enter Litchfield Island Site of Special Scientific Interest. The applicant is coordinating a study of the effect of the February 28, 1989 fuel spill resulting from the grounding of the Argentine vessel Bahia Paraiso at Palmer Station. Tissue samples of morbid birds and blood and stomach contents of birds will be collected and imported to the United States for hydrocarbon analysis. Take plant, invertebrate and bird (as described above) samples from Litchfield Island.

Location

Antarctic Peninsula.

Dates

March, 1989—March, 1990.

Charles E. Myers,

Permit Office.

[FR Doc. 89–3760 Filed 2–16–89; 8:45 am]

BILLING CODE 7555-01-M

Membership of National Science Foundation's Senior Executive Service Performance Review Board

AGENCY: National Science Foundation.

ACTION: Announcement of Membership of the National Science Foundation's Senior Executive Service Performance Review Board.

SUMMARY: This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

ADDRESS: Comments should be addressed to Director, Division of Personnel and Management, National Science Foundation, Room 208, 1800 G Street NW., Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Mr. John Wilkinson or Mr. Kenneth Bransford at the above address or (202) 357–7857.

SUPPLEMENTARY INFORMATION: The membership of the National Science Foundation's Senior Executive Service Performance Review Board is as follows:

Permanent Membership

John H. Moore, Deputy Director, Chairperson

Jeff Fenstermacher, Assistant Director for Administration, Executive Secretary

Rotating Membership

Adriaan M. de Graaf, Head, Special Programs in Materials Research Section, Division of Materials Research, Directorate for Mathematical and Physical Sciences

Lynn Preston, Deputy Division Director of Cross-Disciplinary Research, Directorate for Engineering

Donald F. Heinrichs, Section Head, Oceanographic Technology Program, Division of Ocean Sciences, Directorate for Geosciences

Charles T. Owens, Head, Information and Analysis Section, Division of International Programs, Directorate for Scientific, Technological and International Affairs

W. Franklin Harris, Executive Officer, Directorate for Biological, Behavioral and Social Sciences

Robert F. Watson, Head, Office of College Science Instrumentation, Directorate for Science and Engineering Education

Constance K. McLindon, Director, Office of Information Systems, Office of the Director

Charles N. Brownstein, Executive Officer, Directorate for Computer and Information Science and Engineering

Dated: February 14, 1989.

Margaret L. Windus,

Director, Division of Personnel and Management.

[FR Doc. 89–3791 Filed 2–16–89; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–266 and 50–301]

Wisconsin Electric Power Co., Point Beach Nuclear Plant, Units Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix K to 10 CFR Part 50 to the Wisconsin Electric Power Company, (the licensee), for the Point Beach Nuclear Plant, Unit Nos. 1 and 2, located in Manitowoc County, Wisconsin.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would grant relief from the requirements of 10 CFR Part 50, Appendix K, Sections I.D.3 and I.D.5, as these requirements relate to the calculational method for determining the core exit flow without establishing the carryover fraction and the heat transfer analysis during the refill and reflood phase of a loss of coolant accident (LOCA). These calculations are part of a thermal/hydraulic analysis that demonstrates the existing emergency core cooling system (ECCS) will provide adequate protection of the reactor fuel during a LOCA.

The exemption is in accordance with the licensee's applications for exemption dated November 30, 1988.

The Need for the Proposed Action

The proposed exemption is required because the features described in the licensee's request indicate that the method assumed for injecting cooling water in the reactor in thermal/hydraulic analysis is different than the actual method used at the plant. The evaluation model for analyzing potential accidents assumed cooling water would enter the reactor via the lower plenum, while the pipe configuration of the plant injects cooling water in the upper plenum of the reactor.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed exemption and concludes that the exemption deals with the calculational method in the analysis of a potential accident. The exemption does not affect in any way the plant operating characteristics or procedures, components or systems. Consequently, the exemption does not increase the probability or consequences of any accident, and radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed exemption will in no way affect environs located outside the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significnt nonradiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Point Beach Nuclear Plant Unit Nos. 1 and 2, dated May 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

No further details with respect to this action, see the application for exemption dated November 30, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Dated at Rockville, Maryland, this 13th day of February 1989.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–3785 Filed 2–16–89; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Mechanical Components; Meeting

The ACRS Subcommittee on Mechanical Components will hold a meeting on February 28, 1989, Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Tuesday, February 28, 1989—8:30 a.m. Until the Conclusion of Business

The Subcommittee will continue its discussion on the NRC's proposed generic letter on MOVs.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member identified below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 301/492–8192) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: February 10, 1989.

Morton W. Libarkin,

Assistant, Executive Director for Project Review.

[FR Doc. 89–3792 Filed 2–16–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–318]

Baltimore Gas and Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–69, issued to the Baltimore Gas and Electric Company (the licensee), for operation of the Calvert Cliffs Nuclear Power Plant, Unit No. 2, located in Calvert County, Maryland.

The amendment would make the following changes in accordance with the licensee's application for amendment dated October 14, 1988:

1. Modify Technical Specification (TS) Surveillance Requirement 4.7.8.1.c by extending the surveillance interval for snubber functional tests beyond the current maximum interval of 18 months plus 25%. This proposed extension would be for 54 days or prior to entry into Mode 4 following the Unit 2 Cycle 9 refueling outage, whichever comes first. This extension is a one-time request.

2. Correct nomenclature errors in TS 3/4.7.8, "Snubbers."

3. Delete an obsolete note in TS 4.7.8.1 which states that "The steam generator snubbers 2–63–11 through 2–63–26 need not be functionally tested until the refueling outage following June 30, 1985."

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment requested involves no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability of a new or different kind of accident from any accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee evaluated the proposed changes against the standards in 10 CFR 50.92 and has determined that the amendment would not:

The licensee evaluated the proposed changes against the standards in 10 CFR 50.92 and has determined that the amendment would not:

(i) Involve a significant increase in the probability or consequences of an accident previously evaluated * * *

Since 1978, the licensee has functionally tested 413 snubbers on Units 1 and 2, with only 3 test failures. This corresponds to a failure rate of approximately 0.7% over a period of greater than 10 years. The licensee is requesting, in Change 1, a surveillance interval extension of up to 54 days for snubber functional tests required by TS 4.7.8.1.c. This extension is needed primarily for the snubbers required to be operable during cold shutdown and refueling operations, because the TS allowable surveillance interval (18 months plus 25%) expires at approximately the same date that Unit 2 is scheduled to be shut down for refueling.

Due to the types of snubbers, those required for modes 5 and 6 only, and to the short length of the requested extension, the probability or consequences of any accidents previously evaluated would not increase significantly as a result of this proposed change to the snubber function test surveillance interval.

Changes 2 and 3 are strictly administrative in nature in that they (1) correct several nomenclature errors in TS 3/4.7.8 (TS 4.7.8.1.b and 4.7.8.1.d were referred to as TS 4.7.8.b and 4.7.8.d in several places in the body of the TS) and (2) delete an obsolete note to TS 3/4.7.8 which permitted the functional testing of several steam generator snubbers to be deferred until the refueling outage following June 30, 1985. Consequently, Changes 2 and 3 do not involve any increase in the probability or consequences of any previously evaluated accident.

(ii) Create the possibility of a new or different type of accident from any accident previously evaluated * * *

Since these proposed changes do not alter any plant operations, other than the snubber functional test surveillance interval, maintenance requirements, or system design or functions, no possibility of creating a new or different type of accident would result from the proposed changes.

(iii) Involve a significant reduction in a margin of safety * * *

As the only consequence of this extension in the snubber function test surveillance interval is the very slight degradation in snubber functionality that might occur over this short period (54 days) with the plant in cold shutdown, the reduction in any margin of safety provided for the plant would not be significant.

No margins of safety are affected by the proposed administrative changes. On March 6, 1986, the NRC published guidance in the **Federal Register** (51 FR 7751) concerning examples of amendments that are not likely to involve a significant hazards consideration. Changes 2 and 3 are consistent with the example provided: "(i) a purely administrative change to the Technical Specifications: for example, * * * a change in nomenclature * * *."

Based upon the above, the NRC staff proposes to determine that the changes requested to TS 3/4.7.8, "Snubbers," involves no significant hazards consideration.

By March 20, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment requested involves no significant hazards considerations, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment requested involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert A. Capra: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to D.A. Brune, Jr., General Counsel, Baltimore Gas and Electric Company, P.O. Box 1475, Baltimore, Maryland 21203, attorney for the licensee.

Nontimely filings of petitons for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the local Public Document Room, Calvert County Library, Prince Frederick, Maryland.

Dated at Rockville, Maryland, this 14th day of February 1989.

For the Nuclear Regulatory Commission.

Scott Alexander McNeil,

Project Manager, Project Directorate I–1, Division of Reactor Projects I/II.

[FR Doc. 89–3782 Filed 2–16–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–61, issued to Connecticut Yankee Atomic Power Company (CYAPCO), for operation of the Haddam Neck, Plant located in Haddam Neck, Connecticut.

The proposed change will provide a one-time relaxation to Technical Specification 3.11.B, "Containment Integrity", to allow the service water side of the four containment air recirculation (CAR) fan heat exchangers to be cleaned while at power. Each CAR fan heat exchanger, which is comprised of five cooling coils, will be cleaned in series.

Pursuant to 10 CFR 50.91(a)(6), CYAPCO requested the NRC to approve this proposed amendment under exigency circumstances. As a result of an engineering analysis which resulted in all four CAR units being declared inoperable, CYAPCO issued a prompt report in accordance with 10 CFR 50.72.b.1.ii.B on December 16, 1988. A justification for continued operation (JCO) was prepared and made available to the NRC on December 18, 1988. The JCO placed several restrictions on plant operation, including river water temperature and CAR cooling coil blockage, CYAPCO had stated the river water temperature restriction could be increased if the CAR cooling coils were cleaned. This is because the CAR cooling analysis is based on 55% CAR cooling coil blockage. Since December 16, 1988, CYAPCO has initiated several efforts, on a high priority basis, to determine how the CAR cooling coils should be cleaned and whether it was feasible to perform these activities while at power. These efforts were completed prior to processing the proposed license amendment. A review of river water temperature history has shown that there is a good probability that river water temperature will exceed the JCO restriction of 50 °F in April. So far it has been a mild winter and river water temperature already has reached the mid-forties on several occasions. Because of the time needed to clean the CAR cooling coils (approximately 4 weeks) and the potential for the river water temperature to exceed 50 °F and force the plant to shutdown if the CAR cooling coils are not cleaned, the staff has agreed to review this amendment under exigent circumstances.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The license provided the following evaluation of the above three criteria in their application.

1. *Involve a significant increase in the probability or consequences of an accident previously evaluated.* In the process of cleaning the CAR cooling coils, the CAR units will be removed from service one at a time. A design basis accident (DBA) LOCA or steam line rupture coincident with a failure of one of the three operable CAR units could result in insufficient cooling of containment. Thus, containment design pressure and/or temperature could potentially be exceeded. However, the Haddam Neck Plant Technical Specifications require that only three CAR units be operable whenever the reactor is critical and current administrative controls allow a fourth CAR unit to be removed from service for up to seven days. Since the unavailability of the CAR system due to the cleaning process is equivalent to the unavailability already permitted by the administrative controls, the proposed configuration is allowed by existing administrative controls, and is equivalent to the existing Technical Specifications. In addition, the evaluations supporting the JCO confirm that four service water pumps and three operable CAR units are adequate to meet all service water cooling requirements including containment cooling with service water temperature less than 50 °F. Therefore, the consequences of a DBA will not be significantly increased by the removal of a single CAR unit from service for cleaning.

By opening up the service water piping inside containment, containment integrity will be technically relaxed. If a DBA LOCA were to occur coincident with a loss of containment, the allowable offsite dose could be exceeded. To ensure that an adequate containment will be in place at all times during the CAR cooling coil cleaning activities, special precautions will be implemented as a compensatory measure. The service water supply manual valve (outside containment) will be closed and a blank installed between existing mating flanges upstream of the service water return manual valve (also outside containment) prior to the service water piping inside containment being opened. Pressure above the maximum post-accident containment pressure will be maintained on the closed inlet valve to prevent containment leakage. The outlet blank flange will be leak tested. Although not seismically qualified, the return piping outside containment between the containment penetration and the discharge throttle valve is carbon steel seamless A53 grade A schedule 40. It was built to the then-current standard, B31.1, 1955. (An accident concurrent with a seismic event is beyond the Haddam Neck Plant design basis). In addition, all work in this area of piping will be administratively restricted during these evolutions. Therefore, the compensatory measures will ensure that no significant increase in radiological consequences following an accident will occur as a result of this change. During the allowable maximum of 64 hours that the service water piping may be open, the containment barrier will be the manual valve and seismically qualified piping on the CAR unit supply and the blank flange and associated piping on the return side.

The proposed change would not affect the probability of a DBA LOCA or a steam line rupture. As stated earlier, administrative controls currently allow a single CAR unit to be removed from service for up to seven days. Therefore, the probability of failing the CAR fan system will not be significantly affected.

The special procedure regarding isolation of service water supply to the CAR fan unit will not impact service water system availability to other components.

The purpose of the proposed change is to clean the CAR fan heat exchangers. In so doing, service water flow through the heat exchanger will increase. This increase in heat removal capacity is necessary to restore the CAR unit performance to that assumed in the Final Safety Analysis Report for the design service water temperature. The net effect of the change will be to improve CAR unit cooling system performance.

2. *Create the possibility of a new or different kind of accident from any previously evaluated.* The possibility for an accident or malfunction of a different type than any evaluated previously in the Final Safety Analysis Report is not created since the change and/or failure modes associated with the change do not modify the plant response to the point where it can be considered a new design basis accident. There are no new failure modes associated with the proposed change which could represent a new unanalyzed accident.

In addition, our plant-specific Probabilistic Safety Study was utilized to gain additional insight regarding this criterion of the no significant hazards consideration determination.

The probability of having a core damage accident during the 64 hour time frame allowed to install and remove blank flanges on the service water piping inside containment is given by:

probability = $(8\times10^{-4}$/yr.) (64 hr.)/(8760 hr./yr.)

$=5.9\times10^{-6}$

where 8×10^{-4}/yr. is the currently calculated core melt frequency for internal events and fire (with credit for the oil-filled transformer replacement in the switchgear room during the 1987–88 outage). Since a seismic PRA has not been performed, the above value does not include seismic events.

This value represents the probability of a core damage accident with containment integrity relaxed. Although in the strict regulatory sense, containment integrity is technically relaxed, in actuality the containment barrier is ensured by compensatory measures.

The compensatory measures will provide a containment barrier by closing off the supply and return service water lines outside containment. Based on WASH–1400 type failure rates for large pipe rupture, the probability of the service water piping to and from the CAR fan unit outside containment failing in a one year time frame following a core damage accident in less than 10^{-4}. For catastrophic rupture of the isolation valves and/or blank flanges, a conservative analysis gives less than 10^{-2} probability over a one year time frame. Assuming a 10^{-3} conditional probability for failure of the compensatory measures to isolate containment gives

probability of core melt accident (nonseismic) = (5.8×10^{-6}) (10^{-2}) concurrent with loss of containment integrity

$=5.8\times10^{-8}$

This probability is sufficiently low that the above accident need not be considered within the design basis of the plant. The basis for this determination is that containment isolation failure in the current configuration has some finite probability, and the incremental increase resulting from the proposed change would be insignificantly small.

In addition, a qualitative assessment of the core melt frequency risk associated with a seismic event and a loss of containment integrity during the 64 hour period was performed. Using the Millstone Unit No. 3 seismic hazard curves and the seismic experience data base on inherent seismic capacity of ANSI B31.1 non-seismically supported piping, it may be shown that the probability of pipe rupture during the 64 hour period as a result of a seismic initiating event is of the same order of magnitude as the probability of core melt accident (nonseismic) concurrent with loss of containment integrity reported above.

The proposed change does not create a new unanalyzed event based on compensatory measures which will be in effect. As described above, the proposed change does not increase the probability of an accident to the point where it whould be considered within the design basis of the plant.

3. *Involve a significant reduction in a margin of safety.* The proposed change does not impact the consequences of an accident on the fuel or reactor coolant system protective boundaries. The impacts on containment integrity and offsite public does are sufficiently low as to be considered beyond the design basis of the plant.

The proposed change will allow the opening of the service water piping inside containment for relatively short periods of time. This piping serves as the containment boundary. The relaxation of containment integrity does not represent a significant reduction in the margin of safety. As noted above, the compensatory measures which will be implemented provide assurance that the containment boundary will be maintained and that the allowable offsite dose limit will not be exceeded.

Based on the above discussion, the proposed change will not decrease the margin of safety because of:

a. The compenatory measures to maintain the containment boundary,

b. The relatively short duration when the service water piping inside containment is open, and

c. The unavailability of the CAR fan units is bounded by that allowed by both the Technical Specifications and existing administrative controls.

The staff has reviewed and agrees the licensee's analysis as provided above. Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice.

Written comments may also be delivered to Room P–216, Phillips Building, 7920 Norfolk Avneue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 20, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a suppplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30-days, the Commission will make a final determination on the issue of no significant hazards considerations. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards considerations, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3494.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 10, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, Washington, DC, 20555, and at the Local Public Document Room, Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 14th day of February, 1989.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Acting Project Manager, Project Directorate I–4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–3783 Filed 2–16–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–277 and 50–278]

Philadelphia Electric Co., et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–44 and DPR–56, issued to Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company for operation of the Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, located in York County, Pennsylvania.

The proposed amendments would reflect modifications made pursuant to the ATWS Rule (10 CFR 50.62) by incorporating the Alternate Rod Insertion (ARI) instrumentation into the Technical Specifications and by revising the current Recirculation Pump Trip (RPT) Technical Specifications in accordance with the licensee's application for amendment dated June 12, 1987 as amended on February 7, 1989.

The ATWS Rule (10 CFR 50.62, "Requirements for Reduction of Risk from Anticipated Transients Without Scram (ATWS) Events for Light Water Cooled Nuclear Power Plants") requires improvements in the design and operation of commercial nuclear power facilities to reduce the likelihood of a failure to shutdown the reactor following anticipated transients, and to mitigate the consequences of an ATWS event. The requirements for a boiling water reactor are to install an alternate rod injection (ARI) system, a standby liquid control system (SLCS) and to trip the reactor coolant recirculating pumps (RPT) automatically under conditions of an ATWS. The licensee has provided information on the implementation of the ARI and RPT portions of the rule and the staff has concluded, in a safety evaluation report published on December 21, 1988, that the ARI and RPT designs are in compliance with the rule. The SLCS design was previously addressed by modifications to the Technical Specifications for Units 2 and 3 in amendments numbered 122 and 126, respectively, on June 2, 1987. This amendment would therefore, complement the staff's safety evaluation on ARI and RPT by establishing revised Technical Specification Limiting Conditions for Operation (LCO) and Surveillance Requirements (SR) for RPT and by establishing added LCO's and SR's for ARI.

The ARI system will (1) be independent from the existing Reactor Protection System (reactor trip system) from sensor output to final actuation device, (2) have redundant scram air header exhaust valves, and (3) perform its function in a reliable manner. The ARI logic will be one parameter-out-of-two-parameters-taken twice, energize to trip with redundant sensors. Since commercial operation began, Peach Bottom Atomic Power Station Units 2 and 3 have been equipped with a recirculating pump trip (RPT) feature. However, the RPT logic will be modified to ensure that RPI and ARI actuation occur simultaneously. This will be achieved by using the same sensors for ARI and RPT. Both RPT and the proposed ARI are actuated on the parameters of reactor high pressure (1120 psig) or reactor low-low water level (minus 48 inches indicated level), which are conditions indicative of an

ATWS. The ARI and RPT systems will also share pressure transmitters and level transmitters. Each transmitter will provide a signal to an electronic trip unit. When the signal from a transmitter reaches the trip setpoint (corresponding to 1120 psig or minus 48 inches) the electronic trip unit will actuate the logic. Presently, the RPT logic is actuated directly from pressure switches and level switches. The transmitter and electronic trip unit combination to be installed will serve the same function as the switch, and will simplify instrument functional tests.

The RPT logic will also be modified to minimize the potential for inadvertent actuations and to ensure that a single sensor failure cannot prevent a trip. The modified RPT logic will be a one parameter-out-of-two-parameters-taken twice, energize to trip logic with redundant sensors.

The ARI and RPT instrumentation will be addressed in LCO 3.2.G which refers to Table 3.2.G for the minimum number of operable instrument channels, trip level settings and the action that must be taken if the requirements of the table cannot be met. ARI and RPT will also be addressed in SR 4.2.G which refers to Table 4.2.G for the testing and calibration frequencies. ARI and RPT are also discussed in the BASES of section 3.2.

The logic to actuate RPT and, since its addition, ARI has been changed from a one-out-of-four logic (two levels and two pressures) to trip each recirculation pump to one-out-of-two-taken twice to trip both recirculation pumps and to actuate ARI.

The minimum number of operable instrument channels per reactor pump trip system and the required actions if these minimums cannot be met, as specified in Notes 1, 2 and 3 have been revised to reflect the revised trip logic. Since Table 3.2.G also has been revised to include ARI, these revisions also now apply to ARI. Table 4.2.G has been revised so that it now also includes ARI and specifies the functional test. By its submittal dated February 7, 1989 the licensee also revised the channel functional test frequency to once per month.

The specific changes to the TS consist of the following: (a) a revision of TS sections 3.2.G and 4.2.G and the BASES to add ARI, (b) revision of the ACTION statements in Table 3.2.G to reflect the revised logic for RPT and ARI, (c) additional limitations for the ACTIONS specified in the Notes of Table 3.2.G to be taken and on the frequency of the functional test in Table 4.2.G, and a requirement to place an inoperable trip system in the tripped condition, (d) administrative changes in the title of the "instrument functional check" to the "instrument functional test", changing the surveillance frequency terminology from "once/refueling cycle" to "once/operating cycle" and addition of the functional test definition in Table 4.2.G to achieve consistency within the TS.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

A discussion of the proposed changes as they relate to these standards is presented below:

A. Additional to Alternate Rod Injection (Insertion)

The licensee has provided a discussion of this proposed change as follows:

(i) The proposed revisions do not involve a significant increase in the probability or consequences of an accident previously evaluated because the installation of the ARI system and establishment of Technical Specification controls decrease the probability of a reactor transient without a scram. The ARI system does not adversely affect any safety-related equipment.

(ii) The proposed revisions do not create the possibility of a new or different kind of accident from any accident previously evaluated because the ARI system and associated Technical Specification requirements do not alter facility operations or adversely affect any accident analyses. The ARI trip systems do not affect the reactivity characteristics of a reactor scram and utilize the same parameter values as the normal scram initiation system. A trip of both recirculation pumps coincident with a scram during reactor operation is less severe than a trip of both pumps without a scram, which has been analyzed in the FSAR (14.5.5.3).

(iii) The proposed revisions do not involve a significant reduction in a margin of safety because the ARI system decreases the probability of an ATWS event without adversely affecting any other safety margin. The ARI instrumentation will be properly isolated from safety-related circuits.

The staff has reviewed the licensee's no significant hazards consideration determination for the addition of ARI and agrees with the licensee's analysis. Accordingly, the Commission has proposed to determine that the above changes do not involve a significant hazards consideration.

B. Revised Logic for RPT and ARI

The proposed revision of Notes 1 and 2 into Notes 1, 2, and 3 to reflect the revised logic to initiate RPT and ARI does not involve a significant increase in the probability or consequences of an accident previously evaluated because the change ensures that the ACTION statements retain their purpose.

The proposed revision does not create the probability of a new or different kind of accident from any accident previously evaluated because changing the operability requirement of the RPT system to reflect the modified logic cannot create the possibility of any accident. The modified logic is more reliable and less likely to spuriously actuate.

The proposed revision does not involve a significant reduction in a margin of safety because the purpose and effects of the notes are not being changed.

C. Additional Limitations on ACTION Statements

These changes involve specifying additional limiting periods for the ACTIONS in Notes 2 and 3 to be taken, specifying that the affected trip system will be placed in the trip condition in Note 2 and providing a more limiting frequency for the surveillance tests in Table 4.2.G. The Commission has provided guidance for the application of the criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). These examples include: Example (ii) a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement. Since these proposed changes are encompassed by an example for which no significant hazard exists, the staff has made a proposed determination that it involves no significant hazards consideration.

D. Changes in Nomenclature

The licensee has proposed that administrative changes in the titles of "instrument functional check" in Table 4.2.G be changed to a term explicitly included in the Definitions section of the TS, "instrument functional test";

likewise that "once/refueling cycle" be changed to "once/operating cycle". The licensee also proposes to add a definition of the instrumentation functional test to Table 4.2.G as has previously been done elsewhere in the TS where these instruments are involved. The Commission has provided guidance for the application of the criteria for significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). These examples include: Example (i) a purely administrative change to technical specifications; for example, a change to achieve consistency throughout the technical specifications, corrections of an error, or a change in nomenclature. The proposed changes are examples of such changes since the meaning of these terms remains the same and consistency with the rest of the TS is enhanced by the changes. Since these changes are encompassed by an example for which no significant hazard exists, the staff has made a proposed determination that they involve no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be addressed to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 20, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler, Director, Project Directorate I–2, Division of Reactor Projects I/II: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition

should also be sent to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Conner and Wetterhahn, 1747 Pennsylvania Avenue NW., Washington, DC 20006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 12, 1987, as amended an supplemented February 7, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Dated at Rockville, Maryland, this 13th day of February 1989.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–3784 Filed 2–16–89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26538; File No. SR–DTC–88–19]

Self-Regulatory Organizations; Depository Trust Co.; Order Granting Temporary Approval of Proposed Rule Change; Automated Tender Offer Program

On November 23, 1988, the Depository Trust Company ("DTC") filed a proposed rule change (File No. SR–DTC–88–19) under section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] to implement the Automated Tender Offer Program ("ATOP"). Notice of the proposal was published in the Federal Register on December 13, 1988.[2] No comments were received. DTC, by a letter dated January 5, 1989, extended the time for the Commission to take action on the proposal until February 15, 1989. This order approves the proposal on a pilot basis for a period of 90 days.

I. Description of the Proposal

The proposed rule change will implement ATOP, which will further automate the manner in which tender and exchange offers can be processed through DTC's facilities. ATOP will permit DTC participants to transmit electronically to a bidder's agent through DTC acceptance of a tender or exchange offer contemporaneously with delivery of securities on deposit at DTC that the participant intends to tender.

Exchange Act Rule 17Ad–14 requires most tender or exchange agents to establish a book-entry account at qualified securities despositories for delivery of securities from participants in those depositories who wish to tender securities under the terms of the offer.[3] DTC is a qualified securities depository for purposes of Rule 17Ad–14.[4]

DTC's current service for processing tender and exchange offers enable participants to submit written instructions to delivery, by book-entry movement, securities to the tender or exchange agent's account in satisfaction of the terms or exchange agent's account in satisfaction of the terms of the offer. To authorize DTC to surrender securities on the participant's behalf, a participant must submit two hardcopy documents to DTC. The first document, a DTC Voluntary Offering Instruction ("VOI"), authorizes DTC to deduct the securities from the participant's account and deliver them by book-entry to a special account maintained at DTC on behalf of the agent. The second document is a letter of transmittal, the terms of which are prepared by the bidder and which the participant obtains from the bidder or its representatives. The participant signs the letter of transmittal and submits it to DTC. DTC then forwards the letter of transmittal and a copy of the VOI to the agent. If the shares are accepted by the agent, DTC makes arrangements with the agent to receive cash or securities which it will allocate to the accounts of the appropriate participants. A participant may submit multiple VOI forms and letters of transmittal authorizing up to the total quantity of target shares in the participant's DTC account.

Currently, a participant may also accept an offer through the agent and subsequently surrender those securities through DTC. The participant can submit a letter of transmittal or other documentation, sometimes called a "notice of guaranteed delivery" or a "protect letter" directly to the agent and later submit a VOI form, along with a copy of the letter of transmittal, to DTC. This procedures allows the participant to surrender securities through DTC during the offer protection period, if any, (*i.e.*, the period after the expiration date of the offer during which securities may be surrendered pursuant to a notice of guaranteed delivery submitted prior to the expiration date).

ATOP will eliminate the submission of the hardcopy VOI and letter of transmittal by a participant to DTC by allowing the participant to make the same instructions electronically through DTC's Participant Terminal System ("PTS").[5] To accept an offer through ATOP, a participant will send an ATOP instruction to DTC through its PTS terminal. The ATOP instruction will contain the same information currently contained in the hardcopy VOI form. In addition, the ATOP instruction will contain a special field in which the participant will acknowledge that it has received the letter of transmittal (as prepared by the bidder or its agent) and that the participant agrees to be bound by the terms of the letter of transmittal.[6] The participant will also be able to enter in the ATOP instruction characters responding to any special representations that are requirted by the terms of the offer.

DTC will check some of the data in the ATOP instruction, verifying, for example, that the participant has correctly identified a current offer and the target securities. DTC also will reject any ATOP instruction in which the participant has failed to enter the leter of transmittal acknowledgement. if the participant does not have sufficient securities in its DTC account at the the ATOP instruction is submitted, the ATOP instruction will recycle until sufficient securities are present. If the participant does not have sufficient

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[1] 15 U.S.C. 78(b)(1).

[2] Securities Exchange Act Release No. 26344 (December 7, 1988), 53 FR 50145 (December 13, 1988).

[3] *See* 17 CFR 240.17Ad–14 (1988).

[4] *See* Securities Exchange Act Release No. 20581 (January 19, 1984), 49 FR 3064.

[5] DTC's PTS allows participants to communicate with DTC through a computer terminal in the participant's office. Participants use PTS to send instruction, inquiries and other messages to DTC and to DTC and to receive messages and reports from DTC. *See* File No. SR–DTC–76–8, Securities Exchange Act Release No. 20519 (Dec. 30, 1984), 49 FR 966.

[6] ATOP will not charge current practices regarding the preparation and distribution of tender and exchange offer materials. Bidders will continue to prepare and distribute the same hardcopy offer materials, including letters of transmittal, as it does now, and distribute them to Participants and other who do not use DTC's facilities to accept offers.

securities in its account by the end of the day, the ATOP instruction will not be processed.

If the participant has sufficient securities in its DTC account, DTC will deduct the specified securities from the participant's account and add them to the agent's account. At the same time, DTC will automatically generate hardcopy messages reflecting this transaction on the PTS printers in the offices of the participant and the agent. A participant will receive one message for each instruction sent by the participant. The agent will receive one message for each instruction sent by a participant.

DTC will send the agent a receipt and confirmation report summarizing the day's activities in each particular offer at the end of each business day the offer is open. The agent also will be able to review information about the offer throughout the day on its PTS terminal.

Each participant using ATOP has agreed with DTC to be bound by DTC's Participant Operating Procedures. Those procedures, as they relate to ATOP, will provide that any participant sending DTC an ATOP instruction containing the letter of transmittal acknowledgment agrees to be bound by the terms of the related letter of transmittal and agrees that the bidder in the offer may enforce the participant's agreement (and agreement to the terms of the offer) directly against the participant.

Under DTC's current service, each agent enters into an agreement with DTC covering a number of matters relating to the service. The ATOP agreement between the agent and DTC will contain provisions to the effect that DTC's delivery of an ATOP message to the agent (*i.e.*, by printing the message on the agent's PTS printer) will have the same legal effect as the execution and delivery of a letter of transmittal by the participant identified in the agent's message; that such agreement is enforceable against the bidder by the participant; and that the agent is authorized to make such agreement on behalf of the bidder.

DTC will operate ATOP as a pilot program with its participants and a few high volume tender and exchange agents with PTS terminals. DTC plans to expand the program as it gains operating experience and expects eventually to include lower volume exchange and tender agents that do not have PTS terminals. DTC, however, will continue to offer the current hardcopy service along with ATOP for those exchange and tender agents that wish to continue to rely on written letters of transmittal.[7]

II. DTC's Rationale

DTC states that the proposed rule change is consistent with the requirements of the Act and the rules thereunder applicable to DTC. Specifically, DTC believes that the proposed enhancement to DTC's tender and exchange offer services is consistent with the requirement to safeguard securities and funds in DTC's custody or control or for which it is responsible under section 17A of the Act.

DTC also states that ATOP will alleviate problems arising from use of hardcopy documents in tender and exchange offers, such as the risk of loss, delay during shipment and the expense and labor involved in the physical handling of documents. In addition, ATOP will provide agents for tender and exchange offers with an improved ability to control the processing of such offers by making a variety of information available to the agent (and to the bidder) while an offer is open.

III. Discussion

The Commission believes that the proposal is consistent with section 17A of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions. ATOP will bring to DTC's tender and exchange offer processing service the benefits and efficiencies of automation, including decreased risk of loss, reduced costs to participants and a later cut-off date for the submission of instructions.

The principal benefit of ATOP may be a reduction in the paperwork associated with tender and exchange offers. Currently, reams of paper must be shuffled among participants, DTC and the agents using the mails, overnight delivery services and facsimile transmissions.

ATOP may also allow DTC to extend its deadlines for accepting an offer through DTC. Currently, because of the delay in shipping letters of transmittal from participants to DTC and then from DTC agents (which are frequently located outside New York), DTC in many cases can accept letters of transmittal only up to a certain time prior to the expiration date of the offer. Under ATOP, DTC will be able to accept the VOI and letter of transmittal from participants through PTS for a period much closer to the expiration date of the offer. This will allow participants more time to receive their customer's instructions to tender or exchange securities.

The Commission agrees with DTC that ATOP should begin as a pilot. A 90-day pilot should provide DTC with the operational experience to make any necessary adjustments to its operational procedures. DTC has not finalized the procedures for ATOP but expects to do so prior to the expiration of the pilot period. DTC will include ATOP procedures when it files a proposed rule change pursuant to Rule 19b–4 for permanent approval of ATOP.

The Commission notes that DTC's proposal will provide, in essence, facilities for communications between agents and participants. Although Exchange Act Rule 17Ad–14 requires agents to establish accounts with DTC because DTC is a qualified securities depository, nothing in that rule currently *requires* agents to participate in ATOP or to accept ATOP transmittals absent an agreement to do so.

IV. Conclusion

For the reasons discussed in this order, the Commission finds that the proposal is consistent with the requirements of the Act, particularly section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b) of the Act, that the proposed rule change (SR–DTC–88–19) be, and hereby is, approved on a pilot basis for a period of 90 days from the date below.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 13, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–3793 Filed 2–16–89; 8:45 am]

BILLING CODE 8010–01–M

[7] At a later date, and subject to approval under section 19(b) of the Act, DTC expects to expand the type of information available to the participant. DTC plans to eventually allow a participant to send an instruction that would serve as a notice of guaranteed delivery. The participant would send such an instruction when it does not have the securities credited to its DTC account but anticipates receiving the securities on a later day. The Participant would send another instruction to surrender the securities in the offer when it receives them.

[Release No. 34-26539; File No. SR-NASD-89-1]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Automated Submission of Trading Data

The National Association of Securities Dealers, Inc. ("NASD") submitted a proposed rule change on January 4, 1989, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 [2] thereunder, to require its members to submit to the NASD certain customer and proprietary trading information in an automated format.[3]

Notice of the proposed rule change together with the substance of the terms of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 26429, January 6, 1989) and by publication in the **Federal Register** (54 FR 1262, January 12, 1989). No comments were received regarding the proposed rule change.

The rule change will facilitate the collection and storage of trade data elements which will enhance the NASD's ability to oversee its members. The Commission finds that the proposed rule change is designed to assist in the prevention of fraud and manipulation and, in general, will assist in protecting investors and the public interest. The Commission finds that the proposed rule change is consistent with requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular with the requirements of Section 15A and the rules and regulations thereunder.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: February 13, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-3794 Filed 2-16-89; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] The NASD rule change is virtually identical to the rule changes recently filed by the New York and American Stock Exchanges and the Chicago Board Options Exchange and approved by the Commission. *See* Securities Exchange Act Release No. 25859 (June 27, 1988), 53 FR 25029; and Securities Exchange Release No. 26235 (November 1, 1988).

[Rel. No. 34-26541; File No. SR-PHILADEP 89-01]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Depository Trust Company Relating to Announcement of Participation in Securities Clearing Group Agreement

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 17, 1989, the Philadelphia Depository Trust Company ("PHILADEP") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Depository Trust Company ("PHILADEP") hereby submits as a proposed rule change pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 ("Act") announcement of participation in the Securities Clearing Group ("SCG") Agreement [1] signed on October 19, 1988.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and statutory basis for 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 Purpose of, and Statutory Basis for, the Proposed Rule Change

The SCG Agreement, signed on the anniversary of the greatest stock market crash in American history, represents the formalization of the efforts of the SCG, which is currently comprised of seven registered clearing organizations. The objectives of SCG are to coordinate efforts toward identifying risks posed by participants in more than one clearing organization. In this regard, the Agreement provides for the sharing of appropriate financial, operational and clearing data on common participants among members of the SCG for regulatory purposes.

The proposal is consistent with section 17A(b)(3) of the Act in that it is designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PHILADEP does not believe that the rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved such proposed rule change, or,

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street 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.

[1] For a copy of the text of the proposed rule change, *see* Securities Exchange Act Release No. 23600 (November 21, 1988); 53 FR 48353 (November 30, 1988).

Copies of such filing will also be available for inspection and copying at SCCP. All submissions should refer to the File No. SR–Philadep–89–01 and should be submitted by March 10, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 13, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–3795 Filed 2–16–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26540; File No. SR–SCCP 89–01]

Self-Regulatory Organizations; Proposed Rule Change by the Stock Clearing Corporation of Philadelphia Relating to Announcement of Participation in Securities Clearing Group Agreement

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 17, 1989, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Stock Clearing Corporation of Philadelphia ("SCCP") hereby submits as a proposed rule change pursuant to Rule 19b–4 under the Securities Exchange Act of 1934 ("Act") announcement of participation in the Securities Clearing Group ("SCG") Agreement [1] signed on October 19, 1988.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and statutory basis for 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:

[1] For a copy of the text of the proposed rule change, *see* Securities Exchange Act Release No. 23600 (November 21, 1988); 53 FR 48353 (November 30, 1988).

(A) Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

The SCG Agreement, signed on the anniversary of the greatest stock market crash in American history, represents the formalization of the efforts of the SCG, which is currently comprised of seven registered clearing organizations. The objectives of SCG are to coordinate efforts toward identifying risks posed by participants in more than one clearing organization. In this regard, the Agreement provides for the sharing of appropriate financial, operational and clearing data on common participants among members of the SCG for regulatory purposes.

The proposal is consistent with section 17A(b)(3) of the Act in that it is designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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. Copies of such filing will also be available for inspection and copying at SCCP. All submissions should refer to the File No. SR–SCCP–89–01 and should be submitted by March 10, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: February 13, 1989.

[FR Doc. 89–3796 Filed 2–16–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16808; 812–7188]

Dimensional Fund Advisors Inc.; Notice of Application

February 10, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order Pursuant to section 2(a)(9) of the Investment Company Act of 1940 ("1940 Act") Declaring Presumption of Control Created by that Section Rebutted by Evidence.

Applicant: Dimensional Fund Advisors Inc. ("DFA").

Relevant 1940 Act Section: Declaration requested under section 2(a)(9).

Summary of Application: DFA seeks an order that the presumption created by section 2(a)(9) of the 1940 Act that a stockholder of DFA owning 30.23% of the outstanding common stock of DFA controls DFA has been rebutted by the evidence and, therefore, that the proposed transfers of such voting securities will not result in the "assignment," as such term is defined in section 2(a)(4) of the 1940 Act, of the investment advisory agreement between DFA, an investment adviser registered under the Investment Advisers Act of 1940, and DFA Investment Dimensions Group Inc. (the "Fund"), an open-end management investment company registered under the 1940 Act.

Filing Dates: The application was filed initially on December 6, 1988. An

amended and restated application was filed on February 6, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on March 6, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 1299 Ocean Avenue—Suite 650, Santa Monica, California 90401.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. DFA, a Delaware corporation, is controlled by David G. Booth ("Booth") and Rex A. Sinquefield ("Sinquefield"), who are the Chief Executive Officer and the Chief Investment Officer, respectively, and Co-chairmen and directors of DFA. Together, Booth and Sinquefield own 43,000 or 50%, of the 86,000 shares of the outstanding common stock of DFA.

2. Larry G. Klotz ("Klotz"), a cofounder of DFA and the holder of 26,000 shares (30.23%), is the only stockholder other than Booth and Sinquefield who beneficially owns more than 25% of DFA common stock. Klotz was the Executive Vice President, Treasurer and a director of DFA and Vice President, Treasurer and a director of the Fund from inception of DFA and the Fund in 1981 until January of 1985 when, due to irreconcilable differences of opinion with Booth and Sinquefield, Klotz formally resigned all of his official positions with DFA and the Fund. By agreement with Booth and Sinquefield relating to his departure, Klotz terminated all relationships with DFA except that he continued to hold his 26,000 shares of DFA common stock subject to a Stock Restriction, Purchase and Voting Agreement with DFA, Booth and Sinquefield dated January 8, 1985 (the "1985 Agreement"). Since August of 1984, Klotz has not been involved in any way whatsoever in the affairs of DFA, nor does he have any relationships of any kind with DFA, Booth or Sinquefield.

3. Since they started DFA in 1981, Booth and Sinquefield have shared the managerial responsibilities of DFA. The strong relationship between Booth and Sinquefield dates back to 1970 when they both were attending the Graduate School of Business of the University of Chicago. As graduate students Booth and Sinquefield became disciples of the "efficient market" theory. They both have contributed significantly to the development of DFA's investment products and they jointly determine DFA's management and investment policies. They also share responsibility for oversight of the administrative and operational functions of the business.

4. Klotz' involvement, on the other hand, was focused in the area of sales and marketing. He was instrumental in attracting the first institutional clients to DFA, drawing on his strong selling skills and significant contacts developed while in the pension consulting business. Klotz had little input into product development.

5. In connection with the formation of DFA, Booth, Sinquefield and Klotz decided that shares of the company would only be issued subject to a voting agreement requiring the shares to be voted in the election of directors in favor of the persons designated by the principals (and including the principals) to serve as the directors of DFA. Accordingly, in conjunction with their initial purchases of DFA common stock, they each, as a "purchaser," entered into a Stock Purchase and Voting Agreement dated June 1, 1981 (the "1981 Agreement"), with DFA and the three of them as "principals."

6. Each of the other stockholders of DFA, as a condition to their purchases of shares of DFA common stock, agreed to voting provisions and restrictions on the transfer of DFA common stock (collectively, the "Voting Agreements") substantially identical to those set forth in the 1981 Agreement. In order to avoid the expense of judicial enforcement in the event of breach of any such Voting Agreements by a stockholder, each Voting Agreement also provides that it constitutes an irrevocable proxy of the stockholder in favor of the principals. As a result, the principals have absolute control to elect all directors of DFA. The purpose of such Voting Agreements is to ensure the stability and continuity of and to retain control of the company in management, or persons selected by management.

7. The 1985 Agreement restates Klotz' obligation under the 1981 Agreement to vote his shares in the election of directors in favor of Booth and Sinquefield (the remaining "principals") and such other persons as they may "jointly" designate as directors. Like the 1981 Agreement, the 1985 Agreement also provides that it shall constitute an irrevocable proxy to vote Kotz' shares in the election of directors in accordance with his contractual obligations.

8. Klotz has now proposed to sell his shares of DFA and DFA has exercised the option it has to purchase such shares. DFA has separately entered into Stock Purchase Agreements with each of two unrelated institutional investors providing for their purchase from DFA of 12,500 and 7,500 shares of DFA common stock, respectively, to be consummated simultaneously with DFA's purchase of the Klotz shares. No changes are contemplated, however, in the existing management or investment personnel of DFA, any of the investment policies or strategies of DFA or the Fund, or any of the operations of DFA or the Fund, in connection with the proposed transactions.

9. After completion of the proposed transactions, 80,000 shares of DFA common stock will be issued and outstanding and, except for Mr. Booth whose percentage ownership will increase from 30.23% to 32.50%, no stockholder will own more than 25% of the outstanding shares of DFA common stock. Sinquefield will be the second largest stockholder, owning 21.25% of the outstanding DFA common stock. After completion of the proposed transactions, Booth and Sinquefield will own in aggregate 53.75% of the outstanding shares and will jointly control 75% of the voting power in the election of directors of DFA.

Applicants Legal Analysis

1. DFA seeks a determination that, with respect to Klotz, the presumption created under section 2(a)(9) of the 1940 Act that any person owning more than 25% of the voting securities of a company (*i.e.*, more than 21,500 shares of the common stock of DFA) is deemed to control that company has been rebutted by evidence, and thus the transfer of more than 21,500 of Klots' shares will not constitute a transfer of a controlling block of voting securities of DFA within the meaning of section 2(a)(4) of the 1940 Act. If Klotz' shares were deemed to be a controlling block of

DFA, the transfer of more than 21,500 of such shares would be deemed an assignment of the fund's investment advisory agreement under section 2(a)(4) of the 1940 Act resulting in the automatic termination of the agreement in accordance with Section 15(a)(4) of the 1940 Act. If such agreement is terminated, a new investment advisory agreement must be approved by the Fund's directors and shareholders under section 15(a) of the 1940 Act.

2. DFA wants to obviate the need for a special meeting of shareholders of the Fund and to avoid the burden and expense of soliciting proxies merely for the purpose of approving an investment advisory agreement which DFA states would be identical to the one already approved by the Fund directors and shareholders in accordance with section 15(a) of the 1940 Act.

3. The irrevocable proxies granted to Booth and Sinquefield for the election of directors have largely eliminated even the usual limited influence of a minority stockholder. Booth and Sinquefield exercise actual control of DFA. They directly own 50% of the DFA Common Stock, they jointly appoint and elect 100% of the directors of DFA under the Voting Agreements creating a *de factor* partnership between them, and together they actively manage the business and affairs of DFA as co-chairmen. The statutory presumption created by section 2(a)(9) that Klotz also controls DFA merely by reason of his more than 25% ownership is clearly rebutted by the facts.

4. Despite the fact that neither Booth nor Sinquefield individually controls more than 50% of the "vote," if it's clear that Klotz has never owned a controlling block of DFA common stock. That Booth and Sinquefield have in fact shared the management and administrative responsibilities of DFA from the outset, that Klotz in fact did not exert any influence on the management decisions made by Booth and Sinquefield, that none of the directors designated by the principals was proposed or chosen by Klotz, these actual facts and circumstances support the conclusion that Klotz did not and does not now "control" DFA. Furthermore, the "dominating persuasiveness" of Booth and Sinquefield in managing the business of DFA as a unified team and the Voting Agreements requiring them to act in concern in the election of directors support the finding that they together control DFA.

5. Further evidence of the fact that Klotz does not control DFA is that the proposed transfer of the Klotz shares will not effectuate any change in the control or management of DFA, just as there was no "change in actual control or management" of DFA occasioned by Mr. Klotz' departure in 1984. The services provided to the Fund by DFA, the investment policies and strategies of DFA, and the operations of DFA and the Fund will not be affected in any way as a result of Klotz' sale of his shares at this time.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-3758 Filed 2-16-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended February 10, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No.: 46099

Dated Filed: February 6, 1989

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 6, 1989

Description: Application of Aspen Airways, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity authorizing it to provide service between the coterminals Grand Forks and Bismark, North Dakota, on the one hand, and Winnipeg, Manitoba, Canada, on the other hand.

Docket No.: 46105

Date Filed: February 8, 1989

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 8, 1989

Description: Application of Arrow Air, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a new or amended certificate of public convenience and necessity to engage in scheduled foreign air transportation of property and mail between any point or points in the United States and its territories and possessions, on the one hand, and any point or points in Argentina, Chile, Colombia, Paraguay, and Venezuela, on the other hand.

Docket No.: 46106

Date Filed: February 8, 1989

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 8, 1989

Description: Application of Hibiscus Airfreight (Guyana), Ltd., pursuant to section 402 of the Act and Subpart Q of the Regulations, requests a foreign air carrier permit authorizing it to perform nonscheduled air transportation of cargo and mail between points in Guyana on the one hand, and Miami, Florida, on the other hand, via intermediate stops in one or more of the following points: Tobago, Barbados, Grenada, St. Vincent, St. Lucia, Antigua, St. Kitts, St. Thomas, San Juan, Ciudad Trujillo, Port au Prince, Jamaica, Cuba, Nassau, Bermuda

Docket No.: 46108

Date Filed: February 9, 1989

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 9, 1989

Description: Application of Transcaesa, S.A. De C.V., pursuant to section 402 of the Act and Subpart Q of the Regulations, requests a foreign air carrier permit seeking authority to provide foreign transportation of general cargo between points in the United States and points in Mexico and, between points in the United States and other points worldwide.

Docket No.: 46110

Date Filed: February 10, 1989

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 10, 1989

Description: Application of Flight International, Inc. pursuant to Section 401(d)(3) of the Act, and Subpart Q of the Regulations, requests authority to engage in interstate and overseas charter air transportation of persons and property.

Docket No.: 46111

Date Filed: February 10, 1989

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 10, 1989

Description: Application of Flight International, Inc. pursuant to Section 401(d)(3) of the Act and Subpart Q of the Regulations, requests authority to

engage in foreign air transportation of persons and property.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89-3776 Filed 2-16-89; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGDI 89-007]

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 USC App. I), notice is hereby given of a meeting of the New York Harbor Traffic Management Advisory Committee to be held on March 9, 1989, 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. Update Kill Van Kull Dredging Project, particularly its impact on navigation in the area.
3. Discuss the possibility of deepening some existing areas in the port, particularly the Bay Ridge area and the Swash Channel.
4. Briefing on Fleet Week, April 29 to May 4, 1989, particularly berthing and anchoring arrangements.
5. Continuation of the committee.
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: Lieutenant Commander L. Brooks, USCG, Executive Secretary, New York Harbor Traffic Management Advisory Committee, Port Safety Office, Building 109, Governors Island, New York, NY 10004; or by calling (212) 668-7834.

Dated: February 10, 1989.

R.I. Rybacki,

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

[FR Doc. 89-3780 Filed 2-16-89; 8:45 am]

BILLING CODE 4915-14-M

Maritime Administration

[Docket S-844]

Seabulk Transmarine I, Inc., et al.; Application for Permission Under Section 805(a) of the Merchant Marine Act, 1936, as Amended

In connection with a possible affiliation with a still to be formed company time chartering vessels in the domestic east, gulf and west coasts trades, Seabulk Transmarine I, Inc. Seabulk Transmarine II, Inc., and Seabulk Transmarine III, Inc. (the Seabulk companies) by letter dated January 30, 1989, requested all determinations and permissions required pursuant to section 805(a) of the Act.

Each of the Seabulk companies is a wholly-owned subsidiary of Hvide Marine International, Inc., which is in turn a wholly-owned subsidiary of Hvide Shipping, Incorporated (HSI) and are operators under Operating-Differential Subsidy Agreements (ODSA), Contracts MA/MSB-440, MA-MSB-441, and MA/MSB-442.

Seabulk Ocean Systems Corporation (SOSC) is a wholly-owned subsidiary of Seabulk Ocean Systems Holding Corporation, which is in turn wholly owned by Seabulk Tankers, Ltd., a limited partnershp of which Hvide Marine Transport, Incorporated is the general partner and 80 percent owner. Hvide Marine Transport is a wholly-owned subsidiary of Hvide Marine International, Inc., which, as stated, is the parent company of Seabulk companies. SOSC sub-time charters the SEABULK MAGNACHEM from Diamond Shamrock Corporate Company which in turn time charters it from HSI.

Two employees of SOSC will form a corporation to be named Ocean Systems Corporation (the Company) and will sever their relationship with HSI and its affiliates. The Company will solicit cargoes from a variety of customers in the chemical and oil business and enter into contracts of affreightment or short-term time or voyage charters with those customers to move cargoes between domestic ports on the east, gulf, and west coasts. The Company will enter into long-term time charters with the owners or charterers of the OMI DYNAHCEM, OMI HUDSON, SEABULK MAGNACHEM, and SEABULK AMERICA (when built), and, when necessary, other vessels, at rates reflecting normal commercial terms. The OMI DYNACHEM and the OMI HUDSON are owned and operated by affiliates of OMI Corp. (OMI); neither OMI Corp. nor any of its affiliates receives subsidy. The beneficial owner of the SEABULK MAGNACHEM is AmeriTrust Company National Association. The vessel is subbareboat chartered and operated by HSI. The SEABULK AMERICA, when completed, will be owned by a subsidiary or affiliate of HSI and operated by a subsidiary or affiliate of HIS, and will be eligible for coastwise service under the Wrecked Vessel Act, 46 U.S.C. app. section 14; it will result from the joining of the stern portion of the wrecked foreign-built oil tanker FUJI and the forward barge portion of the integrated tug/barge OXY PRODUCER/4102, the tug portion of which was lost.

The Seabulk companies maintain that the Company's sole relationship with the affiliates of HSI and OMI will be through the time charters; the affilites of HSI and OMI will continue to be responsible for operation of their respective vessels, and the Company will have no responsibility with respect to vessel operations.

The stock of the Company will be subject to options held by each of HSI or one of its subsidiaries or affiliates and OMI or one of its subsidiaries or affiliates under which each entity will have the right to purchase amounts totalling 50 percent of the outstanding shares of stock in the Company. Exercise of that option, however, is expressly conditioned upon prior written grant of permission, or determination that no such permission is required, by the Maritime Administration (MARAD) under section 805(a) for the affiliation which may result from the exercise of that option. It is stated that the Company, both before and after the exercise of the stock option, will be a United States citizen within the meaning of section 2 of the Shipping Act, 1916, 46 U.S.C. app. section 802.

The Seabulk companies have an existing section 805(a) approval for the SEABULK MAGNACHEM. In the event that MARAD determines that the exercise of the stock option by HSI, its affiliates or subsidiaries will result in an affiliation or association between the

Seabulk companies and certain affiliates of OMI, which operate vessels in the domestic intercoastal or coastwise service, and the Company, which from time-to-tme may "charter in" additional vessels, the Seabulk companies request the written permission contemplated by section 805(a) for that affiliation or association resulting from the exercise of the stock option.

The Seabulk companies also separately request written permission for their affiliates, to be later named, to own, operate, and/or "charter out" the SEABULK AMERICA, when reconstructed, in the domestic intercoastal and coastwise service. At present, it is contemplated that the SEABULK AMERICA will be time chartered to the Company, which will market the vessel, along with the OMI HUDSON, OMI DYNACHEM and SEABULK MAGNACHEM, in the domestic chemical parcel trade and/or other petroleum domestic intercoastal and coastwise service. The SEABULK AMERICA will be operated by affiliates of the Seabulk companies. The Company will old a long-term time charter and enter into contracts of affreightment or short-term voyage or time charters with shippers. As an alternative, permission should also cover the time chartering of the vessel to an affiliate or associate of the Seabulk companies in the event the vessel is not time chartered to the Company.

The Seabulk companies with to note that HSI has commenced harbor towing operations under the name of Mobile Bay Towing, operating three harbor tugs in the port of Mobile, Alabama. It is the Seabulk companies' view that harbor tug operations do not constitute a "domestic intercoastal or coastwise service" within the meaning of section 805(a).

Any person, firm, or corporation having any interest in the application for section 805(a) permission and desiring to submit comments concerning the application must file written comments in triplicate, to the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590, by the close of business 5:00 p.m. on March 10, 1989. If such comments deal with section 805(a) issues, they should be accompanied by a petition for leave to intervene. The petition should state clearly and concisely the grounds of interest and the alleged facts relied on for relief.

If no petitions for leave to intervene on section 805(a) issues are received within the specified time, or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or international service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic operations.

(Catalog of Federal Domestic Assistance Program Nos. 20.804 Operating-Differential Subsidies (ODS)).

By Order of the Maritime Administrator.

Date: February 14, 1989.

James E. Saari,

Secretary.

[FR Doc. 89-3772 Filed 2-16-89; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

Announcement of the Fourth Meeting of the Rollover Subcommittee of the Motor Vehicle Safety Research Advisory Committee

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting announcement.

SUMMARY: This notice announces the fourth meeting of the Rollover Subcommittee of the Motor Vehicle Safety Research Advisory Committee (MVSRAC). The MVSRAC established this subcommittee at the February 1988 meeting to examine research questions regarding crashworthiness and crash avoidance for vehicles under 10,000 pounds GVW.

DATE AND TIME: The meeting is scheduled for Thursday, March 16, 1989, from 10:00 a.m. to 5:00 p.m.

ADDRESS: The meeting will be held in Room 2230 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street SW., Washington, DC.

SUPPLEMENTARY INFORMATION: In May 1987, the Motor Vehicle Safety Research Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for safety research. The MVSRAC will provide information, advice, and recommendations to NHTSA on matters relating to motor vehicle safety research, and provide a forum for the development, consideration, and communication of motor vehicle safety research, as set forth in the MVSRAC Charter.

This meeting of the Rollover Subcommittee will focus on crash avoidance and crashworthiness subjects. Discussions will cover: Rollover occupant modeling, tire modeling, engineering parameters related to rollover, test facilities and test procedures, and NHTSA's crash avoidance research program.

The meeting is open to the public, and participation by the public will be determined by the Subcommittee Chairman.

Records shall be kept of all Subcommittee proceedings and shall be available for public inspection in public reference file Number 88-01—Rollover Subcommittee during the hours of 8:00 a.m. to 4:00 p.m. in the National Highway Traffic Safety Administration's Technical Reference Division, Room 5108, 400 Seventh Street SW., Washington, DC 20590, telephone: (202) 366-2768.

FOR FURTHER INFORMATION CONTACT: Louis V. Lombardo, Office of Research and Development, 400 Seventh Street SW., Room 6208, Washington, DC 20590, telephone (202) 366-4862.

Issued on: February 13, 1989.

Howard M. Smolkin,

Chairman, Motor Vehicle Safety Research Advisory Committee.

[FR Doc. 89-3761 Filed 2-16-89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 5-89]

Treasury Bonds of 2019

Washington, February 10, 1989.

The Secretary announced on February 9, 1989, that the interest rate on the bonds designated Bonds of 2019, described in Department Circular—Public Debt Series—No. 5-89 dated February 2, 1989, will be 8⅞ percent. Interest on the bonds will be payable at the rate of 8⅞ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-3748 Filed 2-16-89; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular-Public Debt Series—No. 4-89]

Treasury Notes, Series A-1999

Washington, February 9, 1989.

The Secretary announced on February 8, 1989, that the interest rate on the notes designated Series A–1999, described in Department Circular—Public Debt Series—No. 4–89 dated February 2, 1989, will be 8–7/8 percent. Interest on the notes will be payable at the rate of 8–7/8 percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89–3747 Filed 2–16–89; 8:45 am]

BILLING CODE 4810–40–M

[Supplement to Department Circular—Public Debt Series—No. 3–89]

Treasury Notes, Series R–1992

Washington, February 8, 1989.

The Secretary announced on February 7, 1989, that the interest rate on the notes designated Series R–1992, described in Department Circular—Public Dept Series—No. 3–89 dated February 2, 1989, will be 9⅛ percent. Interest on the notes will be payable at the rate of 9⅛ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89–3746 Filed 2–16–89; 8:45 am]

BILLING CODE 4810–40–M

Fiscal Service

[Dept. Circ. 570, 1988 Rev., Supp. No. 6]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; Tri-State Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Tri-State Insurance Company of Tulsa, Oklahoma, under the United States Code, Title 31, sections 9304–9308, to qualify as an acceptable surety on Federal Bonds is hereby terminated effective this date.

The Company was last listed as an acceptable surety on Federal bonds at 53 FR 25077, July 1, 1988.

With respect to any bonds currently in force with Tri-State Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287–3921.

Dated: February 10, 1989.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 89–3721 Filed 2–16–89; 8:45 am]

BILLING CODE 4810–35–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 U.S. 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:

Constitutionalism and Human Rights

The Office of Private Sector Programs will assist in supporting a three-week multi-site program on constitutionalism and human rights for government officials, lawyers, and human rights officials from Uganda and other selected Anglophone African countries. The participants will be introduced to the American experience of protecting human rights through Constitutional provision and governmental action, and also will observe the important role of non-governmental organizations active in the field of human rights. The program's three modules will include an opening seminar and introduction to American Constitutional protection of rights, visits to non-governmental human rights organizations in New York City, and sessions in Washington, DC on U.S. government activity in the human rights area including an examination of human rights in U.S. foreign policy. This exchange program will include substantive meetings with government officials, elected representatives and their staffs, Constitutional lawyers, and prominent human rights officials.

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 applicatoin materials—postmarked no later than twenty-one 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. Please refer to this specific program by name in your letter of interest. Office of Private Sector Programs, Bureau of Educational and Cultural Affairs, (Attn: Michael Ringler) United States Information Agency, 301 4th Street SW., Washington, DC 20547.

Date: February 7, 1989.

Robert Gosende,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 89–3801 Filed 2–16–89; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 32
Friday, February 17, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 2:00 p.m., Friday, February 17, 1989.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89–3870 Filed 2–15–89; 10:50 am]

BILLING CODE 6351-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Tuesday, February 14, 1989, the Corporation's Board of Directors determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of a memorandum regarding the Corporation's proposed budget for 1989.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: February 15, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89–3878 Filed 2–15–89; 11:04 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, February 14, 1989, the Corporation's Board of Directors determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,285—Plaza Consolidated Office (Amendment), Kansas City, Missouri

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: February 15, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89–3879 Filed 2–15–89; 11:04 am]

BILLING CODE 6714-01-M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: February 10, 1989, 54 FR 6473.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: February 15, 1989, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Number has been added to Item CAG–2 for the agenda February 15, 1989:

Item No., Docket No., and Company

CAG–2—RP88–205–004, Alabama-Tennessee Natural Gas Company

Lois D. Cashell,

Secretary.

[FR Doc. 89–3920 Filed 2–15–89; 3:11 pm]

BILLING CODE 6717-02-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, February 22, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: February 15, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–3872 Filed 2–15–89; 11:08 am]

BILLING CODE 6210-01-M

federal register

Friday
February 17, 1989

Part II

Environmental Protection Agency

40 CFR Part 248

Guideline for Procurement of Building Insulation Products Containing Recovered Materials; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 248

[SWH-FRL 3506-9]

Guideline for Procurement of Building Insulation Products Containing Recovered Materials

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is issuing a guideline for Federal procurement of building insulation products containing recovered materials. The guideline implements section 6002(e) of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), which requires EPA: (1) To designate items which can be produced with recovered materials and (2) to prepare guidelines to assist procuring agencies in complying with the requirements of section 6002. Once EPA has designated an item, section 6002 requires that any procuring agency using Federal funds to procure that item must revise its specifications and purchase such items containing the highest percentage of recovered materials practicable.

The guideline issued today designates building insulation products as items for which the procurement requirements of RCRA section 6002 apply. The guideline also contains recommendations for implementing the section 6002 requirements with respect to procurement of building insulation products.

DATES: The guideline is effective February 17, 1989. Procuring agencies must implement the requirements of RCRA section 6002 with respect to procurement of building insulation products according to the following schedule:

Completion of specification revisions and development of affirmative procurement programs: February 20, 1990.

Commencement of procurement of building insulation products in accordance with RCRA section 6002: February 20, 1990.

ADDRESS: The public docket is available for viewing in Room LG-100, U.S. EPA, 401 M Street SW., Washington, DC from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. To review docket materials, the public must make an appointment by calling (202) 475-9327. Materials may be copied from any regulatory docket at a cost of 15 cents per page. Copying totaling less than $15 is free.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free, at (800) 424-9346 or at (202) 382-3000. For technical information, contact William Sanjour, Office of Solid Waste, OS-330, U.S. EPA, 401 M Street SW., Washington, DC 20460, telephone: (202) 382-4502.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority

This guideline is issued under the authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a) and 6962.

II. INTRODUCTION

A. Purpose and Scope

The Environmental Protection Agency (EPA) today is issuing one in a series of guidelines designed to encourage the use of products containing materials recovered from solid waste. Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA or the Act), as amended, 42 U.S.C. 6962, states that if a procuring agency purchases certain designated items, such items must be composed of the highest percentage of recovered materials practicable. EPA is required to designate these items and to prepare guidelines to assist procuring agencies in complying with the requirements of section 6002.

EPA issued the first of these guidelines, for cement and concrete containing fly ash, on January 28, 1983 (48 FR 4230; 40 CFR Part 249). After that, EPA issued a final guideline for paper and paper products containing recovered materials on June 22, 1988 (53 FR 23546; 40 CFR Part 250), a final guideline for lubricating oils containing re-refined oil on June 30, 1988 (53 FR 24699; 40 CFR Part 252), and a final guideline for retread tires on November 17, 1988 (53 FR 46558; 40 CFR Part 253). A guideline for building insulation products was proposed on August 2, 1988 (53 FR 29165). Today, EPA is promulgating the final building insulation products guideline.

This preamble describes the requirements of section 6002, explains the basis for designating building insulation products as procurement items subject to section 6002, discusses EPA's recommendations for implementing section 6002 with respect to procurement of building insulation products, and responds to comments on the proposed guideline. It also provides information regarding the price, availability, and performance of building insulation products.

B. Requirements of Section 6002

Section 6002 of RCRA, "Federal Procurement," directs all procuring agencies which use Federal funds to procure items composed of the highest percentage of recovered materials practicable, considering competition, availability, technical performance, and cost. Two factors trigger this requirement. First, EPA must designate the items to which this requirement applies. Second, the requirement only applies when the purchase price of the item exceeds $10,000 or when the quantity of such items, or of functionally equivalent items, purchased or acquired in the course of the preceding fiscal year was $10,000 or more.

In addition, Federal agencies responsible for drafting or reviewing specifications for procurement items were required under section 6002(d)(1) to review and revise the specifications by May 8, 1986 in order to eliminate both exclusions of recovered materials and requirements that items be manufactured from virgin materials. Within one year after the date of publication of a procurement guideline by EPA, the Federal agencies must revise their specifications to require the use of recovered materials in such items to the maximum extent possible without jeopardizing the intended end use of the item.

Furthermore, section 6002(c) requires procuring agencies to obtain from vendors an estimate of and certification regarding the percentage of recovered materials contained in their products.

Section 501 of the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616) (HSWA) then added paragraph (i) to section 6002 of RCRA. This provision requires procuring agencies to develop an affirmative procurement program for procuring items designated by EPA. The program must assure that items composed of recovered materials will be purchased to the maximum extent practicable, be consistent with applicable provisions of Federal procurement law, and contain at least four elements:

(1) A recovered materials preference program;

(2) An agency promotion program;

(3) A program for requiring estimates, certification, and verification of recovered material content; and

(4) Annual review and monitoring of the effectiveness of the procurement program.

Under section 6002(e), EPA is required to issue guidelines for use by procuring agencies in complying with the requirements of section 6002. The EPA guidelines must designate those items which can be produced with recovered materials and whose procurement by procuring agencies will fulfill the objectives of section 6002. They also must provide recommendations for procurement practices and information on availability, relative price, and performance.

Section 6002 is designed to promote materials conservation and thereby to reduce the quantity of materials in the solid waste stream. By using products containing recovered materials, Federal procurement can demonstrate their technical and economic viability. In addition, Federal procurement guidelines can provide guidance to state and local governments interested in procuring products containing recovered materials, and Federal procurement of such products is expected to result in increased procurement by these agencies as well.

C. Criteria for Selection of Procurement Items

In the preamble to the fly ash guideline, EPA established the following four criteria for the selection of procurement items for which guidelines will be prepared (48 FR 4231-4232, January 28, 1983):

(1) The waste material must constitute a significant solid waste management problem due either to volume, degree of hazard, or difficulties in disposal;

(2) Economic methods of separation and recovery must exist;

(3) The material must have technically proven uses; and

(4) The Federal government's ability to affect purchasing or use of the final product or recovered material must be substantial.

These criteria incorporate all of the factors which section 6002(e) requires EPA to consider in designating items subject to the section 6002 procurement requirements.

Section III of this preamble demonstrates that building insulation products made with recovered materials meet the criteria for designation. Industrial byproducts currently used to produce building insulation products are also discussed in more detail.

D. Background Information on Insulation Products Containing Recovered Materials

1. Introduction to Insulation

There are many applications for insulation, including building insulation to provide human comfort, equipment insulation, pipe insulation, and refrigeration or cold storage insulation. Building insulation accounts for by far the largest volume of insulation manufactured and is least likely to require specialty products or materials for special insulation purposes. Moreover, the building insulation market is dominated by products which can, and often do, contain recovered materials.

In this guideline, "building insulation," "building insulation products," and "insulation products" all refer to the insulation uses and product types that follow.

Building insulation refers to a material, primarily designed to resist heat flow, which is installed between

the conditioned (heated and/or mechanically cooled) volume of a building and adjacent, unconditioned volumes or the outside. This term includes but is not limited to products such as blanket, board, spray-in-place, and loose-fill insulation.

Locations suitable for the installation of building insulation include but are not limited to ceilings, floors, foundations, and walls. Ceiling insulation is used between the conditioned area of a building and an unconditioned attic, in common ceiling floor assemblies between separately conditioned units in multi-unit structures, and between the underside and upperside of the roof where the conditioned area of a building extends to the roofs. Floor insulation is used between the first level conditioned area of a building and an unconditioned basement, a crawl space, or the outside beneath it; and around the perimeter of or on a ground level concrete slab where the first level conditioned area of a building is on a slab. Foundation insulation is used at foundation walls between conditioned volumes and unconditioned volumes and the outside or surrounding earth, at the perimeters of concrete slab-on-grade foundations, and at common foundation wall assemblies between conditioned basement volumes. Wall insulation is used within or on the walls between conditioned areas of a building and unconditioned areas of a building or the outside, and in common wall assemblies between separately conditioned units in multiple unit structures.

The principal categories of insulating materials are fiberglass, plastic rigid foams (polyurethane, polyisocyanurate, glass fiber reinforced polyisocyanurate/polyurethane, polystyrene, and phenolic), rock wool, and cellulose. These materials are sometimes used in combination in composite products. Insulation products made from these materials dominate the insulation market and are the primary focus of this guideline.

There also are specialty materials, principally calcium silicate, vermiculite, and perlite, used for insulation products. These materials are virgin minerals which are not recycled, and they represent a relatively small part of the insulation market. These minerals, as well as other specialty materials, however, can also be mixed in composite products with other materials which can contain recovered materials (e.g., perlite composite board).

The primary factors in the choice of insulating material are thermal resistance (R-value); performance standards; impacts on indoor air quality; price; availability; life-cycle cost considering the installed cost of insulation in relation to the estimated reduction in energy cost over the life of the product in use; flammability; corrosiveness of the insulating materials to metallic building components; ease and cost of installation; durability; resistance to moisture absorption; strength; retention of insulating value with time; the dimensions of, and access to, the space to be insulated; and the thickness of the insulation desired.

The process of selecting appropriate thermal insulation for buildings can be broken down in steps as follows:

1. The building type and function is first established, with a view to local, national or government codes and standards. Of particular importance are fire safety and life safety considerations, which affect necessary insulation characteristics, such as insulation flamespread and potential smoke or off-gassing of ignited or smoldering insulation. Another consideration is off-gassing of installed materials which can affect indoor air quality.

2. The preliminary design of the exterior building envelope is examined, in relation to the appropriate insulation form and the availability of space for the insulation, within the anticipated exterior building assemblies. At this point, a preliminary decision may be made as to whether loose fill, flexible blanket, or rigid materials (or combinations of these) will be finally selected. Thermal resistance (R-value) requirements are then finalized, coordinating these as necessary to dimensions and other considerations such as codes.

3. Installation requirements are then considered. Does the insulation require additional support, installed by other skilled workers? Is some form of facing or covering material required for fire safety? Will the workers normally installing the insulation be familiar with the material specified and how it should be placed? Will scheduling of other workers be affected? What level of supervision or inspection is necessary? Other installation considerations may apply, depending on the size and complexity of the building.

4. The level of material and installation costs to be expected is estimated, both as a flat figure and in relation to anticipated building heating and cooling requirements. Installation costs should include all ancillary costs as outlined above.

5. Material specification compliance with code or owner requirements are checked, and provision of certificates of compliance, as appropriate, is added as a specification clause.

6. Specification sections, covering necessary inspections, clean-up and any other prepayment requirements are added, as desired.

2. Types of Recovered Materials Used

At present, several of the major types of insulation are commercially available with recovered materials content, which is defined by RCRA section 1004(19) as follows:

> Waste material and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process.

Some types of insulation are produced using postconsumer materials as feedstocks. An example of this is cellulose insulation, which is made from old newspaper. Others rely on recovered byproducts as feedstocks, such as rock wool insulation, which is primarily made from slags from smelting processes. Fiberglass manufacturers use waste glass from other industries. Plastic foam insulation is made with chemical byproducts, such as dimethyl terephthalate (DMT), which would otherwise be discarded.

3. The Insulation Industry

The following information puts the insulation industry in perspective. The national energy conservation movement caused the insulation industry to grow substantially until 1984. From 1984 to the present, the insulation industry has shown little or no growth. According to the estimated market share based on dollar volume, fiberglass is the predominant insulation material (68 percent), followed by plastic rigid foams (21 percent), rock wool (3 percent), cellulose (3 percent), and all other types including vermiculite, perlite and other specialties (5 percent). Recently, rock wool and fiberglass have lost the greatest share of the market, while plastic foams have been growing most substantially.

During the energy crunch of the late 70s, producers of fiberglass and mineral wool were not able to meet demand. From the mid-70s to the early 80s, fiberglass slipped from 85 percent of the market to around 70 percent, losing market share to cellulose and foam plastics. Neither fiberglass nor rock wool have recovered their market positions.

Cellulose fiber plants expanded from 98 in 1973 to 750 in 1978, but the industry contracted severely after 1977, losing 60 percent of production capacity by 1984.

An estimate of the 1986 total dollar volume of building insulation at

manufacturer's net price is $2.9 billion as shown in Table 1.

TABLE 1.—1986 SALES OF INSULATION

Commercial and industrial roofs	$1,150,000,000
Residential building:	
Attic	340,000,000
Cavity	220,000,000
Sheathing	165,000,000
Slab & basement	100,000,000
Residential retrofit	666,090,000
Non-residential building:	
Cavity	225,000,000
Slab & foundation	35,000,000
Total	$2,901,090,000

Source: Hull & Company and A.W. Johnson.

Although there are numerous estimates of relative market share by insulation material, these are not consistently broken down between residential, commercial, and industrial uses. Moreover, because government funds are used for all types of construction, distinctions between uses have not been considered necessary.

III. Rationale for Designating Building Insulation Products

This section of the preamble demonstrates that building insulation products satisfy EPA's criteria for designating items subject to the procurement requirements of RCRA section 6002.

A. Significant Solid Waste Disposal Problem

The first criterion is that the waste material constitutes a significant solid waste management problem. The waste materials of immediate concern in the production of building insulation are postconsumer newspaper, container glass, and plastics. Each material represents a significant fraction of the municipal solid waste stream as shown by the data in Table 2.

TABLE 2.—SELECTED ITEMS IN THE MUNICIPAL SOLID WASTE STREAM

[In percent of total discards and thousands of tons]

	Total discards	Newspaper	Glass containers	Plastic containers
1980	125,700			
Percent of total		6.5%	10.5%	1.7%
Tons per year		8,100	13,200	2,100
1982	124,900			
Percent of total		6.1%	10.2%	1.6%
Tons per year		7,600	12,800	2,000
1984	133,000			
Percent of total		6.7%	8.9%	1.8%
Tons per year		9,000	11,800	2,400
1990	141,400			
Percent of total		6.7%	8.0%	2.1%
Tons per year		9,700	11,300	2,900
1995	149,900			
Percent of total		7.0%	7.4%	2.3%
Tons per year		10,500	11,100	3,400
2000	158,800			
Percent of total		7.2%	6.8%	2.5%
Tons per year		11,400	10,800	3,900

Source: Franklin Associates, Ltd., 1986.

In addition, metallurgical slags and certain chemicals are industrial byproducts which would contribute to the industrial waste stream if they were not used in products like insulation. Some manufacturing wastes, such as plate glass and plastics, raise the same concerns. Although use of these byproducts and manufacturing wastes is already substantial, concerns remain about the contribution of the unrecycled portion to the industrial waste stream because of the large quantity of material involved.

Each of the solid waste categories result from different industries and are used in different insulation materials. Therefore each category is discussed separately.

1. Newspaper

Newspaper is the most easily recycled material in the residential waste stream and therefore is targeted for collection most frequently. Problems of oversupply of recycled old newspaper have appeared in the Eastern states. The number of recycling programs mandated by municipal and State requirements nationwide that are currently in place or in the planning stages suggests that the oversupply problem may become severe nationwide in the near future.

The category "old newspaper" contains overissue newspapers (newspapers unsold to the public which do not always enter the municipal waste stream) and postconsumer newspaper. Old newspaper is primarily consumed by the paper industry for a variety of recycled paper products and by the cellulose insulation industry. Substantial quantities are also exported out of the country.

In 1983, actual demand for old newspaper, including demand from the paper industry, exporters, and the cellulose insulation industry was 3.67 million short tons. Estimated 1984, 1985, 1986 and 1987 demand was 3.93 million, 3.96 million, 4.23 million, and 4.58 million short tons, respectively. The estimated growth in demand from 1983 to 1987 was therefore 915,700 short tons or 24.9 percent.

To compare demand with supply, total United States and Canadian production capacity for newsprint in 1985 was 16.58 million short tons, with consumption of newsprint by United States publishers being 13.1 million short tons in 1986. In 1987, the newsprint industry announced a production capacity expansion of 1.63 million short tons to be in place by 1990, approximately a 10 percent increase, with 338,000 tons of this new capacity to be produced from old newspaper.

In 1986, unused old newspaper supply (total U.S. newsprint consumption less demand for old newspaper) was 8.71 million short tons. Assuming newspaper quickly enters the waste flow, the 1986 national recovery efforts represented just under 33 percent of available supplies. National recovery of a feasible 50 percent of available supplies would recycle an additional 2.32 million tons. Assuming all factors remain the same, this would require an increase in demand for old newspapers of 55

percent over 1986 levels. This is more than twice the growth in demand for the past four years. The new North American production capacity which is expected to be on line by late 1990 would raise the necessary growth rate in old newspaper use to over 65 percent in order to achieve the same 50 percent recovery rate.

2. Glass

The largest volume of waste glass in the solid waste stream comes from containers. According to industry spokesmen, recycling of glass has increased, with glass container plants currently using an average of 20 to 30 percent of cullet in their mix. Some plants use considerably higher percentages if the cullet is readily available.

U.S. Department of Commerce data on container production shows that 309 million gross containers with a net packed weight of 12.7 million tons were produced in 1982. In 1985 and 1986, production was 273 million and 283 million gross with net packed weight of 11.10 million and 11 million tons, respectively. The increase in container quantities from 1985 to 1986 may be due to the stronger economy or to increased use of glass in microwave, wine cooler and other specialty containers.

According to 1982 Census of Manufacturers data, the glass container industry consumed 1.66 million tons of glass cullet (in-plant, pre-, and post-consumer) and 13.82 million tons of other materials, including 8 million tons of sand. This represents 11 percent cullet to the total feedstocks. If all documented 1982 cullet consumption in the container industry was postconsumer glass, an unlikely assumption, it would have represented only 13 percent of potential postconsumer cullet supplies, which as previously stated, were 12.7 million tons.

Another use of postconsumer bottle cullet, as a substitute aggregate in asphalt paving, has been explored since the 1960s. Experimentation has increased in the 1980s, and this use appears to be very promising. However, no data exist for the quantities of cullet in current use nor for the potential demand if "glassphalt" becomes a common paving practice.

As of January 1988, it was not difficult to find buyers for postconsumer bottle cullet within reasonable transportation radii. The container industry, using existing equipment, is capable and willing to double its consumption. The only limitation is lack of supplies that are consistent in quantity and quality. The market for postconsumer bottle cullet will also increase as "glassphalt" is used more commonly.

Published data on preconsumer or manufacturing waste glass (including flat and window glass, table and cookware and so on) which is brokered to other users is not available. The glass processing industry estimates that approximately 500,000 tons per year changes hands. Such waste glass, with the exception of automotive windshield wastes which are very difficult to process, generally enter the waste disposal system only when consumers of cullet are beyond economic transportation distances. However, both fluctuations in the business cycle and periodic dislocations in supply or demand can cause inventories to be stockpiled and possibly discarded.

3. Plastic

Plastics have increased steadily in the waste stream according to data presented in the EPA waste characterization report. Plastic disposal grew from 0.5 million tons in 1960 to 9.6 million tons in 1984 or 7 percent (by weight) of total residential waste. Plastics are expected to increase to 10 percent of the waste by the year 2000. Although many types of plastic are included in the general trend, polyethylene terephthalate (PET), polystyrene (PS), and manufacturing wastes (DMT and phthalic anhydride bottoms) were analyzed for solid waste management impacts because they are the only recovered plastics apt to be used in insulation products.

Data from the U.S. Department of Commerce's Bureau of Trade indicates that PET use is growing faster than other plastic container resins. From 1985 to 1986, PET use grew 37.5 percent compared with high density polyethylene (12.9 percent), low and medium density polyethylene (25.9 percent), polypropylene (4.8 percent), polyvinyl chloride (9.5 percent), polystyrene and others (29.4 percent). The quantity of PS in containers is small, and miscellaneous other resins are included in the data. The rapid growth in PET use is presented in Table 3.

TABLE 3.— CONSUMPTION OF PET IN PLASTIC BOTTLE MATERIALS

Year	Million lbs.	Tons	Percent growth
1983	420.5	210,250	
1984	452.0	226,000	7%.
1985	480.0	240,000	6% estimate.
1986	660.0	330,000	37.5% estimate.
1987	800.0	400,000	21% forecast.

Source: U.S. Department of Commerce.

There are two types of postconsumer PET easily available, containers and used film stock. Industry sources state that PET production for packaging is approaching 1 billion pounds per year with approximately 150 million pounds (or 15 percent) currently recycled. The industry is targeting 2 billion pounds of PET for packaging by 1990. All film stock, including x-ray, photographic and micrographic, is extruded PET. According to industry sources, approximately 600 million pounds of PET film stock is produced annually. About one third, or 200 million pounds, is x-ray film. While specific data on disposal of used x-ray film is not gathered, one source stated that approximately 200 million pounds of used x-ray film is disposed of annually, of which about 10 percent or 20 million pounds is recycled.

In addition to postconsumer plastic bottles and film, an average of 5 percent of every type of plastic resin production becomes manufacturers' or industrial waste plastic annually. Polyester resin production was 6.3 billion pounds in 1985. The amount of manufacturer's polyester waste generated in 1985 was estimated to be 315 million pounds. Total supplies of recyclable PET from bottles, x-ray film, and industrial wastes can be roughly estimated to be 1.25 billion pounds annually.

The Society of the Plastics Industry reported 1986 production of PS resin to be 4.47 billion pounds. Approximately 1.36 billion pounds were produced for packaging and 418 million pounds for building construction. Production

capacity was reported to be 5.39 billion pounds.

Recycling of postconsumer PS from the municipal waste stream is just being attempted, and data on manufacturers' waste PS is not gathered. For 1986, industrial waste was estimated to be 5 percent of production or 223.5 million pounds. Manufacturing waste PS is regularly brokered.

EPA identified another industrial waste that is used to produce plastic rigid foam insulation, dimethyl terephthalate (DMT) bottoms. Bottoms are the heavy fraction, or residue, of a production process, which may or may not have recoverable materials. An EPA data base of plastic industry waste products suggests that DMT wastes that potentially had value were not recovered for sale in 1981; this data base contained only a partial sample of 1981 data, however. Those DMT wastes with value were recovered for internal use or were burned to extract energy value. DMT wastes without apparent value (e.g., very dilute) did not appear to be recovered at all but were disposed in a variety of ways.

Another industrial waste, phthalic anhydride bottoms may also be used, but this has not been documented nor are quantity data and information on phthalic anhydride wastes currently available from the EPA data base.

4. Slag

Slag is a by-product from blast furnaces and other metal smelting processes. According to the National Slag Association, metallurgical slags from the production of iron and steel do not represent a significant solid waste management problem. Stockpiles are said to be used efficiently in most, though not all, parts of the country. Iron-blast-furnace slag (the general term) sold or used totaled 15.4 million short tons in 1986, of which 88 percent or 13.5 million tons were air-cooled iron blast furnace slag. Road construction materials, such as road base and substitute aggregates in concrete and asphalt, absorbed 81 percent of the total supply. Rock wool manufacturers purchased 519,000 short tons, or 3.8 percent of the air-cooled iron blast furnace slag. According to recent Bureau of Mines data, purchases of slag for rock wool fell from 617,000 short tons in 1985 to 519,000 short tons in 1986.

Based on current data, EPA believes that the major volumes of metallurgical slags are recycled and do not currently represent a nationwide solid waste management problem. However, increased iron and steel production, increasing competition from other recovered materials in roadbuilding, and changes in the national economy could adversely affect the balance of supply and demand for metallurgical slags in the future with a resulting impact on solid waste disposal.

5. Spent Aluminum Potliner

A commenter recommended that EPA add to the guideline mineral wool made with spent aluminum potliner from primary aluminum reduction. Potliner was recently listed as a hazardous waste by EPA because it contains cyanide, so in this instance, toxicity as well as quantity are the management problems of concern.

Primary reduction of aluminum takes place in a "pot," a strongly reinforced steel box lined with an insulating layer and carbon to resist corrosion and abrasion. The lining must be replaced approximately every five years and becomes "spent potliner." The spent potliner is a dark, concrete-like material that contains fluoride, carbon, and cyanides. Approximately 130,000 tons are produced each year by the primary aluminum industry.

EPA listed "spent potliner from primary aluminum reduction" as a hazardous waste on September 13, 1988 (53 FR 35412). The aluminum industry has already pursued recycling/reuse of spent potliner, however. The carbon is a good source of energy as a fuel supplement, while the fluoride values can be used to promote chemical reactions, as a fluxing agent or as part of a chemical feedstock. The industry estimates the 1988 recycling rate to be about 15 percent. Prior to the listing of spent potliner as a hazardous waste, the aluminum industry projected a 1988 recycling rate of 35–40 percent. One of the viable recycling technologies is use as a fuel and fluoride feedstock for mineral wool production.

6. Conclusions

EPA concludes that newspaper and plastics (PET and PS) in the municipal waste stream represent solid waste management problems based on quantity. Current supplies of postconsumer glass are used efficiently, and the container industry is capable of doubling its consumption of postconsumer cullet. Manufacturing wastes (such as plate glass and plastic scrap) as well as industrial byproducts (such as metallurgical slags and chemical bottoms), which qualify under the RCRA definition of recovered materials, would also present solid waste management problems based on quantity if current markets are interrupted. Spent aluminum potliner represents both quantity and toxicity problems, which will persist if efforts to recycle/reuse the material are curtailed due to listing of the material as a hazardous waste.

B. Feasible Methods of Recovery

The second EPA criterion for selection of reclaimed materials for affirmative procurement under RCRA Section 6002 is the existence of economic methods of separation and recovery.

Source separation programs in operation and in the planning stages all target newspaper and container glass, and some target container plastics (particularly PET in bottle bill states). Materials are picked up through curb-side collection programs, drop-off centers, charity drives and so on. There is no national count of such recycling programs, but in some states there are as many as 200 local programs. More programs are being implemented each year. Government-sponsored collection programs are being subsidized because state-sponsored economic analyses have indicated that recycling is less expensive than other disposal options. There also is a healthy system of brokers for materials collected by source separation programs as well as all types of manufacturers' waste materials.

1. Newspaper

Recycling programs mandated by municipal and State laws always target postconsumer newspaper. The waste paper brokerage system handles a large proportion of this postconsumer newspaper as well as the pre-consumer or overissue waste newspaper.

2. Glass

The Glass Packaging Institute reported in 1987 that seventeen non-bottle bill states and the District of Columbia have joined individual state or joint state associations to foster collection of glass containers and publicize redemption centers. For example, the Pennsylvania Glass Recycling Corporation publishes a newsletter that listed forty-three "glass for cash" centers within the state in 1987. Beverage Industry Recycling Programs (BIRPs) serve some of the same non-bottle bill states as well as three others. In addition, ten bottle bill states have developed glass collection and processing systems. The EPA waste characterization report[1] estimated that 1.25 million tons of glass were recycled in 1986, just under ten percent of the available supply. This compares with

[1] *Characterization of Municipal Solid Waste in the United States, 1960 to 2000 (Update 1988)* (Franklin Associates, Ltd., March 30, 1988).

368,000 tons, or barely three percent, ten years earlier.

Processing centers have been established in both bottle bill and non-bottle bill states to crush and clean glass to market specifications. While national data is not gathered on the numbers of these facilities nor the quantities of cullet they handle, new processing centers, both public and private, are opening in urban areas all around the country.

Three markets for postconsumer glass are the container industry, "glassphalt" producers, and fiberglass manufacturers. The container glass industry requires bottle cullet to be color-sorted, a labor intensive process which either requires citizens to do the color separating or requires hand sorting lines at the processing centers. Mixed-color cullet is suitable for an aggregate substitute in "glassphalt". The fiberglass industry has accepted color-mixed cullet in the past, although the industry claims that fiberglass furnaces are much more sensitive than container furnaces to contaminants such as carbon, plastics, and metals.

Recycling programs are being proposed and implemented that stress quantity over color separation for glass. If sufficient demand develops for color-mixed cullet, it should become available because it is less expensive to collect. The technology has already been developed to prepare cullet for aggregate substitutes. Additional processing to remove contaminants and to prepare color-mixed cullet to fiberglass industry specifications is more complex and therefore more expensive. This technology currently exists at large processors. It is possible that additional processing lines will be developed if supplies of postconsumer cullet are greater than other markets can absorb.

3. Plastic

Postconsumer PET containers are recovered primarily in the bottle bill states, although some additional state and local governments are planning collection for PET and other plastic containers. According to the EPA waste characterization report referenced above, 63,000 tons of soft drink bottles (PET with high density polyethylene (HDPE) base cups) were recovered in 1984 from bottle bill states. This represented 18 percent of national production and 1 percent of gross plastic discards.

Used x-ray film and other film stock is processed to recover silver nitrate and other metals, then is routed for further contaminant removal and sale or to disposal facilities. At least one company has been established to decontaminate x-ray plastics and market clean PET film scrap. In 1987, throughput at this mill was about 6 million pounds per year. The design capacity for the mill is 48 million pounds (or 24,000 short tons) per year. This capacity represents approximately 25 percent of the estimated used x-ray stock.

Postconsumer PS was not being recovered for recycling as of December, 1987. During 1988, the industry began to develop pilot programs to collect foam polystyrene food service materials from fast food restaurants and institutions, but it is still too early to determine how effective these programs will be. Although data is not gathered systematically for manufacturing waste PS, one broker roughly estimated that 200 million pounds of crystalline and foam PS are purchased and sold in some form to other users. If waste PS can be accumulated in 40,000 pound truckloads, and if these wastes meet specifications for contamination, users can be found.

The network of waste plastic brokers will handle any plastic waste for which it can find an economically feasible market. This entails a market value high enough to cover the costs of processing and transportation.

DMT bottoms are in commercial use and therefore are economically feasible to recover. The use of phthalic anhydride bottoms has not yet been documented.

4. Slag

Metallurgical slag is used as an aggregate substitute in road construction and as the raw material for most rock wool insulation made in the United States. Collection and transportation of this industrial byproduct appears to be well established.

5. Spent Aluminum Potliner

The aluminum industry routinely removes spent potliner and stores it prior to disposal. Some purchasers exist for this material, and the aluminum industry is actively exploring additional uses.

6. Conclusions

EPA has concluded that feasible recovery methods exist for postconsumer newspaper, glass, and PET plastics. Postconsumer PS may be recoverable but methods have not yet been proven. The industrial byproducts, slag, DMT bottoms, and spent aluminum potliner, as well as preconsumer (or manufacturing waste) PET, PS and glass cullet, are also recovered efficiently.

C. Technically Proven Uses

The third EPA criterion for selection of reclaimed materials for affirmative procurement under RCRA section 6002 is that the material has technically proven uses in the designated items. Recovered materials currently are commercially acceptable feedstocks in four types of insulating material covered by the guideline issued today: cellulose, composites, the plastic rigid foams, and rock wool.

1. Cellulose

For purposes of this guideline, cellulose is defined as vegetable fiber such as paper, wood, or cane. There are two types of cellulose insulation products—cellulose loosefill and fiberboards made from cellulose.

a. *Cellulose loose-fill and spray-on insulation.* Cellulose insulation is made from approximately 75 percent waste paper; the remaining portion consists of chemicals to retard flammability and to deter insects and pests. While there is some spray-on cellulose insulation made from waste paper, the industry predominately makes loose-fill insulation which is blown into walls and attics.

Cellulose insulation comprises about 3 percent of the insulation market according to a 1987 industry estimate. The cellulose insulation produced in 1984 consumed approximately 480,000 tons of recycled paper. More recent data has not been obtained.

The Department of Commerce listed 371 manufacturers of cellulose insulation in 1983. Four years later, in July 1987, the Cellulose Industry Standards Enforcement Program (CISEP) identified 138 active firms. This indicates continued shrinkage in the cellulose insulation industry. Thirteen of the companies identified by CISEP produced approximately 20 percent of the cellulose insulation manufactured in 1987. Cellulose insulation manufacturers are located all across the country; consequently availability to procurement agencies should present no problems.

b. *Fiberboard made with cellulose.* These fiberboards are made in panels of varying thicknesses from wood, cane or paper fibers. They are often called insulating boards, although they are frequently used for structural reasons rather than for their insulation properties. The American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) uses the general term "vegetable fiber board" and includes within the category: sheathing, nail-base sheathing, shingle

backer, sound deadening board, tile and lay-in boards, laminated paperboard, and homogenous board from repulped paper. The R-value, according to ASHRAE, is about 2.

Fiberboard manufacturers no longer have a trade association, and data regarding market share is not available. The American Paper Institute groups data about "insulating boards" within the construction paper and board category. Estimated production of insulating board for 1986 to 1989 remained flat at 1,178,000 short tons. The entire construction paper and board category was estimated at 2.2 million short tons, with estimated consumption of recovered paper materials growing from 929,000 short tons in 1986 to just over 1 million short tons in 1989. The recovered paper feedstocks were predominantly postconsumer newspaper, mixed paper, and corrugated. There is no estimate of recovered paper consumption for insulating boards alone.

2. Perlite Composite Board

Some composite boards are made with expanded perlite aggregate (a virgin mineral), small amounts of selected binders, and waste newspapers. The materials are mixed together and formed into rigid, flat, rectangular units which may have facings on one or both sides according to the ASTM C–728–82 standard specification. Perlite composite board is primarily used for commercial- and industrial-type roof insulation. Market growth follows growth in the gross national product and is expected to remain at 1987 levels for the next few years.

Approximately 0.2 pounds of newspaper is used per board foot of the finished product. Approximately 500 million board feet were produced in 1987 by the only two known manufacturers, consuming about 50,000 tons of waste newspaper. The percentage of newspaper to other ingredients varies from 23 percent to 30 percent, with the average about 24 percent. The percentage varies according to the technical requirements of different finished products. The paper provides strength while the perlite provides insulating properties. Product availability to government procuring agencies is limited only because it is manufactured by just two companies.

3. Fiberglass Insulation

Fiberglass insulation is primarily made from sand, limestone, soda ash, and boron. There are other materials added to product mixes in small quantities. The materials are melted together and spun into filaments called "batt." Cullet is a substitute for sand, limestone, and soda ash. Boron, the most expensive primary ingredient, is not contained in bottle or plate glass cullet.

Recovered materials used in fiberglass insulation products include pre-consumer waste glass from other manufacturing processes, such as plate glass, container glass, transition cullet (material from glass furnaces produced while mixes are being changed), as well as postconsumer bottle cullet in isolated instances. Home scrap produced in the manufacturing process is called re-feed by the fiberglass industry and is usually consumed by the generator.

Two types of furnaces are used to melt ingredients for fiberglass insulation, electric and gas- or propane-fired. Although both types of furnaces are generally used by each company, a large portion of production uses electric melt. The manufacturers state that the electric furnaces are especially sensitive to organic contaminants. Even trace amounts can cause operational problems and may result in a production line shut down. Electric furnaces are said by the industry to have advantages in environmental emissions control. The gas- or propane-fired furnaces are somewhat more tolerant of contaminants. The manufacturers state, however, that even these furnaces cannot accept cullet as readily as bottle/container furnaces because: (1) The furnaces are smaller in size and refining area, (2) melting temperatures are typically lower and therefore contaminants are not liquified as readily, (3) batch residence times are generally shorter, which results in lower tolerances for non-uniform cullet and, (4) the fiberizing process is very sensitive to variations in batch composition.

The fiberglass industry states that mixed-color waste glass (pre- or postconsumer) can be used if the mixtures are consistent batch to batch. The industry further states however, that green and amber bottle cullet introduce trace metals used to create the colors, which can cause difficulties in fiberglass furnaces. Variations in quantities of the colors change the characteristics of melt, and therefore require costly process adjustments.

Some manufacturers have stated that there are production advantages in using recycled glass. Melting cullet instead of melting virgin materials provides energy savings. In the proposed guideline, EPA stated the energy savings to be 10–15 percent. Commenters from the industry stated that the savings are considerably lower. One producer estimated 0.3 percent per each 1 percent of cullet in the batch; another found 1 percent of energy savings for each 10 percent of cullet used. Cullet use is also said to speed up production lines, increasing the production rate. At least one fiberglass plant intermittently experimented with 40 percent or more cullet, including postconsumer bottle cullet, in 1986. However, this is not common to the industry and was discontinued by the parent company when the plant was closed. Another company, using a European fiberizing process, has been experimenting with using low percentages of cullet; according to the company, however, the expected production advantages have not resulted.

Other manufacturers consider bottle cullet to be an unacceptable feedstock for a number of reasons. First, and most important, it is not consistently available, which would interrupt long term contracts from feedstock suppliers of limestone, soda ash, and sand. Long term contracts for feedstocks tend to stabilize the costs of production and assure preferred customer status in times of raw material scarcity. Second, as discussed above, batches of postconsumer mixed-color bottle cullet do not consistently contain the same percentages of individual colors, which causes processing disruptions. Third, price is a restraint on using bottle cullet. At 1986 costs of production, a price of $.02–.025 per pound ($40–$50 per ton) for green glass cullet was said to be acceptable. The fourth factor is contaminants. While cullet does not have to be color sorted, even minor contamination with metal, plastics, ceramics, or carbon causes problems in fiberglass processing lines.

Fiberglass industry commenters stated that specifications for pre- and postconsumer cullet vary from company to company and plant to plant because different manufacturing processes are used. Size specifications can vary from the consistency of sand (minus #16 mesh—plus #100 mesh) up to half inch chunks. The following contaminant specifications offer general guidance only:

TABLE 4.—FIBERGLASS SPECIFICATIONS

Contaminant	Content
Moisture	Less than 2%.
Organic carbon (e.g., sugars, paper, plastic, milk, residues).	Less than 1%.
Coatings/oxides (e.g., silver, iron oxide, lead oxide, chrome oxide, cobalt oxide, tin oxide).	Less than 1% (usually).
Magnetic materials	0%.

TABLE 4.—FIBERGLASS SPECIFICATIONS—Continued

Contaminant	Content
Foreign materials (e.g., stones, ceramics, non-magnetic metals).	0%.

In Europe, a French company is said to use substantial proportions of plate and bottle cullet in some of its installations; the same company manufactures the bottles and the plate glass and therefore has the advantage of knowing exactly what is contained in the cullet it uses. According to the European trade association, EURIMA, production of multiple products occurs at other European companies, but it is not common. Companies in Germany and Belgium also use purchased cullet (including bottle cullet) to improve furnace efficiencies and to save energy. All European companies are said to be exploring the use of cullet but the material is not generally available. As in the United States, European furnaces cannot tolerate impurities in cullet.

American glass processors do sell postconsumer bottle cullet to fiberglass manufacturers in some parts of the country, although not in great amounts. The broader category of preconsumer or manufacturing waste cullet is used more commonly. While data is not gathered, knowledgeable sources estimate 175,000 tons of preconsumer cullet is sold to the fiberglass industry annually. Unlike the glass container industry, which favors bottle cullet partly because it contains the key ingredient soda ash, the fiberglass industry obtains much of the needed soda value from other raw materials containing alumina and boron. Therefore, neither soda ash costs nor scarcities have much impact on the costs of producing fiberglass.

Some fiberglass manufacturers indicated interest in using postconsumer cullet if it was available in consistent quantities and quality at competitive prices. These companies believed that cullet processing technology would have to be improved to meet their specifications for consistent color mix and low contaminant levels.

With nearly 70 percent market share, fiberglass dominates the total insulation industry. In 1987, there were six companies producing fiberglass insulation at 26 locations.

4. Plastic Rigid Foams

Plastic rigid foam insulation is made by expanding resins to create cells. Blowing agents are used to enhance the formation of cells and, in some cases, the blowing agent remains trapped within the cells to increase insulating properties. Rigid foam insulations have higher R-values than equivalent thicknesses of other insulations, although they tend to cost more. The higher the R-value, the better the insulating properties.

There are several basic types of plastic rigid foam in general use, including polyurethane, polyisocyanurate, polystyrene, and phenolics. The use of plastic rigid foam insulation appears to be growing the most rapidly of all types of insulation, although data is not consistently published, and information from different sources rarely agrees. However, despite variations in the data, it is established that polyurethane, polyisocyanurate, and polystyrene foams have an important share of the total market, while phenolics represent a very small though growing fraction of the total.

An estimate of total rigid foam boardstock consumption in residential and commercial applications was presented at a Society of the Plastics Industry conference in 1985. Polyurethane foam use was expected to grow from 230 million pounds in 1984 to 249 million pounds and 280 million pounds in 1986 and 1990, respectively. Projected polystyrene growth for the same years was from 285 to 315 to 375 million pounds. Phenolic growth, again for 1984, 1986, and 1990, was estimated at 10 to 11 to 15 million pounds.

a. *Polyurethane and polyisocyanurate insulation.* References to polyurethane (PU) and polyisocyanurate (PIR) insulations tend to be confusing. The term polyurethane foam can also refer to the flexible foams used for cushioning. Data for PU and PIR feedstocks and insulation production quantities are frequently grouped together under the term polyurethane and sometimes are included under the broader term urethane (U). The differences between PU and PIR rigid foam are slight and do not affect the use of recovered materials. For simplification in this guideline, the term polyisocyanurate/polyurethane (PIR/PU) will be used, although the original terms will be preserved in cited data.

PIR/PU insulation is primarily board and laminated board products used to insulate walls, roofing, and doors in residential and commercial buildings. The physical blowing agent is trapped in the cells of PIR/PU rigid foams and contributes to the high R-value.

PIR/PU board insulation is made with various formulas depending on the requirements of the final product. Ingredients are used in the following ranges:

- Isocyanate, 53–57%
- Aromatic polyester polyol, 20–30%
- Blowing agent, 15–20%
- Surfactants and catalysts, 2–3%.

PIR/PU foam-in-place insulation (with two sub-categories, spray-in-place and pour-in-place) is a smaller segment of the market. It is used primarily for roofing insulation and injection into cavities, with some used in wall insulation. PIR/PU foam-in-place ingredients are combined on site and injected into position where the mixture expands and hardens in place. An estimate of the size of the PIR/PU foam-in-place market was developed for the Department of Energy. In 1982, approximately 65 million pounds of foam were used, primarily in roofs, expanding to approximately 88 million pounds in 1986.

The formulation percentages of PIR/PU foam-in-place are basically 40 percent isocyanate to 40 percent polyol to 20 percent blowing agent and other ingredients. Unlike boardstock, where the ingredients are mixed as they are used, PIR/PU foam-in-place is premixed and sold to installers in drums. Shelf-life of six months is the industry standard. According to the industry, formulations with more than 30 percent polyester in the polyol fraction break down in less than six months, and viscosity is seriously impaired.

Polyol is the component in all types of PIR/PU rigid foam insulation that can contain recovered materials. ASTM defines polyol in cellular plastic usage to "include compounds containing alcoholic hydroxyl groups such as polyethers, glycols, polyesters, and castor oil used in urethane foam." Industry sources have stated that the foam insulation market for polyol is approximately 100 million to 120 million pounds per year. Two types of polyol are used by the PIR/PU industry, aromatic polyester polyol and polyether polyol:

Aromatic polyester polyol can be derived from recycled pre- and postconsumer PET or from the chemicals DMT and phthalic anhydride. The polyol is made by reacting glycol with the other ingredients. In some cases, waste DMT bottoms are used; phthalic anhydride bottoms are possibly used as well. Various manufacturers contacted between 1986 and 1988 suggested that DMT bottoms and possibly phthalic anhydride bottoms were commonly recovered to produce feedstock resins for plastic rigid foam insulation products. PET polyols are 45 percent

PET to 55 percent glycol. DMT polyols are 50 percent DMT to 50 percent glycol.

Polyether polyol is derived from polypropylene oxide, a virgin material process. The insulation industry has switched almost entirely from polyether polyols to the less expensive polyester polyols for boardstock. Premixed foam-in-place insulation uses about 70 percent polyether and 30 percent polyester to avoid loss of viscosity in storage.

At least one company is marketing polyols made from both postconsumer and manufacturing waste PET bottles as well as x-ray and other films. Other companies are marketing polyols derived from chemical bottoms.

Twenty manufacturers of PIR/PU board have been identified with production facilities in 36 locations. Distribution across the country is fairly good in the northwest and mid-northern states. Although it was not determined how many of these insulation manufacturers use polyols derived from recovered materials, nor exactly how many polyol producers are using recovered materials rather than virgin feedstocks, one third of the polyols currently marketed for PIR/PU rigid foam insulation are said to be derived from recovered materials.

b. *Glass fiber reinforced PIR/PU foam.* A special type of PIR/PU board is reinforced with glass fibers and is designed to improve fire retardancy. The feedstocks are similar to the other types of PIR/PU foams but the formulation ratio differs. More isocyanate is used in relation to aromatic polyester polyol. The formulation ratios are 15 percent polyol, 67 percent isocyanate and 18 percent fiberglass, blowing agents, surfactants and catalysts. This product is produced by only one company to date which may or may not limit availability.

c. *Polystyrene insulation.* Polystyrene insulation for building construction is produced by two processes. Expanded polystyrene foams incorporate a blowing agent, usually pentane, with polystyrene beads which are expanded with steam or hot air. The resulting "prepuff" is aged for six to twenty-four hours before the final product is made in a heated mold. The product is then cooled in the mold to assure uniformity and good quality.

Extruded polystyrene is made by combining polystyrene base resin with a blowing agent in one extruder, feeding the melt through a cooling extruder then through a die for the desired shape. Flame retardants are also added to the product mix. Like the PIR/PU foams, blowing agents are generally retained within the cellular structure to improve R-values.

Representatives from several manufacturers of polystyrene insulation indicated that use of recovered material content is technically feasible. However, one source stated that polystyrene with flame retardants could not be reused, which would appear to restrict the use of home scrap in polystyrene insulation manufacture. Despite indications that research and development efforts may be underway, current use of recovered materials could not be documented.

EPA identified 77 manufacturers of polystyrene insulation. These include producers of both extruded polystyrene and expanded polystyrene products. Numerous other small companies are said to be in business around the country. Geographically, the identified polystyrene insulation manufacturers are spread as widely as the producers of other types of insulation products.

d. *Phenolic insulation.* Phenolic rigid foam insulation is said to have very high R-values per inch, good fire retardation, and potentially low cost, among other characteristics. It is a fairly new product, but the relative market share is expected to grow rapidly from its current small base. Phenolic foam production is similar to PIR/PU foam, although the ingredients differ. Aromatic polyester polyols are used in small quantities as a plasticizer. The product formulations vary according to the specific product. Product mixes are also guarded competitive secrets because the product is new. Therefore, the following list of ingredients do not add to 100 percent.

- Phenolic resin—65%–85%.
- Blowing agent—5%–15%.
- Catalyst and surfactants—5.5%–21.5%.
- Polyester polyol—3%–10%.

Unlike the approximate 1 to 1 ratio of glycol to other ingredients in PIR/PU polyols, aromatic polyester polyol in phenolic foam manufacture uses 10 percent glycol to other ingredients. The 90 percent fraction of the polyol contains the recovered material. However, one manufacturer stated that larger percentages of polyol used as a plasticizer produce an end product that is too soft for commercial application with mechanized roofing equipment, and therefore a higher percentage of recovered material is technically impracticable.

Few manufacturers of phenolic foam were identified by EPA. A commenter informed EPA that the phenolic foam also is available under four private label and joint venture agreements with the principal manufacturer. This is the only limit on availability for government procurement.

5. Rock Wool

Rock wool is used as loose-fill insulation and also is sold in batts and blankets, although production of batts and blankets is phasing out. While rock wool and fiberglass insulation manufacturers are not necessarily the same companies, they all belong to the same trade associations and the two products are usually tracked together under the general heading mineral fibers.

Rock wool insulation is most frequently made from metallurgical slag, such as slag from steel mills. Approximately 70 percent of the rock wool produced in 1980 was primarily made from blast furnace slag, the other 30 percent was primarily made from steel and copper slag. Not all rock wool manufacturers depend entirely on slag for their feedstock needs, however. Some use trap rock or basaltic rock. Use of slag or alternatives depends on the availability and costs of the materials and their location to production facilities. The rock wool industry is shrinking, and data is no longer consistently gathered. However, conversations with manufacturers in 1988 indicated that more companies are using higher percentages of natural rock than were in 1980.

Natural rock is said to have a lower comparative yield. Slag has a higher melting alumina silicate than natural rock, which makes slag-based insulation attractive in commercial and residential installations where fire protection is important. For comparative purposes, fiberglass is affected by heat at 1,200–1,300 degrees Fahrenheit, compared to rock wool, where temperatures must exceed 1,800–2,000 degrees Fahrenheit before the wool is affected.

There are no sources of postconsumer recovered material for rock wool insulation. The manufacture of this type of insulation is linked to the metal smelting industries, which provide the principal feedstocks. Smelting in the United States is decreasing, and there is strong demand for metallurgical slags as aggregate substitutes in asphalt and concrete for road construction. Slag for rock wool must be of higher quality and contain fewer contaminants than slag for substitute aggregates. Although rock wool manufacturers are said to pay premium prices, some slag suppliers are said to prefer volume to specialty customers.

Some rock wool manufacturers have also begun to use spent aluminum potliner as a fuel substitute and fluoride source. The potliner replaces a portion of the more expensive coke used as fuel

to melt the slag or rock. The proportions are determined by chemical composition of the slag. The fluoride in the spent potliner serves as a flux and also improves the viscosity of the molten material which, in turn, improves the fiber spinning process. In addition, potliner has very low sulfur content which reduces sulfur in stack emissions.

Rock wool insulation's market share has been decreasing in recent years. One estimate based on data gathered in 1985 was 9–10 percent of the total market; the percentage dropped to 3 percent in another estimate in 1987. Changes in the industry and in trade associations have made it difficult to make a more accurate assessment. The most recent data cited was for 1982, when U.S. production of rock wool was estimated to be 1.0 billion pounds (453,500 metric tons). Ten manufacturers of rock wool insulation were identified, with plants in 18 locations. Trade association representatives stated that a number of small companies do not belong to the associations and therefore may not be included in this total. Rock wool insulation manufacturers are primarily located in the mid-west and the southern states, with a few companies located in the northeast.

6. Conclusions

EPA concludes that six of the principal insulation products used in the United States are commercially available with recovered materials content: Cellulose, fiberboard made with cellulose, perlite composite boards, PIR/PU rigid foam, phenolic rigid foam, and rock wool. A specialty product, glass fiber reinforced PIR/PU rigid foam, also uses recovered materials. Industry sources have suggested that polystyrene insulation containing recovered materials is technically feasible; however, commercial use has not yet begun.

EPA further concludes that the technology exists to manufacture fiberglass insulation using preconsumer cullet and possibly postconsumer bottle cullet. For a variety of reasons, however, no American fiberglass manufacturing plant routinely uses either pre- or postconsumer bottle cullet.

Based on the evidence reviewed above, EPA notes that insulation meeting a wide range of construction design applications is available with recovered materials content. EPA did not evaluate the potential for recovered materials usage in specialty types of insulation made with virgin materials because they represent such a small portion of the insulation market.

D. Federal Purchasing Power

The fourth EPA criterion for selection of a procurement item for affirmative procurement under RCRA Section 6002 is that the Federal government's ability to affect purchasing or use of the item, when it contains recovered materials, be substantial.

The dollar volume of the building insulation industry was estimated by Hull & Company in 1986 to be $2.24 billion excluding retrofit of residential buildings. A.W. Johnson estimated the 1986 residential retrofit insulation market to be $6.7 million. The total 1986 building insulation market, at manufacturer's net price is estimated to be $2.9 billion. Other industry spokesmen estimated the total market to be $3 billion in 1985. The same sources stated that the industry was holding even, with neither major growth nor shrinkage.

1. Federal Government

Government agencies purchase, or finance purchases with appropriated Federal funds, residential, industrial, and commercial types of insulation products. Expenditures for insulation purchased with appropriated Federal dollars is conservatively estimated to be $148 million. This figure represents only those expenditures that could be estimated based on assured insulation use by an agency. Open market expenditures at the local level may be considerable but could not be estimated because centralized records are not currently maintained. Based on 1986 estimates of market size and identified government purchases, the Federal government accounts for approximately 5.1 percent of the insulation market. Procurements by individual agencies are summarized in Table 5.

TABLE 5.—SUMMARY OF ESTIMATED GOVERNMENT EXPENDITURES FOR INSULATION

Department of Energy (1985):	
Weatherization	$38,000,000
Institutional Conservation	4,593,000
Total DOE	42,593,000
Health & Human Services (1985):	
Low Income Home Energy Assistance Program	45,750,000
Housing and Urban Development (1986):	
Public Housing Modernization Fund	14,000,000
Housing for Elderly and Handicapped	3,800,000
Community Development Block Grants	5,700,000
Indian Housing Program	2,392,000
Total HUD	25,892,000
General Services Administration (1986):	
Direct purchases	487,300
New construction, repairs, and alterations	12,344,600
Total GSA	12,831,900
Department of Defense (1986):	
Direct purchases	Nominal
New construction and rehabilitation	20,983,600
Total Estimated Government Purchases	148,050,500

The value of Federal insulation purchases was estimated as conservatively as possible, using lowest percentages or lowest range when there was a choice. It is probable that appropriated Federal dollars account for a considerably higher percentage of market share. Insulation is rarely tracked as a line item in any budget. In the one case that EPA knows of, the data are not yet available.

The Department of Energy (DOE) estimates that 20 percent of its expenditures for the Weatherization Program is spent for insulation. Funds are distributed through state agencies, which in turn use a variety of methods to distribute monies through local housing authorities and local grantees. The Institutional Conservation program roughly estimated total insulation expenditures from which an average annual expenditure was computed.

The Department of Health and Human Services (HHS) distributes Low Income Home Energy Assistance Program (LIHEAP) funds. Under this program, states are allowed to spend up to 15 percent of their allocation on weatherization. As these funds are distributed by the same state agencies as DOE funds, the same 20 percent estimate for insulation was used.

Many Department of Housing and Urban Development (HUD) programs provide funds for building construction and/or rehabilitation. Insulation expenditures are not tracked at the national level. HUD funds are distributed many ways, for instance through the ten regional HUD offices, through local housing authorities or through block grants to states where priorities are determined locally. Most HUD funds that are dispersed where

they could be used to purchase insulation are considered loans. However, loans are repaid through Federal funds and subsidies, not from the private sector. In addition, HUD mortgage insurance programs range from $30 to $100 billion per year, and energy efficiency remains a high priority. The insulation component would be $228 to $760 million. This estimate derived from mortgage insurance was not included in the estimate of Federal purchases of insulation because it could not be established that direct or indirect expenditures of appropriated Federal funds actually take place in insurance programs.

At the General Services Administration (GSA), insulation is purchased directly for use by government agencies and is also purchased through construction contracts. The entire direct purchase program is being revised from warehoused purchases to requirement contracts which allow agencies to buy what they need directly from suppliers under annual contract. Direct expenditures were determined as available. All GSA expenditures for insulation are direct use of Federal funds.

Divisions of the Department of Defense (DOD), the Army, Navy and the Air Force, do not track direct purchases of insulation. Construction projects which would include insulation were estimated from the general construction budget (which includes non-insulated items like bridges). All DOD expenditures for insulation are direct use of Federal funds.

2. Impact on State and Local Governments

A significant number of the Federal programs disperse their funds through state, local and non-profit agencies. Funds are not specifically earmarked for insulation purchases; rather monies are used for weatherization, building construction, rehabilitation and so on, usually through construction contracts.

State and local agencies are required to comply with EPA procurement guidelines under the conditions described in Section IV.C. of this preamble. EPA believes that once affirmative procurement programs are established by state and local agencies in compliance with their obligations when using Federal funds, the same provisions that favor the use of recovered material content will be used for other insulation purchases.

3. Conclusions

EPA concludes that the expenditure of Federal funds for insulation would have a significant impact on the insulation market. EPA believes not only that direct Federal government agency purchases would have an impact, but also that a considerable ripple effect would develop through state and local governments that use local funds as well as Federal funds for major programs.

E. Other Considerations

There is an additional factor affecting insulation which EPA included in its development of the guideline issued today. Both pre- and postconsumer waste materials (e.g., newspaper, glass, plastic) and industrial byproducts (e.g., slag, chemical bottoms, potliner) are used in many different types of building insulation products. All these products compete for the same end use. Although most byproducts and some pre-consumer materials used in building insulation are not currently a solid waste management problem, EPA is concerned that these materials could return to the waste stream if preferences were established for products made with only a few pre- and postconsumer materials. Therefore, EPA has intentionally included within the scope of the guideline insulation products made with all pre-consumer materials and industrial byproducts that qualify as recovered materials under the RCRA definition.

In the proposed guideline, EPA requested comments on including this range of recovered materials for insulation products in the scope. No comments challenged the basic conclusion. In fact, only the use of glass cullet in fiberglass insulation was addressed in the comments received.

A fiberglass manufacturer recommended that EPA state unequivocally that only postconsumer cullet be addressed because preconsumer cullet is not a significant solid waste management problem. EPA disagrees. In some parts of the country where preconsumer plate glass cullet was previously sold to the glass container industry, it has become more difficult to find buyers. Therefore, there is a potential solid waste management problem.

A fiberglass trade association commented that EPA should recognize the successful use of internal scrap ("re-feed") as "a responsible activity in response to the spirit and intent of RCRA" by including it as recycled content in fiberglass. EPA again disagrees. The RCRA definition of recovered materials specifically excludes "material and by-products generated from, and commonly reused within, an original manufacturing process." Thus, while EPA encourages this type of recycling, "re-feed" materials used in fiberglass manufacture do not qualify as recovered materials for purposes of RCRA.

A recycling center commented that additional markets (such as fiberglass) are needed for mixed-color postconsumer cullet because prices in California dropped to $0 per ton in September 1988. EPA agrees in principal but cannot currently recommend a minimum content standard for fiberglass (as discussed in Section IV.G.1.d. of the preamble). EPA sought information from cullet brokers and recycling operations around the country regarding unsold supplies of postconsumer cullet. Not one indicated a current or future concern with selling current and potential supplies of clean, color-sorted bottle cullet.

F. Conclusions Regarding the Designation of Building Insulation Products

Based on the analysis above and comments received on the proposed guideline, including economic and environmental considerations, EPA has determined that building insulation products containing "recovered materials" as defined by RCRA meet the criteria for designation as a procurement item under the provisions of section 6002.

IV. Contents of the Guideline

This portion of the preamble explains each section of the final guideline, including EPA's response to comments. Of the comments EPA received on the proposed guideline, half simply expressed support based on the need for markets for recyclable materials or primarily urged EPA to maximize the use of recovered materials in insulation products. Although the remaining comments recommended various improvements which are addressed in the relevant sections, no commenters advised against issuing the guideline.

A. Purposes

The purposes of this guideline are (1) to designate building insulation products, as described below, as items subject to the procurement requirements of section 6002 of RCRA; and (2) to recommend procedures for complying with section 6002.

Insulation products are not fungible items and consequently do not compete in the marketplace on the basis of price alone. Technical performance

considerations may dictate use of one type of insulation material rather than another. EPA believes that the intent of RCRA would best be served by identifying and increasing the use of recovered materials content in as many different types of insulation products as possible. Competition between product type (e.g., loose-fill, blanket, board, or spray-in-place) or material type (e.g., cellulose, fiberglass, rock wool, rigid plastic foam, and specialty materials) would therefore continue, while use of recovered materials would increase. Consequently, EPA has sought to include all the major types of insulation in commercial use within the final guideline. EPA received several favorable comments and no negative comments on this approach.

B. Scope

This guideline applies to building insulation products. This term includes but is not limited to insulation products used in residential, commercial, and industrial type applications and includes blanket, board, spray-in-place, and loose-fill insulations. As explained in section II.D. of this preamble, building insulation is used in four locations: ceilings, floors, foundations, and walls. The types of materials from which these products are made include, but are not limited to, cellulose fiber, fiberglass, rock wool, plastic rigid foams, and specialty materials. Composite products made from more than one material are also included within the scope of this guideline.

All of the predominant application types of building insulation are included within the scope of the guideline, and all contain, or have the technical potential to contain, recovered materials. In addition, specialty materials for all types of building insulation or insulation ingredients where recovered material content use may not have been documented (e.g., vermiculite and polystyrene) *are* included within the scope of this guideline.

1. Facers and Bindings

In this guideline, recommendations for minimum content standards and any references to recovered material content refer only to the core material of an insulation product and do not include any facings, bindings, or other materials applied to the surfaces of the core materials. In the case of composite products made from more than one material, proposed minimum content standards apply to the respective materials used in the core unless the product is specifically addressed.

Several commenters questioned the decision to exclude facers, binders, and other materials applied to core materials on the basis that they could contain recovered materials. Examples include asphalt saturated felt, fibrous glass, aluminum foil and sheet, vinyl (various thicknesses, formulations and reinforcements), cork, burlap, laminates of aluminum, paper and various polymers, kraft paper, vinyl reinforced kraft, woven mesh, woven and non-woven organic and non-organic mats, glass fiber mats, latex coatings, neoprene coatings, and a wide variety of water base and hot-melt adhesives. These applied materials can be and are used in a wide range of combinations; they are often laminated in four or more variations depending on the final product specifications, and any or all of the applied materials can be used with all the different core materials.

This diversity makes it difficult for EPA to recommend meaningful minimum content standards and could discourage purchasing officials from using products containing recovered materials. Thus, the probability of increasing recovered material use in these applied materials is significantly outweighed by the probability that complex minimum content standards would discourage compliance with the guideline.

2. Postconsumer Recovered Paper

EPA has included insulation made with postconsumer recovered paper in the scope of this guideline, as well as stressed its use in building insulation products. Section 501 of HSWA amended RCRA section 6002(c)(1) to stress the maximum practicable use, in the case of paper, of postconsumer recovered materials. These postconsumer paper materials are defined in RCRA section 6002(h) as:

(A) Paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes, old newspapers, old magazines, mixed waste paper, tabulating cards, and used cordage, and

(B) All paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste.

EPA believes that increasing the use of postconsumer recovered paper is a key goal of RCRA section 6002. Therefore, EPA is recommending minimum postconsumer recovered paper content standards for those insulation products which are capable of being made with paper fibers. (As previously discussed, EPA is not including fiberboard in the final guideline issued today although some manufacturers use postconsumer recovered paper to produce fiberboards. Instead, EPA will continue to consider various issues pertaining to fiberboards, including whether a minimum content standard for postconsumer recovered paper for fiberboard would have a positive net impact on solid waste volumes.)

3. Other Types of Insulating Products

There are other types of insulating products, such as air handling, acoustic, pipe, and cold storage insulation. Building insulation was designated because it is by far the largest volume of insulation manufactured, is least likely to require virgin specialty materials for specialty purposes, and is dominated by the types of insulation products that for physical or chemical reasons can contain recovered materials. Government purchases of insulation products would also tend to have the greatest impact on this category.

These other types of insulation products must meet different and frequently more stringent specifications and are believed to be less easily adapted to manufacture with recovered materials. EPA requested comments on the use of recovered materials in non-building types of insulation and whether they should be included in this guideline. Several commenters recommended that EPA investigate the feasibility of including these products within the scope of the guideline but offered no details. Another stated that these products should not be included because they do not meet the definition of "building insulation." Another commenter stated they should not be included because they must meet unique specifications, they are often used in applications where they are required to give structural support, resistance to flaking or fiber erosion, and acoustical insulation. EPA acknowledges that these products deserve further study and therefore is not including them within the scope of the guideline issued today.

C. Applicability

Many of the requirements of section 6002 apply to "procuring agencies," which is defined in RCRA section 1004(17) as "any Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract." Under section 6002(a), the procurement requirements apply to any purchase by a procuring agency of an item costing more than $10,000 or when the procuring agency purchased $10,000 worth of the item or of functionally equivalent items

during the preceding fiscal year. Both direct and indirect purchases are covered.

1. Procuring Agencies

In its other procurement guidelines, EPA discussed the applicability of section 6002 to procuring agencies. Because this discussion is germane to this guideline as well, EPA is including it in the final guideline today.

The statutory definition of procuring agency identifies three types of agencies: (1) Federal agencies, (2) State or local agencies using appropriated Federal funds, and (3) contractors. Federal agencies should note that under this definition, the requirements of section 6002 apply to them whether or not *appropriated* Federal funds are used for procurement of items designated by EPA. Section 248.3(a)(2) has been added to the final guideline to clarify this point.

In addition, the requirements of section 6002 apply to each Federal agency as a whole. This point is particularly important in determining whether the $10,000 threshold has been reached. For example, the Department of Housing and Urban Development (HUD) as a whole, purchases, or causes the purchase of, more than $10,000 worth of building insulation products during each fiscal year. Therefore, the requirements of section 6002 will apply to all procurements of building insulation products by HUD, its regions, and subagencies.

One commenter stated that EPA should make it clear that section 6002 requirements apply to private contractors as well as to government purchasing agencies. EPA agrees. The statutory definition of procuring agencies includes any person contracting with the defined Federal, state, or local agencies. Clearly, contractors must comply with the guideline when installing insulation on projects for Federal agencies or for state and local agencies where appropriated Federal funds are used.

2. Direct Purchases

For the purposes of this guideline, purchases made as a result of a solicitation by a procuring agency for its own general use or that of other agencies (for example, GSA purchases) are considered "direct." Building insulation purchased as part of a construction contract is also considered a "direct purchase."

3. Indirect Purchases

The definition of "procuring agency" in RCRA section 1004(17) makes it clear that the requirements of section 6002 apply to "indirect purchases," i.e., purchases by a State or local agency using appropriated Federal funds or, in some instances, its contractors. Thus, the guideline may apply to building insulation purchases meeting the $10,000 threshold made by States, political subdivisions of states, or their contractors.

In the proposed guideline, EPA stated that the guideline does not apply to such purchases if they are unrelated to or incidental to the Federal funding, i.e., not the direct result of the grant, loan, or funds disbursement. Several commenters disagreed with EPA's interpretation, noting that RCRA section 6002(a) states simply that section 6002 applies to "*any* purchase or acquisition of a procurement item" (emphasis added) when the $10,000 threshold is reached. These commenters raise an issue of general applicability to all the procurement guidelines. The Agency plans further review and consideration of this issue and will publish detailed guidance on this subject within the near term. However, at this time, EPA is retaining the proposed language, which provided that the guideline does not apply to purchases that are not the direct result of a funds disbursement to a procuring agency.

EPA requested comments on whether this guideline should exempt block grants from the section 6002 procurement requirements or exempt block grants only when it is not possible to account separately for such funds. Commenters stated that there should not be an exemption, which would circumvent the intent of section 6002. EPA agrees and therefore, there is no exemption for block grants in the final guideline. EPA believes that the guideline should apply whenever Federal monies, including block grants, are used, whether or not they are commingled with non-Federal funds.

4. The $10,000 Threshold

RCRA section 6002(a) provides that the requirements of section 6002 apply: (1) When the purchase price of an item exceeds $10,000 or (2) when the quantity of such items or of functionally equivalent items purchased during the preceding fiscal year was $10,000 or more. Thus, section 6002 clearly sets out a two-step procedure for determining whether the $10,000 threshold has been reached. First, a procuring agency must determine whether it purchased $10,000 worth of building insulation products during the preceding fiscal year. If so, the requirements of section 6002 apply to all building insulation purchases occurring in the current fiscal year. Second, if a procuring agency did not procure $10,000 worth of building insulation products during the preceding fiscal year, it is not subject to section 6002 unless it makes a purchase of building insulation products, during the current fiscal year, exceeding $10,000. The requirements of section 6002 then apply to the $10,000 purchase of building insulation products; to all subsequent purchases of building insulation products made during the current fiscal year, regardless of size; and to all procurements of building insulation products made in the following fiscal year.

Section 6002(a) does not provide that the procurement requirements are triggered when the quantity of items purchased during the *current* fiscal year is $10,000 or more. EPA does not believe that Congress intended to require procuring agencies to keep a running tally of procurements of items designated by EPA. Maintaining such a running tally would be very burdensome. Rather, procuring agencies only need to compute their total procurements of building insulation products once at the end of the fiscal year and only if they intend to claim an exemption from the requirements of section 6002 in the following fiscal year.

Note that the text of § 248.3(a)(1) in the final guideline differs slightly from the proposed text. The proposed text did not reflect the statutory provision that section 6002 applies when an agency makes a purchase exceeding $10,000 in the current year. The text in the final guideline has been corrected accordingly.

5. Functionally Equivalent Items

In common usage, the term "insulation" covers many items manufactured to meet different uses and performance standards. EPA believes that restricting the applicability of section 6002 based on a very narrow, technical definition of functional equivalency would limit the effectiveness of the guideline in meeting the objectives of RCRA, because an agency may purchase less than $10,000 of each type of building insulation product.

EPA has concluded that, in the case of building insulation, "functionally equivalent" items should be defined as a category of items having substantially the same or similar end use. This category, "building insulation," will assure broad applicability of this guideline. Further, building insulation types defined by design (such as loose-fill, blanket, board, and spray-in-place) and building insulation products defined by material content (such as fiberglass, cellulose, rock wool, plastic rigid foams,

composites, and specialty materials) can be used almost interchangeably in ceilings, floors, foundations and walls. The choice of building insulation type and material content is based on technical considerations that are site specific.

Government procuring agencies rarely track building insulation purchases as a line item and certainly do not distinguish between material types or design types of building insulation products. EPA believes that the guideline will be more easily implemented by procuring agencies if all types of insulation used to resist heat flow within a building are included within the single category of building insulation.

Under § 248.3(a)(1) of the guideline, all of the following types of insulation are encompassed by the term "building insulation" and therefore are "functionally equivalent" for purposes of the $10,000 threshold:

- Loose-fill insulation, including but not limited to cellulose fiber, fiberglass, rock wool, vermiculite, and perlite;
- Blanket and batt insulation, including but not limited to fiberglass and rock wool;
- Board (sheathing, roof decking, wall panel) insulation, including but not limited to cellulose fiber fiberboard, perlite composite board, glass fiberboard, foam glass, perlite, polyurethane, polyisocyanurate, polystyrene, phenolics, and composites; and
- Spray-in-place insulation, including but not limited to polyurethane, polyisocyanurate and spray-on cellulose.

6. Miscellaneous Comments

A commenter strongly supported EPA's position that the $10,000 threshold applies to each Federal agency as a whole (§ 248.3(a)(3)) and to all types of building insulation as "functionally equivalent items" (§ 248.2(a)(2)).

D. Definitions

Most of the definitions used in the final guideline are used in RCRA and therefore need no further explanation. Others are standard industry or purchasing definitions. A few are discussed in more detail in this section of the preamble to clarify the information that follows.

1. Practicable

Section 6002 requires procuring agencies to procure items composed of the highest percentage of recovered materials *practicable* and to develop programs to assure that recovered materials are purchased to the maximum extent *practicable* (emphasis added). EPA defined the term "practicable" in the final paper guideline, 52 FR 37297 (October 6, 1987) and is including the definition in the final guideline issued today.

EPA's definition of "practicable" combines the dictionary definition with certain statutory criteria for determining practicability. The dictionary definition of practicable is "capable of being used," and EPA believes that Congress intended the term to be defined in this way. Congress also provided four criteria for determining the maximum amount practicable: (1) Performance in accordance with applicable specifications; (2) availability at a reasonable price; (3) availability within a reasonable period of time; and (4) maintenance of a satisfactory level of competition. EPA's definition of "practicable" incorporates these criteria.

2. Building Insulation

"Building insulation" is defined as a material, primarily designed to resist heat flow, which is installed between the conditioned (heated and/or mechanically cooled) volume of a building and adjacent, unconditioned volumes or the outside. This term includes but is not limited to insulation products such as blanket, board, spray-in-place, and loose-fill. "Building insulation" is intended to cover all thermal insulation products used in all types of structures with the exception of cold storage and pipe insulation. The phrase "including but not limited to" in the insulation definitions is intended to insure that new types of products will be included within the scope of the guideline as they are developed.

3. Procurement Terms

To simplify the Federal purchasing process, "commercial item descriptions" (CIDs), which reference industry standards, have generally replaced the multitude of individual insulation specifications previously used by Federal procuring agencies. In issuing procurement solicitations, procuring agencies can stipulate special terms and conditions (such as minimum content standards for recovered material content), in the "invitation to bid" or "request for proposal" documents. These phrases have been defined by the National Institute of Governmental Purchasing as follows:

- *"Commercial Item Descriptions"* are series of simplified item descriptions under the Federal specifications-and-standards program used in the acquisition of commercial off-the-shelf and commercial type products.
- *"Invitation For Bids (IFB)"* is the solicitation for prospective suppliers by a purchaser requesting their competitive price quotations.
- *"Request for Proposal (RFP)"* is a request for an offer by one party to another of terms and conditions with references to some work or undertaking; the initial overture or preliminary statement for consideration by the other party to a proposed agreement.

4. Insulation Terms

Definitions for terms relating to insulation are directly quoted or have been adapted from the Association of Testing and Materials (ASTM), the Department of Energy's Residential Conservation Service definitions, and Federal specifications, as they were available. When necessary, EPA has developed terms and definitions for purposes of this guideline.

EPA requested comments on the term and definition "cellulose fiberboard," and whether the industry term "cellulosic fiberboard" referred to fiberboards containing postconsumer recovered paper. Responses were inconclusive. EPA has determined that fiberboards made with postconsumer recovered newspaper are covered by the term cellulosic fiberboard but related products made with laminations derived from pre- and postconsumer corrugated are not. EPA will re-examine the term and definition.

E. Requirements vs. Recommendations

RCRA section 6002 requires procuring agencies and contracting officers to perform certain activities, such as revising specifications for procurement items. It also requires EPA to prepare "guidelines for the use of procuring agencies in complying with" section 6002. EPA has incorporated the section 6002 requirements into the final guideline for the benefit of procuring agencies. As a result, the guideline contains two types of provisions: requirements (mandated by Congress in section 6002) and recommendations (EPA's guidance for complying with the requirements of section 6002). As used in this guideline, the verbs "shall" and "must" indicate section 6002 requirements, while verbs such as "recommend," "should," and "suggest" indicate recommendations for complying with those requirements.

Procuring agencies must comply with the requirements of section 6002, whereas EPA's recommendations are only advisory in nature. Procuring agencies may choose to use other approaches which satisfy the section 6002 requirements. However, EPA believes that if a procuring agency chooses to follow EPA's

recommendations, that agency will be in compliance with the section 6002 requirements.

F. Specifications

Subpart B of the guideline, Specifications, contains two sections, Revisions and Recommendations.

1. Revisions

a. *Federal agencies.* RCRA section 6002(d) contains two requirements for revising specifications for procurement items. First, Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies were required to revise their specifications, by May 8, 1986, to eliminate exclusions of recovered materials and requirements that items be manufactured from virgin materials (section 6002(d)(1)).

Second, within one year after the date of publication of a guideline as a final rule, Federal agencies must assure that their specifications for designated items require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item (section 6002(d)(2)). EPA believes that this second requirement is more extensive than the first requirement. Simply eliminating discriminatory provisions, as required by section 6002(d)(1), is not sufficient to meet all the obligations of section 6002(d). EPA believes, however, that compliance with the affirmative procurement requirements of section 6002(i) fulfills the section 6002(d)(2) requirements because an affirmative procurement program should result in procurement of building insulation products containing recovered materials to the maximum extent practicable.

b. *Procuring agencies.* Non-Federal procuring agencies will also be required to revise their specifications for building insulation products. These agencies are required, by section 6002(c)(1) of the Act, to procure building insulation products composed of the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. Section 6002(c)(1) requires that any decision not to purchase building insulation products composed of the highest percentage of recovered materials practicable be based on a determination that such products (1) are not available within a reasonable period of time, (2) are not available at a reasonable price, or (3) fail to meet reasonable performance standards set forth in the applicable specifications.

Under section 6002(c)(1), a procuring agency cannot choose to purchase building insulation products produced with virgin material simply because the agency's existing specifications for building insulation products require the use of virgin materials or prohibit the use of recovered materials. To be consistent with the requirements of the Act, any such discrimination in an agency's specifications must relate directly to an inability of the building insulation to satisfy reasonable, established performance requirements. Consequently, any procuring agency that now uses a specification that precludes the use of recovered materials in building insulation products must revise its building insulation specifications to eliminate that discriminatory provision.

In previously issued guidelines, EPA addressed the obligation of non-Federal procuring agencies to revise their specifications as a requirement of section 6002(d)(2). That section, by its terms, applies only to Federal agencies. EPA believes, however, that the requirements imposed upon non-Federal procuring agencies by section 6002(c)(1) of the Act are co-extensive with the requirements placed upon Federal procuring agencies by section 6002(d)(2). Accordingly, in previous guidelines, EPA drew no distinction between Federal and non-Federal agencies as concerns the statutory sources of the requirement that discriminatory specifications be revised. The distinction is drawn at this time not to indicate a change in the EPA's position, but to answer concerns that the Agency's prior discussion of section 6002(d)(2) may be construed as an unjustifiable expansion of the applicability of that section.

2. Recommendations

In the early 1980s, the Federal government began to use CIDs for insulation purchases, as they are available, rather than specifications written by each individual agency. CIDs are functional in nature and as generic as possible to permit the maximum number of suppliers to bid for contracts. In general, ASTM and ASHRAE specifications are referenced.

EPA has reviewed the materials requirements of the ASTM specifications and finds that they neither allow nor disallow recovered material content. ASHRAE specifications tend to be test and performance standards and thus do not refer to specific material content. EPA has also reviewed specifications used by Federal agencies. HUD programs list certain Federal specifications and reference minimum property standards, which currently refer to local building codes. Local building codes reference the ASTM and ASHRAE specifications. DOE weatherization program specifications that deal with material content require conformance with equivalent ASTM specifications. GSA referenced ASTM and DOD military specifications and commercial item descriptions in 1986 procurements.

The military specifications address the issue of recycled content in one of two ways, depending on the specification. Either recycled content was neither allowed nor disallowed in the material description or there was a special clause requiring that recovered materials be used to the maximum extent practicable. Recovered materials was defined to mean "materials which have been collected or recovered from solid waste and reprocessed to become a source of raw materials as opposed to virgin raw materials. None of the above shall be interpreted to mean that the use of used or rebuilt products is allowed."

As previously discussed, all procuring agencies must assure that their specifications for items designated by EPA are revised, as necessary, to allow the use of recovered materials to the maximum extent practicable. If the use of CIDs and standard specifications over which procuring agencies have no direct control continues, another method to assure maximum use of recovered material content in building insulation products must be employed.

a. *Use of commercial item descriptions.* EPA believes that the use of industry standards and CIDs is an efficient procurement practice and therefore recommends in § 248.11(a) of the final guideline that Commercial Item Descriptions and equivalent standards continue to be used whenever possible. However, the use of CIDs and industry standards does not absolve procuring agencies of the requirement to review specifications to assure that recovered materials are used to the maximum extent possible without jeopardizing the end use of the item. As CIDs or industry standards are adopted, procuring agencies must review them thoroughly to be certain that no discrimination against recovered materials exists.

b. *Use of invitations for bids and requests for proposals.* Contractors buy a large portion of the insulation purchased with appropriated Federal dollars as part of their work to build or renovate structures. Therefore, to fulfill their obligations regarding procurement of building insulation products containing recovered materials to the maximum extent practicable, EPA recommends in § 248.11(b) of the guideline that procuring agencies insert minimum content standards or

equivalent preferences for recovered materials content in building insulation in their contract solicitations.

A commenter questioned EPA's recommendation to use CIDs whenever possible and stated that RCRA requires procuring agencies to use specifications that affirmatively require the use of recovered materials "to the maximum extent practicable." EPA believes that returning to the use of separate specifications for government procurements would be burdensome, expensive, and time consuming for procuring agencies and their contractors. Further, EPA believes that inserting minimum content standards in IFBs and RFPs is the most efficient way to assure use of recovered materials to the maximum extent practicable.

However, EPA is aware that architects, designers, engineers, and building contractors refer to commercial item descriptions, national standards, and local building codes when preparing their solicitation documents. Therefore, EPA recommends that the entities responsible for drafting such codes and standards consider incorporating the recommended minimum content standards.

Another commenter agreed that minimum content standards should be inserted in IFBs and RFPs but stated more was needed. The commenter recommended that procuring agencies include such information in pre-bid conferences and notices about bids; the commenter further recommended that EPA sponsor seminars for Federal and state agencies and their contractors to explain how the section 6002 requirements are to be incorporated into bids and bid solicitations. EPA notes that the first suggestion is already covered under the promotion program requirements discussed below. With respect to the second suggestion, regional seminars regarding section 6002 requirements are currently being planned.

c. *Exclusion of products that do not meet performance standards.* Certain building insulation products cannot be made with recovered materials content without jeopardizing performance standards. In general, this situation applies to specialty materials and insulation items that must meet very stringent performance requirements. In most cases, EPA does not believe that such items will be offered to procuring agencies with recovered materials content. If such items are offered and found to fail performance tests, § 248.11(c) recommends that an agency document any finding that, for a particular end-use, an item containing recovered materials content will not meet reasonable performance standards. The documentation should reference the particular tests used to judge performance. Procuring agencies should also reference such documentation in subsequent solicitations for the specific item to avoid repetition of previously documented findings.

d. *New and adapted products.* EPA believes that as new building insulation products enter the marketplace and as recycling technologies advance for feedstocks used in insulation manufacture, additional types of building insulation with recovered content will become available. EPA recommends in § 248.11(d) of the guideline that procuring agencies assure that language in new specifications for new building insulation products allows recovered materials content. EPA further recommends that as new building insulation products containing recovered materials are identified, the same approaches to procurement recommended in this guideline for existing products be inserted in invitations for bids and requests for proposals whenever the new products could be offered.

The annual review procedure detailed in § 248.24 of this guideline, the certification and estimation process detailed in § 248.23, and the case-by-case procurement approach detailed in § 248.21 provide methods to monitor the introduction of recovered materials content in building insulation products where such use may be developing.

G. Affirmative Procurement Program

RCRA section 6002(i) requires procuring agencies to adopt an affirmative procurement program to ensure that building insulation products containing recovered materials are purchased to the maximum extent practicable. The program must contain four elements: (1) A recovered materials preference program; (2) a promotion program; (3) procedures for estimation, certification, and verification of recovered materials content; and (4) procedures for annual review and monitoring of the program's effectiveness. The program must be established within one year of the date of publication of this guideline as a final rule.

The following sections explain EPA's recommendations for each element of the affirmative procurement program.

1. Recovered Materials Preference Program

Under section 6002(i), procuring agencies have three options for implementing the preference program. They can employ a case-by-case approach, adopt minimum content standards, or choose an approach that is "substantially equivalent" to the preceding approaches. The guideline recommends that procuring agencies adopt minimum content standards for those building insulation products commercially available with recovered materials content. A list of products and recommended minimum content standards is provided. The guideline further recommends a procedure for implementing the minimum content standards approach when contracting for building design, construction, alteration, or repair. For individual procurements of a type of insulation for which the procuring agency has not established a minimum content standard, EPA recommends that the procuring agency use the case-by-case approach and recommends methods for implementing this approach when using sealed bidding or competitive negotiation.

EPA notes that these approaches are *recommended*, not required. Procuring agencies may adopt "substantially equivalent" alternatives. However, EPA believes that if a procuring agency follows the recommendations, it will meet the requirements of RCRA. Procuring agencies that adopt other approaches must ensure that their preference programs achieve the procurement of building insulation products "with the maximum percentage of recovered materials practicable."

The following sections provide a detailed discussion of the basis for the recommended minimum content standards, including legal and technical considerations; the recommended procedure for implementing the minimum content standards approach when using contractors; and the recommended case-by-case approach.

a. *Background.* Considering the range of building insulation products commercially available with recovered materials content, EPA believes that the use of minimum content standards is the most practical approach for procuring agencies to use. The minimum content standards approach would also be the most effective way to insure that building insulation products are purchased with the maximum percentage of recovered materials practicable, as required by RCRA sections 6002 (c) and (i).

EPA today recommends minimum content standards for most types of building insulation products. EPA believes that these minimum content standards are the highest that are currently practicable, and procuring agencies would therefore meet the

requirements of section 6002 if the minimum content standards are adopted. These standards are discussed further in section IV.G.1.d. of this preamble.

b. *Alternatives considered.* In addition to minimum content standards and case-by-case procurement, EPA considered two other approaches for a preference program: price preferences and set-asides.

As discussed in the final paper guideline, 53 FR 23553 (June 22, 1988), section 6002(i) requires that any affirmative procurement program be consistent with applicable provisions of Federal procurement law. From time to time, Congress has established preferential procurement programs in order to attain socioeconomic goals. Among those are the Small Business, Labor Surplus Area, and Minority Business procurement programs. EPA considered applying either or both of the mechanisms used in those programs—price preferences and set-asides—to this guideline. A price preference allows the procuring agency to pay a higher price, if necessary, for a specified product from preferred vendors. A set-aside requires the procuring agency to award a certain percentage of its contracts to preferred vendors of a product regardless of price. Price preferences and set-asides are currently being used in some state programs for the procurement of paper and paper products containing recovered materials. As of October 1988, eight states and two cities use price preference programs in which products containing recovered materials may cost from 5 to 10 percent more than products made with virgin materials. Three states have set-aside programs, two for paper and paper products, the other for all types of products. Several of these states report that they successfully procure products containing recovered materials.

EPA has considered recommending these programs at the Federal level. In the case of existing Federal preferential procurement programs that allow a price preference or set-aside, the Agency found that each had been established under explicit statutory authority or a specific Executive Order. Neither the statutory language nor the legislative history of section 6002 seems, however, to contemplate the adoption of either price preferences or set-asides, and doing so would conflict with existing Federal procurement regulations. Therefore, rather than recommending price preferences or set-asides, EPA is recommending that procuring agencies use the procurement mechanisms provided in RCRA section 6002(i)(3).

c. *Legal considerations.* RCRA section 6002(i)(1) requires that affirmative procurement programs be "consistent with applicable Federal procurement law." EPA was concerned that minimum content standards might violate the Competition in Contracting Act of 1984 (CICA) (10 U.S.C. Chapter 137) and the Federal Acquisition Regulation (FAR) (48 CFR Ch. 1). Both provide that specifications restricting what can be offered are legally permissible only to the extent that they reflect the Government's minimum needs or are authorized by law. (CICA 2711(a)(2), 48 CFR 10.002(a)(3)(ii).) EPA previously has concluded that RCRA section 6002 provides the necessary authorization. See 52 FR 38844 (October 19, 1987). Section 6002(i)(3)(B) expressly permits agencies to establish specifications which restrict offers to those which meet a minimum content standard. Therefore, minimum content standards are not in violation of general Federal procurement law.

CICA requires agencies to use full and open competitive procedures when procuring property and services. The term "full and open competition" means that all responsible sources must be permitted to submit an offer. In the case of a procurement against a restrictive specification, such as a minimum content standard, "full and open competition" means that all responsible sources who can meet the specification can submit an offer. The preference program recommendation in the guideline is consistent with this requirement, since any person can submit an offer as long as the building insulation products offered contain the minimum recovered content.

d. *The minimum content recommendations.* RCRA provides four criteria for establishing a minimum content standard. Section 6002(i)(3)(B) provides that the minimum content required by a specification must be the maximum available without jeopardizing the intended end use of the item or violating the limitations of section 6002(c)(1)(A) through (C). Thus, the four criteria are (1) the intended end use of the item, (2) availability, (3) technical performance, and (4) price.

For the items designated by this guideline, the criteria are satisfied by setting the minimum content standards at levels which do not interfere with the technical performance of the items and therefore the intended end uses. In general, the use of recovered materials content within the technical limitations is cost-effective in insulation production, regardless of the type. The second criterion, availability, will be the determining factor. There is a possibility, though not a probability, that industries other than insulation may eventually absorb most of the available supplies of recovered materials suitable for certain types of building insulation (e.g., slag used in rock wool production). Should that occur, the case-by-case approach described below can be used until it is certain that market stimulation for the recovered material is no longer needed.

EPA believes that minimum content standards can be set most efficiently by the percentage by weight in relation to other ingredients for each type of building insulation product. While there are variations in the technically acceptable levels of recovered materials content among the myriad types of building insulation products within most material types, they are not wide enough to warrant a separate minimum content standard for each building insulation item.

EPA recommends in § 248.21(a)(4) of the guideline that procuring agencies adopt the minimum content standards listed in Table 6 for all types of building insulation products made with the respective types of material. The standards are based on the core insulation material, disregarding the facings, bindings, or any materials surrounding or attached to the insulation core as discussed above in section IV.B., Scope. The minimum content standards would also apply to the portion(s) of the respective insulation material(s) that is used in composite products.

TABLE 6.—MINIMUM CONTENT STANDARDS FOR RECOVERED MATERIALS IN BUILDING INSULATION PRODUCTS

Material type	Percent by weight
Cellulose loose-fill and spray-on.	75% postconsumer recovered paper.
Perlite composite board	23% postconsumer recovered paper.
Plastic rigid foams:	
Polyisocyanurate/ polyurethane:	
Rigid foam	9% recovered material.
Foam-in-place	5% recovered material.
Glass fiber reinforced.	6% recovered material.
Phenolic rigid foam	5% recovered material.
Rock wool	50% recovered material.

Note: The minimum content standards are based on the weight of material (not volume) in the insulating core only.

Each of the minimum content standards has been set based on technical constraints in the manufacturing processes used in 1988. EPA requested comments on the appropriateness of these standards and

requested specific alternatives. One commenter questioned "why EPA invariably recommended a minimum content standard at the low end * * * when the purpose of section 6002 is to encourage additional purchases of products containing recovered material by the government." The commenter wanted more research by EPA on average percentages of recovered materials used and the average percentage of manufacturers that regularly meet or exceed the average so EPA could substantiate that its recommended minimum content standards are the highest practicable. EPA reviewed the minimum content standards with the respective industries, revised them upwards when possible, and clarified the limitations as needed. EPA confirmed that recovered materials are usually preferred by insulation manufacturers for economic reasons and that higher percentages would be used if performance standards could still be met. Building insulation products are made in several variations for many material types (e.g., perlite composite boards). In such cases, minimum content standards have been set at the low end of a range to accommodate all variations of a particular product type.

There are cases where percentages of recovered materials vary among manufacturers of the same product (e.g., cellulose loose-fill, where the range is 75–80 percent). EPA notes that technical performance of a given building insulation product is critical to its selection by contractors and architects. Products that do not perform well will not be ordered again. Every building insulation product for which a minimum content standard is recommended holds a comparatively small share of the market. EPA believes that increasing market share for products made with recovered materials will have a much greater impact on consumption of recovered materials than raising individual minimum content standards by a few percentage points. EPA further believes that pushing manufacturers to their technical limitations and therefore risking product failure could easily prove counter-productive to "encouraging additional purchases of products containing recovered material."

EPA notes that a commenter speaking for the plastics industry supported the guideline as proposed in principle, stating that the minimum content standards for the plastic foam insulation products "are all indicative of the technology which is being practiced in the industry today."

The following subsections discuss the minimum content standards and include the comments for each product type.

i. *Cellulose loose-fill and spray-on insulation.* The principal feedstock for cellulose loose-fill and spray-on insulation is waste paper. In the case of spray-on insulation, the minimum content standard is applied to the insulating feedstock prior to the addition of adhesives.

Section 6002(i)(2) states that "in the case of paper, the recovered materials preference program required * * * shall provide for the maximum use of the postconsumer recovered materials * * *." Postconsumer waste paper, primarily old newspaper, is not only technically acceptable in cellulose insulation, it is most frequently used.

A variety of chemical additives are also combined with the fibers to retard flammability and to deter pests. The chemical additives are required to meet the performance standards that have been established for this industry. The range of fiber is 75–80 percent, while the range of chemicals is 20–25 percent. The highest percentage of waste paper fiber could jeopardize the performance of the end use product for many manufacturers. For these reasons, EPA recommends a 75 percent postconsumer recovered paper minimum content standard for cellulose insulation as the highest feasible. No comments were received on this minimum content standard.

ii. *Fiberboard.* The American Society for Testing and Materials (ASTM) defines fiberboards in its specification C208 "Insulating Board (Cellulosic Fiber), Structural and Decorative" as follows: fibrous-felted homogeneous panel made from ligno-cellulosic fibers (usually wood or cane) and having a density less than 31 lb/ft^3 (497 kg/m^3) but more than 10 lb/ft^3 (160 kg/m^3). It is characterized by an integral bond which is produced by interfelting the fibers, but which has not been consolidated under heat and pressure as a separate stage of manufacture. Other materials may be added during manufacture to improve certain properties.

In the proposed guideline, EPA inquired whether or not ASTM specification C208 includes the fiberboards made with paper. A commenter informed EPA that "laminated paperboard" and "homogeneous board from repulped paper" were not covered by C208. However, the commenter continued, a fiberboard made with approximately 20% postconsumer recovered paper and approximately 80% bagasse (waste sugar cane fiber) is covered by ASTM C208. Only one company makes this product; the majority of the fiberboards are made with wood fibers only.

EPA has subsequently learned more about all products from commenters. According to their manufacturers, "homogeneous board from repulped paper" does meet ASTM C208, while the laminated paperboards do not meet the density requirements. At least one company uses nearly 100 percent postconsumer recovered paper material in its homogeneous board from repulped paper. This was not true for the laminated paperboard companies. One company uses a range of 50 percent to 80 percent postconsumer corrugated boxes; other companies primarily use kraft linerboard trimmings which are manufacturing and converting wastes. The companies using only wood fiber state that their feedstocks meet the RCRA definition of recovered materials. The wood fibers consist of scrap from plywood plants, lumberyard wastes, trim, waste fiber from hardwood operations and small chip fines which are not of sufficient quality for paper pulp.

In evaluating information submitted by commenters, EPA has concluded that many issues remain unanswered, and information from commenters is contradictory. Therefore, EPA is not able to define this product nor to recommend minimum content standards at this time. EPA will gather further information and will consider recommending minimum content standards for this product at a later date. In the interim, fiberboards made with cellulose that are purchased for insulation use continue to fall within the scope of this guideline, and EPA recommends that procuring agencies use the case-by-case approach, as set out in § 248.21(b), when purchasing this item. This approach is described below in section IV.G.1.f.

Among the issues being examined by EPA are:

1. How should this product be defined? Two options are being considered:

- Option 1—Use the term, *Recycled Fiber Insulating Board,* defined as fibrous-felted, homogenous pulp, or laminated paperboard fiberboard, with or without facings, primarily composed of recovered material(s) (such as paper, cane or wood fibers) which provides thermal resistance and perhaps other properties.
- Option 2—Use the term, *Cellulosic Fiberboard,* and definition used in ASTM specification C208.

2. What should the minimum content standard be? Should it be for

postconsumer recovered paper or for the more broadly defined recovered materials which would include waste wood? In either case, what is the highest practicable percentage of recycled content?

3. Some fiberboards contain postconsumer newspaper, which clearly is a solid waste management problem. Other fiberboards are made with manufacturing wood wastes, which meet the RCRA definition "recovered materials." Are manufacturing wood wastes currently a solid waste management problem? If EPA were to limit the scope of the guideline to fiberboards made from postconsumer recovered paper, would manufacturers switch from wood fibers to postconsumer paper fibers? Would such a switch simply result in a change in the composition of the waste stream without a net reduction in volume? Or, will wood wastes be diverted to another use, such as fuel?

4. Should EPA limit the designated item to fiberboard products that meet the ASTM C208 specification, thus eliminating the laminated paperboards?

5. Should fiberboard be excluded from the guideline because it is technically a structural product, rather then an insulation product?

iii. *Perlite composite board.* The range of products in this type of insulation is made with various formulations of expanded perlite aggregate, selected binders, and old newspaper. The newspaper component is 23 percent to 30 percent, depending on the thickness and strength requirements of the finished product. For example, as the perlite fraction increases, R-value increases and strength decreases. According to the industry, although an increase in the newspaper component would be economically advantageous to the manufacturer, it would interfere with performance requirements in individual products. EPA recommends a minimum content standard of 23 percent postconsumer recovered paper to assure that all variations of perlite composite board are covered by the guideline, and to assure that performance is not jeopardized.

iv. *Polyisocyanurate/polyurethane (PIR/PU) rigid foam board insulation.* The minimum recovered materials content standard for the PIR/PU rigid foams applies to the total feedstocks in the core materials. However, only the polyol fraction contains recovered materials; recovered materials are not available for the other components. Therefore, the minimum content standard cannot be very high. Further, a range of formulations, as shown in Table 7, is used within the industry to achieve special characteristics for different end use products.

Table 7

Components of Polyisocyanurate and Polyurethane Rigid Foam

53–57% isocyanate
20–30% aromatic polyester polyol
15–20% blowing agent
2– 3% surfactants and catalysts

As discussed above, there are also two types of recovered materials used in entirely different processes to make polyol, chemical bottoms (DMT and possibly phthalic anhydride) and PET plastic scrap. EPA solicited but received no comments on its conclusion that DMT and phthalic anhydride waste bottoms qualify as recovered materials under the RCRA definition.

The constraints to increasing the minimum content standard are common to both types of recovered materials. The industry asserts that polyols with higher percentages of recovered materials have characteristics that inhibit the flow of the liquid foaming mass prior to the hardening of the mass into rigid cells. This would have adverse effects on the performance characteristics of the finished products. Further, the PIR/PU rigid foam industry, including all the feedstock suppliers, is currently experimenting with blowing agents other than chlorofluorocarbons (CFCs). These substitute blowing agents are not as efficient as CFCs. Larger quantities by weight may be necessary in the product mixes and would therefore change the relative percentage of polyol. EPA has taken the second constraint into consideration in setting the minimum recovered materials content standard at 9 percent, the highest percentage possible for the lowest percentage of PET-based polyol in the range of product formulations. To avoid confusion in terms and the application of minimum content standards to individual products, one minimum content standard, 9 percent, is to be used for all PIR/PU board products. The trade association for the industry has informed EPA that this level is consistent with current technology. EPA believes that this percentage will provide the maximum amount practicable.

A commenter opposed this standard because it excluded a certain formulation, and provided information about a particular product. EPA concluded that there was sufficient reason to consider the product separately rather than drop the standard for all other related products. This additional product is discussed in the following section.

v. *Glass fiber reinforced PIR/PU foam.* As introduced above, the commenter opposing the 9 percent minimum content standard for PIR/PU rigid foam board insulation stated that its fiberglass reinforced PIR board is produced with a lower proportion of polyol and consequently a lower percentage of recovered materials. The proportions are: 67 percent isocyanate; 15 percent aromatic polyester polyol; and 18 percent catalysts, surfactants, blowing agents, and glass fibers.

The proportion of recovered materials (40 percent) in the polyol fraction is the same as other PIR/PU boards. This results in 6 percent recovered materials in the total formulation. The commenter believed the fiberglass was made with recovered materials. However, EPA has learned that the fiberglass reinforcement may be made with "re-feed," but it is not currently made with a recovered material meeting the RCRA definition.

EPA has determined that this product has different characteristics than the other PIR/PU foam boards (according to Federal specification HH–I–1972/1) and that dropping the minimum content standard for all related products would not meet the objectives of Section 6002. EPA has further determined that this is a separate type of PIR/PU board and should therefore have a separate minimum content standard. EPA has established that the minimum content standard for this product is 6 percent based *only* on the recovered material proportion of the polyol. The table of minimum content standards and the preamble have been revised accordingly.

vi. *PIR/PU foam-in-place insulation.* The minimum content standard for PIR/PU foam-in-place insulation applies to the total feedstocks. However, only the polyester polyol fraction contains recovered materials. The percentages of ingredients is shown in Table 8. The other ingredients also vary compared with PIR/PU board.

Table 8

Components of PIR/PU Foam-in-Place

40% isocyanate
40% polyol
  aromatic polyester, 30%
  polyether, 70%
20% blowing agent

As with aromatic polyester polyols for PIR/PU board products, the recovered DMT or PET is reacted with glycol in similar ratios. The same constraints regarding the eventual change from CFC to another blowing agent also apply to the PIR/PU foam-in-place products. EPA therefore recommends a minimum content standard of 5 percent for PIR/

PU foam-in-place rigid foam. No commenters opposed this standard.

vii. *Phenolic rigid foam insulation.* The only component of phenolic rigid foam insulation that can contain recovered materials is the aromatic polyester polyol which is used in small quantities as a plasticizer. The product formulations vary according to specific product and are expressed in ranges to protect competitive information. The polyol fraction, according to industry spokesmen, was said to be 3 percent to 10 percent of the total. The mixture of glycol to DMT or PET differs from the PIR/PU foams when it is used in phenolics as a plasticizer. The ratio is 10 parts glycol to 90 parts other ingredients.

Industry sources have asserted that there are two technical constraints to setting a higher minimum content standard based on the use of polyol. First, larger percentages of polyol used as a plasticizer produce an end product that is too soft for commercial application with mechanized roofing equipment. Second, manufacturers need leeway in product formulations for different product types and to accommodate potential changes in blowing agents.

A commenter stated that the recommended minimum content standard of 4 percent was acceptable as a minimum but it was probably on the low side. EPA has learned that the product mix for phenolic foam includes slightly more polyol (6 percent) which, according to the glycol/polyol ratio, results in product formulations with 5 percent recovered materials. Therefore, the recommended minimum content standard has been raised to 5 percent recovered materials.

viii. *Rock wool insulation.* The rock wool industry uses either metallurgical slags or natural rock to make rock wool fiber. Although some manufacturers are entirely dependent on slag as feedstock, this is not true in certain parts of the country where good quality metallurgical slags are no longer easily available. EPA believes that the only constraint to setting a higher minimum content standard is the availability of the recovered material feedstock.

As discussed earlier, a commenter recommended that mineral wool produced with spent aluminum potliner be included within the scope of the guideline. EPA has learned that some manufacturers have begun to use spent aluminum potliner in their process lines and that practice may become more common in the future. However, this innovation was not widespread in late 1988 and may be interrupted until hazardous waste issues are resolved. Therefore, EPA has not set a specific minimum content standard for spent aluminum potliner, nor has EPA increased the recommended minimum content standard for rock wool to include the use of potliner. Instead, EPA encourages rock wool manufacturers to include their use of spent aluminum potliner when figuring their recovered material content for purposes of estimation and certification.

EPA also considered geographic availability of rock wool insulation when setting the recommended minimum recovered material content standard at 50 percent. EPA believes that this percentage will provide the maximum amount practicable. No commenters either approved or contested this standard.

ix. *Fiberglass insulation.* Several commenters questioned EPA's decision not to recommend a minimum content standard for fiberglass. One commenter noted "given the mounds of garbage strangling our cities, this is indeed a bizarre position for EPA to take." It was suggested that EPA set a moderate minimum content standard to encourage fiberglass manufacturers to overcome technical problems. While EPA appreciates this point of view, the most immediate technical problem, available supplies of postconsumer glass feedstocks, must still be resolved. Despite mounds of garbage, and a comment that EPA work with public and private agencies to ensure an adequate supply of cullet, neither EPA nor the commenters themselves could discover any current or potential supplies of uncontaminated postconsumer bottle cullet that would not be eagerly absorbed by other industries.

Several other commenters offered another approach to encourage the fiberglass industry to consume additional recovered glass cullet. They suggested including fiberglass in the table of recommended minimum content standards, but with an asterisk rather than a percentage value. The asterisk would note that "no value is established until such time as recovered materials are readily available," or "not practical to establish minimum percentage by weight at this time."

Because the purpose of the guideline is to promote the procurement of products made with materials recovered from the solid waste stream and because fiberglass insulation is not being made routinely with such materials, EPA sees no point in listing it in the table of recommended minimum content standards. EPA believes that use of the case-by-case approach, as recommended in § 246.21(b), is appropriate for fiberglass insulation and will be the most efficient method to implement the preference for recovered materials.

Another commenter suggested that EPA monitor agencies to assure that they are procuring fiberglass with recovered material content and use information from the agencies to revise the guideline. This comment applies equally to all building insulation types. As part of a program to assist procuring agencies to implement the various procurement guidelines, EPA plans to monitor procuring agencies' activities and to review the results of their annual reviews of their programs.

Another commenter stated that fiberglass companies could establish long term contracts with communities that have aggressive curb-side collection programs. EPA considers this a good approach and encourages fiberglass manufacturers to do so.

x. *Polystyrene rigid foam.* In the proposed guideline, EPA stated that polystyrene insulation containing recovered materials is technically feasible but not yet commercially available. For this reason, EPA proposed to recommend that procuring agencies use the case-by-case approach when procuring this product.

A company commented that it produced a polystyrene foam building insulation product that used "a minimum of 25 percent polystyrene that was deemed unusable in food service products due to color or other specification deviations." The commenter proposed a minimum content standard of 25 percent for polystyrene foam ¼ inch and ⅜ inch protection and underlayment boards. EPA learned that in-plant scrap previously sold to outside scrap processors is the only material in current use. Although purchased or postconsumer polystyrene will probably be used if it can be obtained in the future, no materials representing a solid waste management problem are currently being used. Further, the industry trade association has informed EPA that polystyrene products containing recovered materials are not commercially available. EPA therefore concludes that it is premature to set a minimum content standard for this product, or for any polystyrene foam building insulation product, and is retaining in the final guideline the recommendation to use the case-by-case approach when procuring these products.

e. *Recommended procedures for implementing the minimum content standards approach.* Building insulation products are procured directly by (1) government agencies and (2) agency contractors as part of contracts for

building construction, alteration, or repair. Selection of building insulation products thus can be made by agency personnel or by contractors.

EPA believes that the selection of the appropriate building insulation products should be made by the procuring agency architect or contractor architect and should not be left to the supplier or to the construction contractor, who can be expected to select the least expensive product available. In that circumstance, the cheaper price will become the justification for the purchase, because availability only at an unreasonable price is one of the statutorily provided limitations on the requirement to procure building insulation products containing recovered materials to the maximum extent practicable. Therefore, new § 248.21(a)(6) has been added to the final guideline. EPA recommends that procuring agencies which have established minimum content standards for building insulation implement those standards both in the design phase and in procurement of building insulation products or building construction, alteration, and repair services.

EPA is recommending that during the design phase of a building project (1) the designing architect, whether a procuring agency employee or a contractor, be given the responsibility for selecting building insulation products, (2) the designing architect incorporate the procuring agency's minimum content standards into their insulation selection criteria, (3) if more than one type of insulation will satisfy the procuring agency's needs and meet the procuring agency's minimum content standards, then the type with the highest minimum content standard should be preferred, (4) the architect determine whether building insulation products containing the procuring agency's minimum recovered materials content are available, (5) the architect advise the procuring agency in writing when such products are not available and as to the recovered materials content that is available, (6) the architect justify in writing selection of a building insulation product that either does not contain recovered materials or contains less than the procuring agency's minimum, and (7) the procuring agency review the justifications to assure that they are consistent with RCRA section 6002(c)(1). When contracting for building insulation or for construction, alteration, or repair services, EPA recommends that the procuring agency specify in solicitations both the type(s) of building insulation products to be used and the recovered materials content that the products must have.

As explained above under the discussion of the minimum content standard recommendations, it is not possible to set minimum content standards for some types of insulation at this time because they are not commercially available containing recovered materials. For example, industry sources have suggested that polystyrene insulation containing recovered materials is technically feasible, and research and development efforts are underway. Similarly, while fiberglass insulation containing recovered materials is technically feasible, American manufacturers do not routinely produce it. In addition, new types of insulation or insulation products may be introduced, which might or might not contain recovered materials. Thus, there will be instances when the designing architect selects a type of insulation for which the procuring agency has not yet established a minimum content standard. Assuming that the selection otherwise satisfies the requirements of RCRA section 6002, EPA recommends that procuring agencies use the case-by-case approach when procuring these types of insulation.

f. *Case-by-case procurement.* The case-by-case approach means that offers are solicited for the selected type of building insulation with an unspecified percentage of recovered materials content. In other words, offerors may offer building insulation products containing recovered materials ranging from 1 percent to 100 percent of the total product or made entirely with virgin materials. When using sealed bidding, EPA recommends that, in the case of otherwise identical low bids, the procuring agency award the contract to the bidder offering the building insulation product(s) containing the highest percentage of recovered materials.[2] In the case of negotiated procurements, EPA recommends that procuring agencies add to their evaluation criteria a criterion which rewards the offeror for the quantity of recovered materials in the building insulation products offered. In other words, if offeror A offers a building insulation product containing 45 percent recovered materials and offeror B offers a building insulation product containing 50 percent recovered materials, both offerors will receive credit for offering products containing recovered materials, but Offeror B will receive more credit than Offeror A.[3]

One commenter stated that it was unclear whether the case-by-case approach is to be used only within product types of the same material or if it applies across product types (e.g., polyisocyanurate and polystyrene rigid foam boards). It is EPA's intent that the case-by-case approach only be used within a product type of the same material (e.g., two separate bids for fiberglass batt).

g. *Limitations set by RCRA.* As mentioned above, the minimum content standard would be subject to the four limitations provided in RCRA section 6002, namely, not jeopardizing the intended end use of the product, reasonable availability, reasonable price, and ability to meet the performance standards in the specifications. Procuring agencies must also be able to maintain a reasonable level of competition. For example, if a procuring agency determines that it cannot obtain a type of building insulation containing the minimum amount of recovered materials or that it cannot obtain the insulation at a reasonable price, or that an insufficient number of offers can be obtained to meet competition requirements, the procuring agency can re-evaluate the minimum content standard. Lower minimum content standards can be tested for the particular type of insulation product. Section 248.21(c) of the guideline provides that the recommended procurement approaches, or any other approach used by a procuring agency, are subject to the RCRA limitations.

h. *Procurement procedures.* Procuring agencies must examine their procurement policies and procedures and eliminate those which discriminate against recovered materials content in building insulation products. Note that the phrase "procurement policies and procedures" does not include published regulations. Instead, EPA is referring to internal policies and/or procedures which would unjustifiably inhibit or preclude procurement of building insulation products containing recovered materials.

In the proposed guideline, EPA *recommended* that agencies review their procurement practices. A commenter

[2] EPA believes that the recovered materials preference authorized by section 6002 should be incorporated into the equal low bids provision of the Federal Acquisition Regulation (FAR). Therefore, EPA recommends that Federal entities responsible for periodic revision of the FAR consider modifying 48 CFR 14.407-6 to incorporate a preference for vendors offering to provide procurement items which have been designated by EPA under RCRA section 6002(e).

[3] The case-by-case approach differs from the minimum content standards approach in this respect: under the latter approach, offerors must meet the minimum standard but are not rewarded for offering products containing higher percentages of recovered materials.

stated that procuring agencies *must* eliminate discrimination in purchasing practices to conform with statutory requirements. EPA agrees. All procuring agencies, Federal and non-Federal alike, are required by RCRA sections (c)(1) and (i) to procure items designated by EPA composed of the highest percentage of recovered materials practicable. Even if a procuring agency has nondiscriminatory specifications, if a procurement practice undercuts procurement of products containing recovered materials, the procuring agency has failed to meet the statutory requirements. As discussed above, under RCRA section 6002(c)(1), there are only four reasons for failing to procure items containing recovered materials: the level of competition is unsatisfactory; the items are not reasonably available within a reasonable period of time; the items fail to meet the performance standards set forth in the applicable specifications; or the items are only available at an unreasonable price. Unless the procurement practice that precludes purchase of EPA-designated items containing recovered materials is justified on one of these grounds, it is contrary to section 6002. Therefore, it is implicit in RCRA sections 6002(c)(1) and (i) that procuring agencies must review and revise their practices. EPA has amended § 248.21(d) in the final rule to state that agencies must, rather than should, do so.

EPA notes that in the lubricating oil and retread tires procurement guidelines, it was stated that RCRA section 6002(d) required procuring agencies to review and revise their procurement practices. In those guidelines, EPA concluded that the term "specifications," as used in section 6002(d), should not be viewed in the narrow technical sense of an item specification and that Congress intended to refer to all procurement practices related to specifying what a procuring agency intends to purchase. (See 53 FR 24710, June 30, 1988, and 53 FR 46567, November 17, 1988.) EPA has reconsidered its prior conclusion regarding the meaning of "specifications" in section 6002(d). EPA has now concluded that the bases for the requirement to review and revise procurement practices are section 6002(c)(1) and (i).

A commenter urged that performance characteristics be the primary criterion for choosing a building insulation product to avoid discrimination against products without recovered material content. If all performance characteristics are weighed and several products competing for the same application appear to be equal, the commenter supported procurement based on minimum content standards. Other commenters were concerned that the guideline did not mandate the selection of the product with the highest recovered material content whenever the option to choose between products arises. Similarly, commenters stated that, in situations where two or more products meet a specific need, a product containing recovered materials must be used.

EPA believes that these commenters overstate the intended application of the Act. First, it is clear that Congress understood and intended that section 6002 would discriminate against items produced with virgin materials. This is evidenced in the requirement to develop a preference program for items produced with recovered materials. Moreover, the Act mandates that procuring agencies consider the use of minimum content standards as an approach to implementing this preference. Thus, Congress rejected the notion that performance characteristics of designated procurement items should be the primary criterion for selection as between items produced using recovered materials and those produced with virgin materials.

Conversely, Congress did not require the selection of a particular product simply because that product contains a higher recovered material content than other products of the same type offered in response to a procurement solicitation. The Act specifically limits the preference for recovered materials so as not to subordinate certain other policies pursued through the procurement process. Thus, for example, the policy preferring the procurement of items produced using recovered materials is explicitly subordinated to the policy that a satisfactory level of competition be maintained. Additional limitations are set forth in section 6002(c)(1) (A) through (C). These limitations are carried forward in section 6002(i)(3)(B) and delimit the preference program recommended in the final guideline. Thus, the recommended minimum content standards set forth in § 248.21 describe EPA's judgment as to the current level of recovered materials content that can be required in agency specifications without violating the limitations of section 6002(c)(1) (A) through (C). Accordingly, no additional preference is given to offerors who propose to supply items containing a percentage of recovered materials content higher than the recommended minimum. To do so would render the procurement process unworkable, and would elevate the policy for procurement of recovered materials over the limitations on that policy prescribed by the Congress.

As between two equally suitable *types* of building insulation products for which minimum content standards have been established, however, there is a preference for the use of the *type* of product (e.g., cellulose loose-fill versus perlite composite board) having the higher established minimum content standard. Because the recommended minimum content standards account for the limitations of section 6002(c)(1) (A) through (C), the preference for the type of product having the higher minimum content standard is consistent with the Act. Moreover, since the selection of the type of insulation to be procured will be made prior to issuance of the procurement solicitation, this preference will not complicate the procurement process. It is the responsibility of the procuring agency, rather than EPA, to determine whether more than one type of building insulation is suitable for its needs. The selection of a particular type of building insulation may be governed by architectural considerations, applicable building codes, desired performance characteristics, and other factors. However, in those cases where more than one type of product meets the agency's needs, the product having the highest established minimum content standard should be specified.

2. Promotion Program

The second requirement of the affirmative procurement program is a promotional effort by procuring agencies. Section 248.22 of the guideline recommends several methods for procuring agencies to use for disseminating information about their preference programs, such as placing statements in solicitations, discussing the program at bidders' conferences, informing industry trade associations about the program, providing information about building insulation made with recovered materials in the product information programs sponsored by the Department of Housing and Urban Development, and issuing press releases discussing the affirmative procurement program. In § 248.22(f) of the proposed guideline, EPA recommended press releases to the recycling industry. In response to comments requesting broader promotion of the affirmative procurement program, EPA has included architectural and building trade publications in the final recommendation regarding press releases. This recommendation also will

serve to inform contractors of their responsibility to comply with the guideline when specifying or supplying building insulation products.

Under section 521 of the National Housing Act, HUD is required to provide product-related services and publications. These should be used as avenues to publicize recovered materials content in insulation. HUD publications include:

- National Building Codes,
- Bulletins,
- Materials releases,
- Engineering bulletins,
- Use of materials information.

EPA recommends that procuring agencies use all such avenues to publicize their requirements for recovered material content in building insulation products.

3. Estimation, Certification, and Verification

The third requirement of the affirmative procurement program set forth in section 6002(i) covers estimation, certification, and verification of recovered material content in procurements. Estimates and certifications of content in an item are most easily expressed as a percentage of total content by weight and can range from 0 percent to 100 percent, depending on the type of product or the feedstocks used in manufacturing the item. Many issues have been raised by commenters on previous guidelines about these requirements, such as when the information should be provided, who is to provide it, and how it is to be obtained. To clarify this subject, it is necessary to review the requirements of the statute.

a. *Estimation.* RCRA section 6002(c)(3)(B) and section 6002(i)(2)(C) require that, after the effective date of a guideline, contracting officers must require vendors to provide an *estimate* of the total percentage of recovered materials utilized in the performance of contracts to supply building insulation products.

EPA believes that this requirement is for the purpose of gathering statistical information on price, quantity, availability, and performance of products made from recovered materials. EPA further believes that this requirement applies regardless of the approach used to acquire building insulation products (i.e., minimum content standards, case-by-case procurement, or an equivalent alternative). Estimates may differ from percentages of minimum recovered content specified in certifications and will provide up-to-date information for the annual review which is required of procuring agencies.

Section 248.23(a) requires that contracting officers require vendors to provide estimates of the total percentage of recovered content in building insulation products supplied under their contracts. Note that the percentage of recovered content refers to the total content of the insulation *core* rather than the entire insulation product, which includes other items such as facings or bindings. EPA recommends that procuring agencies retain these data for three years by type of product, quantity purchased, and price paid.

b. *Certification.* The use of certifications is common in government procurement. It is written assurance that goods or services delivered will conform to the contract specifications. Failure to meet the conditions which have been certified can result in penalties to a vendor. RCRA section 6002(c)(3)(A) requires that after the effective date of this guideline, vendors must "certify that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by applicable specifications or other contractual requirements." RCRA 6002(i)(2)(C) requires "certification of minimum recovered material content actually utilized * * *."

Together, these sections could be interpreted to mean that multiple certifications will be required: one when offers are submitted, and another with each shipment. This issue was addressed in the paper guideline issued June 22, 1988 (53 FR 23546). EPA concluded that one certification would fulfill both statutory requirements and, by requiring the certification no matter which approach is used, procuring agencies could adapt their purchasing programs most easily. For the same reasons enunciated in the paper guideline, EPA recommends in § 248.23(b) that procuring agencies meet the certification requirement in RCRA sections 6002(c)(3)(A) and 6002(i)(2)(C) by using a single certification prior to delivery or installation.

The final guideline does not require that the contractor certify the actual recovered materials content of the products supplied, but rather that the recovered materials content actually used meets or exceeds the contract minimum. When minimum content standards are used, the contract minimum is the standard specified in the solicitation; see § 248.23(b)(1). When case-by-case procurement is used, the contract minimum is the minimum as specified in the offer provided in response to the solicitation; see § 248.23(b)(2).

Accordingly, EPA recommends that procuring agencies require certification when offers are submitted and, in the case of a contract for construction, alteration, or repair, prior to installation by a contractor, regardless of whether the case-by-case, minimum content standard, or a substantially equivalent approach is used. Also, as previously stated, the successful vendor must estimate the actual recovered content in building insulation products that are supplied. The estimate may or may not be different than the minimum percentage that is certified.

EPA understands that for both estimation and certification, the vendor might not have direct knowledge of recovered materials content. Only the manufacturer that produces the insulation product will have that information. However, there is no direct authority in RCRA section 6002 for the Federal Government to require this information from anyone but the vendor. Therefore, vendors or contractors must make their own arrangements for obtaining this information from manufacturers.

c. *Verification.* Procuring agencies also are required to establish "reasonable verification procedures for estimates and certifications." See RCRA section 6002(i)(2)(C). If these verification procedures include access to manufacturers' records, then the procuring agency must use some authority other than RCRA to inspect these records or must require vendors or contractors to have an agreement with the manufacturer to supply such information or access to the procuring agency.

In general, insulation manufacturers maintain records of the feedstocks used in each "batch" for their own internal quality and specification controls. The optimum mix of recovered and virgin materials often remains the same for each type of insulation though variations may occur in individual batches.

In most cases, manufacturers will be able to provide a certification to vendors or contractors as to the specific feedstock content of the product shipped to a customer. It is not intended that the guideline require any additional records to be kept by the manufacturers; records normally kept should be complete enough to estimate or certify to recovered materials content accurately. However, to simplify the verification procedure and accommodate variations dictated by quality control and supply, the average of recovered materials used in each specific product over a one-month period may be used, if necessary,

to meet the verification of estimates requirement.

EPA recommends in § 248.23(c)(2) that one-month figures be used for estimates of feedstock percentages. If it is necessary to verify the exact content of a specific batch of insulation, the manufacturers' records for that batch can then be consulted.

However, if the vendor knows that the recovered materials content of an insulation product supplied to procuring agencies differs from the monthly average, then the average cannot be used. For example, if the monthly average is 30 percent recovered materials content but the insulation product supplied contains no recovered materials or conversely contains 60 percent recovered content, then the vendor cannot use the monthly average. Use of the average in such instances will be viewed as an attempt to circumvent the requirements of RCRA in supplying insulation products to the procuring agency.

Monthly *averages* cannot be used for certification. Every shipment may not contain recovered materials content equal to or greater than the average. However, the *minimum* percentage of recovered materials used in insulation products by the manufacturer can be determined from monthly records for certification purposes.

It has been suggested that the various insulation industries are very competitive and that the "recipes" for various insulation products are carefully guarded trade secrets. However, the special ingredients that distinguish one manufacturer's product from another's are used in very small quantities. The volumes of virgin and recovered material feedstocks in question are far larger and are the only feedstocks for which verification procedures would be necessary. EPA recommends in § 248.23(c)(1) that, should it be necessary to consult manufacturers' records for verification, records of other ingredients should not be reviewed in order to protect trade secrets.

A commenter stated that verification of certifications would appear to require special record keeping by manufacturers. Difficulties would be experienced by multi-plant operations because recovered materials are not available in equal quantities to each plant. Products are sold to distributors or wholesalers who then sell to procurement agencies. Certifications are requested after the fact, so it would be difficult to track down recovered materials in such cases.

EPA again acknowledges that the Federal government does not have authority under section 6002 of RCRA to require information from manufacturers. However, there is a relatively simple voluntary method to overcome this difficulty. As products are commonly tracked by batch numbers, manufacturers can routinely provide their distributors with the percentage of recovered materials for each batch. Not only would vendors and contractors have information on hand when preparing their offers, the verification process would become straightforward. When necessary, manufacturers could simply pull their existing records for the batch in question. Therefore, EPA has included this method as a recommendation to procuring agencies in § 248.23(c)(3) of the final guideline.

4. Annual Review and Monitoring

The fourth requirement of the affirmative procurement program is an annual review and monitoring of the effectiveness of the program.

EPA recommends that the review include an estimate of the quantity of building insulation products purchased during the year, an assessment of the effectiveness of the agency promotion program, and an assessment of any remaining barriers to procurement of building insulation containing recovered materials. In assessing barriers to procurement, procuring agencies should determine whether they are internal or external. Internal barriers, such as resistance to use of building insulation products containing recovered materials by agency personnel, without cause, can be corrected by the procuring agencies. External barriers, such as unavailability of building insulation products containing recovered materials, may well be beyond the agencies' control.

EPA also believes that procuring agencies should review the range of estimates and certifications of recovered materials content provided by vendors or contractors during the year. Significant and repeated variations between the procuring agency's standards and vendor's certifications and estimates would signal whether changes in approach (e.g., from case-by-case to minimum content standards) or different minimum content standards are warranted. EPA further believes that information provided by the estimation requirement will be particularly helpful to procuring agencies when they review their compliance with the requirement to purchase building insulation products with the highest percentage of recovered materials practicable.

EPA has determined that one intent of the requirement that vendors or contractors estimate the total percentage of recovered materials content is to provide information to procuring agencies that can be used in future procurements. Further, procuring agencies need to keep up-to-date on changes in recycling practices and availability of products containing recovered materials content. For these reasons, EPA believes that agencies should keep statistical records of building insulation product procurements to implement properly the intent of Congress in requiring an affirmative procurement program. A summary of these records should be included in the annual review and monitoring of the effectiveness of the program.

A program for gathering statistics need not be elaborate to be effective. However, agencies should monitor their procurements to provide data on the following:

(a) The percentages of recovered materials content in the products procured or offered;

(b) Comparative price information on competitive procurements;

(c) The quantity of each item procured over a fiscal year;

(d) The availability of the insulation products to procuring agencies;

(e) Type of performance tests conducted, together with the categories of building insulation products containing recovered materials content that failed the tests, the percentage of total virgin products and products containing recovered materials content supplied that failed each test, and the nature of the failure;

(f) Agency experience with the performance of the procured products.

Rather than keep records of each test performed, procuring agencies should identify the performance tests used and maintain records, by test, on the percentage of failures by building insulation products containing recovered materials content and on the nature of these failures.

EPA recommends that each procuring agency prepare a report on its annual review and monitoring of the effectiveness of its procurement program. If the agency is using the case-by-case approach, the report should discuss how that approach is maximizing the use of recovered materials content as required by RCRA section 6002. If the minimum content standard approach is used, the agency should discuss whether the standard should be raised, lowered, or remain constant for each item. The discussion should be based on reasonable determinations of price, quality, and availability as well as a comparison of estimates and certifications provided by the vendors or contractors. Agencies

should also document their review of specifications and list those which are revised each year.

EPA notes that this guideline will apply to state and local procuring agencies, as explained above under "Applicability." Information drawn from the experience of Federal procuring agencies about purchases of building insulation products containing recovered materials would therefore be useful to state and local purchasing officials. Accordingly, EPA encourages Federal procuring agencies to make their reports available to the public.

Several commenters stressed the need for Federal procurement guidelines to provide direction to state and local agencies which are waiting for leadership. Another commenter wondered why EPA encourages procuring agencies to make their reports available to the public when they can already be obtained through the Freedom of Information Act. EPA recognizes that the reports would be available through such means but voluntary distribution by procuring agencies might speed the transfer of information.

A commenter agreed with the proposed annual review and monitoring recommendations and further suggested that procuring agencies provide their reports to the Office of Federal Procurement Policy and to EPA to permit EPA to monitor the program and consider revisions to the guideline. Valuable as these suggestions are, EPA has previously considered both options and concluded that it has no authority under section 6002 to require or recommend that procuring agencies submit their reports to OFPP or to EPA. (EPA does plan to monitor procuring agencies' implementation of the procurement guidelines.)

Finally, EPA notes that while the annual review and monitoring requirements of RCRA section 6002 apply to State and local procuring agencies and to contractors, EPA's recommendation for recordkeeping and reporting is less pertinent for these persons than for Federal agencies. Most EPA recommendations are germane to implementing section 6002. In the case of the recordkeeping and reporting recommendations, however, the recommendations are more germane to the Federal agencies, which are required to report to the Office of Federal Procurement Policy regarding implementation of section 6002. In addition, reports generated by the Federal agencies are available to the public through Freedom of Information Act requests, and the experience of Federal agencies will serve as an important teaching tool for non-Federal agencies trying to implement affirmative procurement programs.

In the case of non-Federal procuring agencies and contractors, there is no reporting requirement in section 6002, and the Freedom of Information Act does not extend to their documents (although there might be a similar state provision). EPA believes that reporting is less relevant when the report is unavailable unless the agency or contractor chooses to make it available. Therefore, EPA continues to recommend recordkeeping and reporting but acknowledges that these recommendations do not apply equally to non-Federal agencies and contractors.

V. Price, Competition, Availability, and Performance

As described above, section 6002(c)(1) of RCRA provides that a procuring agency may decide not to purchase an item designated by EPA if it determines that the item is available only at an unreasonable price, a satisfactory level of competition cannot be maintained, the item is not reasonably available within a reasonable period of time, or the item fails to meet the agency's reasonable performance standards. EPA has considered the effect of these limitations on procurement of building insulation products containing recovered materials.

Commenters asked EPA to compile information on availability, relative price, and performance of building insulation products, including lists of manufacturers, price comparisons by products and regions, and performance tests; to distribute this information to state and local governments; and to sponsor seminars to share this information with interested persons. EPA agrees that further guidance will need to be provided to procuring agencies and vendors regarding the implementation of this as well as the other procurement guidelines. Therefore, the Agency will be developing a plan for educating the various procuring agencies and vendors. EPA also plans to establish informal, highly available mechanisms to disseminate information, such as a telephone hotline.

A. Price

Several factors will affect the market price, or bid price, of the designated building insulation products, including the availability and cost of recovered material feedstocks, transportation costs, and so on. Because these factors can be site specific and are variable, EPA believes the best method of determining the price is through the marketplace. Further, fluctuation in the overall economy affects the prices of individual building insulation products.

In many cases, more that one type of insulation could be selected for a particular installation. The different types of insulation do not compete on pricing alone; otherwise the least expensive insulation product would be used in all instances. There is no purchasing history based on relative prices of building insulation products made with virgin versus recovered material content. The only price comparison EPA could make is by type of insulation made with virgin materials or with recovered materials content at a particular point in time. The price differences may be the result of factors other than recovered material content, such as special additives or features in one product as compared with another.

Further, manufacturers have suggested that the use of recovered materials rather than virgin materials rarely results in price differences. Cellulose and rock wool insulation are rarely available with primarily virgin content. Cellulose fiberboard and the polyisocyanurate/polyurethane rigid foams are commonly, though not always, made with recovered materials. Price differences between similar products are usually the result of factors unrelated to the choice of virgin or recycled feedstocks.

Commenters on several of EPA's procurement guidelines, including the proposed building insulation products guideline, stated that the term "reasonable price" as used in RCRA section 6002 refers to price preferences. EPA disagrees. As previously stated in the paper guideline, 53 FR 23559 (June 22, 1988), RCRA section 6002 does not provide explicit authority to EPA either to authorize or to recommend payment of a price preference or use of set-asides. Therefore, unless an agency has an independent authority to provide a price preference or to create a set-aside, EPA believes that a price is "unreasonable" if it is greater than the price of a competing product made of virgin material.

However, it should be borne in mind that, when product specifications require a recovered material content, there is no way to guarantee that every item procured under those specifications was procured at a price no greater than the price that would have been paid in the absence of those specifications. On the contrary, EPA expects that there will be fluctuations in price in both directions. Therefore, EPA interprets the reasonable price provision of RCRA section 6002(c)(1)(C) for those specifications to mean that there is no

projected or observed long-term or average increase over the price of comparable virgin items.

A commenter stated that when minimum content standards are used, the product specified by the procuring agency is a different product from one made entirely from virgin materials and that, therefore, any price comparison between the two is irrelevant. EPA does not agree that the price of a virgin product is irrelevant. Since price is one of the factors used in setting minimum content standards, procuring agencies should monitor prices to determine whether the standards should be revised. A long-term (e.g., one year) increase over the price of a comparable virgin product might be an indication that the minimum content standard is inappropriate.

Finally, a commenter disagreed with EPA's interpretation of "unreasonable" and noted that the legislative materials upon which EPA relies for this interpretation post-date by several years the original enactment of RCRA, do not indicate any intention on the part of Congress that section 6002 only apply in the rare situation of a tie bid, and only refer to recycled paper. This commenter raised the same concern in commenting on the proposed retread tires guideline; EPA responded to it in the final retread tires guideline as follows:

> While the commenter has correctly characterized the legislative materials, EPA disagrees that one should thus conclude that Congress intended for procuring agencies to pay a premium price for products procured pursuant to section 6002. EPA believes that if Congress had meant to authorize price premiums, then Congress would have explicitly said so in section 6002 and/or the legislative history. In the absence of this explicit authority, EPA can neither require nor recommend that procuring agencies pay a premium price. 53 FR 46569 (November 17, 1988).

EPA continues to believe that section 6002 does not authorize price premiums.

B. Competition

EPA recommends that determinations of "satisfactory" competition be made in accordance with Federal procurement law. For example, 48 CFR Part 14, Sealed Bidding, allows for award of bids even when a small number of bids have been received; see 48 CFR 14.407–1. In the case of negotiated contracts, 48 CFR 15.804–3(b) provides that, for purposes of waiving the requirement for cost and pricing data, competition exists if offers are solicited; two or more responsible offerors that can satisfy the Government's requirements submit price offers responsive to the solicitations's expressed requirements; and these offerors compete independently for a contract to be awarded to the responsible offeror submitting the lowest evaluated price.

EPA believes that, in most cases, the number of manufacturers for the designated types of building insulation products is sufficient to assure competitive bidding. Further, many vendors are able to offer products from a single manufacturer. In those cases where a building insulation product is made by only one company, there still should be sufficient competition among vendors. EPA does not foresee insufficient competition for building insulation products made with recovered materials content. If a lack of competition results because of the recommended minimum content standards, EPA recommends that procuring agencies re-evaluate the minimum content standards.

C. Availability

EPA believes that the building insulation products designated in the guideline promulgated today are currently available with recovered materials content in each of the following insulation categories: cellulose loose-fill, perlite composite board, rock wool, polyurethane/polyisocyanurate rigid foam-in-place and board, glass fiber reinforced polyisocyanurate/polyurethane rigid foam, and phenolic rigid foam. Although statistics on recovered material feedstock use have not been gathered for any type of building insulation product, both manufacturers and suppliers of recyclable feedstocks have indicated the flow of recovered materials into the insulation industries. Fiberglass insulation made with recovered cullet is not consistently available, and polystyrene insulation made with recovered materials is only in the developmental stages.

If building insulation products containing recovered materials are not available, then procuring agencies are not required to buy them *at that time.* Procuring agencies are required to continue to promote their affirmative procurement programs, however, in order to encourage availability. In addition, as discussed previously, procuring agencies are required to review procurement practices and revise such practices if they discourage the availability of building insulation products containing recovered materials.

Commenters requested that EPA list manufacturers of building insulation made with recovered materials in the guideline. EPA believes that it is inappropriate to do so. Because the list would require constant updating, EPA believes that other, less formal, highly available mechanisms for providing this information should be used. As noted above, EPA plans to establish such mechanisms for disseminating this and other information, including a telephone hotline. In addition, EPA has placed in the docket for this guideline a document entitled *Insulating Material Types and Manufacturers,* which contains lists of manufacturers of building insulation products. This document has been amended to include additional manufacturers that were suggested by commenters. EPA has been informed that a national directory of recycled products will be published shortly which is being designed to keep such lists up-to-date and make them widely available.

Several commenters stated that, if procurement officers conclude that fiberglass insulation products are not included in the guideline, serious material shortages and scheduling delays would result. These commenters appear to refer to supplies of the other competing building insulation products. None of the commenters offered facts to support this position. EPA notes, however, that procuring agencies must base their decision not to procure an item made with recovered materials on the statutory criteria, which include unavailability within a reasonable period of time.

New types of insulation products may become available with recovered materials content. Procuring agencies can identify such new products and adaptations to existing products as they monitor new developments. These additional products must be included in the preference program as they become available.

D. Performance

In general, performance standards for building insulation products have been established without regard to the kind of feedstocks used. Manufacturers have indicated that the use of recovered materials rather than virgin feedstocks does not affect the performance of the insulation product in question. Performance is determined by other factors. Standard industry specifications for all but cellulose loose-fill insulation neither allow nor disallow recovered material content; cellulose loose-fill insulation specifically mentions that the basic material is to be recycled. In many other types of insulation products, recovered material is commonly used. Therefore, EPA does not believe that product performance should be an issue of concern to procuring agencies.

VI. Implementation

Different parts of section 6002 refer to different dates by which procuring agencies must have completed or initiated a required activity: (1) May 8, 1986 (i.e., 18 months after enactment of HSWA), (2) one year after the date of publication of an EPA guideline, and (3) the date specified in an EPA guideline. As a result, there is some confusion with respect to which activities must be completed or initiated by each date. This section of the preamble explains these requirements.

First, under section 6002(d)(1), Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items were to eliminate from such specifications any exclusion of recovered materials and any requirements that items be manufactured from virgin materials. This activity was to be completed by May 8, 1986.

Second, Federal agencies must assure that their specifications for procurement items designated by EPA require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item (section 6002(d)(2)). In addition, procuring agencies must develop an affirmative procurement program for purchasing designated items, in this instance, building insulation products (section 6002(i)(1)). Both of these activities must be completed within one year after the date of publication of this guideline as a final rule.

Third, procuring agencies which procure items designated by EPA must procure such items containing the highest percentage of recovered materials practicable (section 6002(c)(1)). They also must revise their specifications for building insulation products to assure that they can procure such items containing the highest percentage of recovered materials practicable (section 6002(c)(1)). In addition, contracting officers must require vendors or contractors to submit estimates and certifications of recovered materials content (section 6002(c)(3)). These activities must begin after the date specified by EPA in the applicable guideline. EPA believes that procuring agencies should begin to procure the designated products as soon as the affirmative procurement programs have been developed. Because the programs must be completed within one year after publication of this guideline as a final rule, affirmative procurement should begin no later than one year from publication as well. Section 248.26 specifies this implementation date.

EPA expects cooperation from affected procuring agencies in implementing this guideline. Under section 6002(g) of RCRA, the Office of Federal Procurement Policy (OFPP), in cooperation with EPA, is responsible for overseeing implementation of the requirements of section 6002 and for coordinating it with other Federal procurement policies. OFPP is required to report to Congress on actions taken by Federal agencies to implement section 6002.

VII. Summary of Supporting Analyses

A. General

Four background documents were prepared for EPA and have been placed in the docket: for the proposed guideline: *Feasibility of a Federal Procurement Guideline for Recovered Materials in Insulation Products* (E.H. Pechan & Associates, Inc., February 1988), *Insulating Material Types and Manufacturers* (E.H. Pechan & Associates, Inc., June 1988), *Energy and Economic Impacts of the Proposed Guideline for Procurement of Building Insulation Products Containing Recovered Materials* (E.H. Pechan & Associates, Inc., June 1988), and *Industry and Regulatory Information, Background Document for Final Insulation Procurement Guideline,* (E.H. Pechan & Associates, Inc., February 1989).

B. Environmental Impacts

The principal environmental impacts concern chlorofluorocarbons in plastic rigid foams and the possible risk of durable fibers.

1. Chlorofluorocarbons

Recently, questions have been raised regarding the environmental consequences of use of chlorofluorocarbons (CFCs) in the manufacture of various items. One of the types of insulation covered by the proposed guideline, rigid plastic foams, contain CFCs.

Ozone depletion in the upper atmosphere has created environmental concerns. Fully halogenated CFCs are the primary suspects for causing substantial ozone depletion. EPA published a final rule on Protection of Stratospheric Ozone (40 CFR Part 82) on August 12, 1988 (53 FR 30566). The regulations (1) will reduce consumption of CFCs and halons, (2) are intended to reduce the release of CFCs and halons to the atmosphere, and (3) will implement the Montreal protocols. As of July 1, 1989, manufacture of CFCs are frozen at 1986 production levels.

CFCs are now a key ingredient of PIR/PU, extruded PS, and phenolic rigid foam insulations. PIR/PU rigid foam insulation uses CFC–11 (fluorotrichloromethane). Extruded PS foam insulation is manufactured with CFC–12 (dichlorodifluoromethane). CFCs are used as a supplementary blowing agent and are retained within the closed insulation cells. CFCs have good thermal insulation properties and contribute significantly to the high R-values of the rigid foam insulations. Use of CFCs in closed cell foams has changed the emissions scenario from one of quick release (such as aerosol propellants) to a steady, very long term release. Industry sources have informally suggested that the half lives of CFCs in one-inch thick un-clad polyisocyanurate foam boards range 75 to 150 years.

Expandable foam polystyrene (EPS) is not made with CFCs. Instead, hydrocarbons such as pentane are used as blowing agents. R-values for equivalent thicknesses of EPS when compared with extruded polystyrene are said to be lower.

Insulation, by nature, is installed in the broadest range of building applications and geographies. Therefore, release of CFCs cannot be effectively controlled. Continued, and increasing use of CFCs in PIR/PU and extruded PS insulation as market share grows would effectively create a bank of CFCs slowly being released throughout the environment.

In 1988, a substitute for CFC–11 and CFC–12 was announced, with commercial availability expected in 1991. One commenter stated that the compatibility of new blowing agents with the polyols in current use has not yet been completely evaluated and may have an effect on the aims of the guideline. However, EPA has received no information that a problem will, in fact, arise. As there are already provisions in the guideline that allow procuring agencies to respond when building insulation products become unavailable with recovered material content, EPA believes it is premature to change the minimum content standards at this time.

2. Possible Risk of Durable Fibers

One commenter expressed concern about possible health: effects of man made mineral fibers. The EPA Office of Toxic Substances is examining the hazards and exposures associated with durable fibers in detail. Therefore, as the issues are being addressed elsewhere and do not apply uniquely to products with recovered material

content, EPA does not believe that it is necessary to address the possible risk of durable fibers in this guideline.

C. Energy Impacts

The primary energy impact of insulation is energy conservation as more buildings are insulated more efficiently. The use of recovered materials in the insulation products would not affect insulation or R-values.

The use of glass cullet rather than virgin materials in fiberglass insulation has been said to reduce energy consumption in fiberglass manufacture. DMT waste bottoms have been said to be burned to recover energy value if they are not recovered to produce products like insulation polyols. Data regarding quantities and potential energy impacts were not available. EPA received comments on the energy savings in theoretical batches of fiberglass insulation which contributed to changes in earlier sections of the guideline. However, no comments were received regarding industry-wide impacts. No comments were received regarding DMT waste bottoms used in polyols. EPA believes that energy consumption will not increase due to this guideline; rather it will decrease though not by significant amounts.

D. Executive Order 12291

Under Executive Order 12291, EPA must determine whether a regulation is major or nonmajor. The proposed guideline is not a major rule because it is unlikely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA does not believe that this guideline will result in higher prices nor that adverse effects throughout the economy will result. In fact, the guideline may stimulate employment, competition, investment, productivity, innovation and United States enterprises may be able to compete more effectively with foreign based counterparts that are importing recovered materials.

This rule was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

E. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., whenever an agency publishes a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, small governmental jurisdictions), unless the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

As described in the environmental, energy, and economic impact document, the economic impact on both small businesses and small governmental jurisdictions is expected to be in some cases, negligible and in other instances, beneficial. An extremely limited number of business and governmental entities are affected at all by the guideline.

For the above reasons, EPA certifies that the final rule is not expected to have a significant economic impact on a substantial number of small entities. As a result, the guideline does not require a Regulatory Flexibility Analysis.

List of Subjects in 40 CFR Part 248

Commercial item descriptions, Government procurement, Insulation, Military Specifications, Postconsumer materials, Recovered materials, Recycling, Resource recovery.

Dated: February 8, 1989.

Jack Moore,

Acting Administrator.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended by adding a new Part 248 reading as follows:

PART 248—GUIDELINE FOR FEDERAL PROCUREMENT OF BUILDING INSULATION PRODUCTS CONTAINING RECOVERED MATERIALS

Subpart A—General

Sec.

Subpart B—Specifications

Subpart C—Affirmative Procurement Program

Authority: 42 U.S.C. 6912(a) and 6962.

Subpart A—General

§ 248.1 Purpose.

(a) The purpose of this guideline is to assist procuring agencies in complying with the requirements of section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA or the Act), as amended, 42 U.S.C. 6962, as that section applies to procurement of building insulation products designated in § 248.2 of this part.

(b) This guideline contains recommendations for use in implementing the requirements of section 6002, including revision of specifications, purchasing activities, and procurement.

(c) EPA believes that adherence to the recommendations in the guideline constitutes compliance with section 6002. However, procuring agencies may adopt other types of procurement programs consistent with section 6002.

§ 248.2 Designation.

EPA designates building insulation products as items which are or can be produced with recovered materials and whose procurement by procuring agencies will carry out the objectives of section 6002 of RCRA.

§ 248.3 Applicability.

(a)(1) This guideline applies to all procuring agencies and to all procurement actions involving building insulation products where the procuring agency purchases in excess of $10,000 worth of one of these items during the course of a fiscal year, or where the cost of such items or of functionally equivalent items purchased during the preceding fiscal year was $10,000 or more. For purposes of the $10,000 threshold, functional equivalency extends to all building insulation products used for ceilings, floors, foundations, and walls. All building insulation products are considered to be functionally equivalent and include the following product types and materials:

(i) Loose-fill insulation, including but not limited to cellulose fiber, mineral fibers (fiberglass and rock wool), vermiculite, and perlite;

(ii) Blanket and batt insulation, including but not limited to mineral fibers (fiberglass and rock wool);

(iii) Board (sheathing, roof decking, wall panel) insulation, including but not limited to cellulose fiber fiberboard, perlite composite board, polyurethane, polyisocyanurate, polystyrene, phenolics, and composites; and

(iv) Spray-in-place insulation, including but not limited to foam-in-place polyurethane and polyisocyanurate, and spray-on cellulose.

(2) This guideline applies to Federal agencies, to State and local agencies using appropriated Federal funds to procure building insulation products, and to persons contracting with any such agencies with respect to work performed under such contracts. Federal agencies should note that the requirements of RCRA section 6002 apply to them whether or not appropriated Federal funds are used for procurement of items designated by EPA.

(3) The $10,000 threshold applies to procuring agencies as a whole rather than to agency subgroups such as regional offices or subagencies.

(b) The term "procurement actions" includes purchases made directly by a procuring agency and purchases made directly by any person in support of work being performed for a procuring agency (e.g., by a contractor).

(c) This guideline does not apply to purchases which are not the direct result of a contract with or a grant, loan, or funds disbursement to a procuring agency.

§ 248.4 Definitions.

As used in this guideline:

(a) "Act" or "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 *et seq.*

(b) "Blanket insulation" means relatively flat and flexible insulation in coherent sheet form, furnished in units of substantial area. Batt insulation is included in this term.

(c) "Board insulation" means semi-rigid insulation preformed into rectangular units having a degree of suppleness, particularly related to their geometrical dimensions.

(d) "Building insulation" means a material, primarily designed to resist heat flow, which is installed between the conditioned volume of a building and adjacent unconditioned volumes or the outside. This term includes but is not limited to insulation products such as blanket, board, spray-in-place, and loose-fill that are used as ceiling, floor, foundation, and wall insulation.

(e) "Ceiling Insulation" means a material, primarily designed to resist heat flow, which is installed between the conditioned area of a building and an unconditioned attic as well as common ceiling floor assemblies between separately conditioned units in multi-unit structures. Where the conditioned area of a building extends to the roof, ceiling insulation includes such a material used between the underside and upperside of the roof.

(f) "Cellular polyisocyanurate insulation" means insulation produced principally by the polymerization of polymeric polyisocyanates, usually in the presence of polyhydroxl compounds with the addition of catalysts, cell stabilizers, and blowing agents.

(g) "Cellular polystyrene insulation" means an organic foam composed principally of polymerized styrene resin processed to form a homogenous rigid mass of cells.

(h) "Cellular polyurethane insulation" means insulation composed principally of the catalyzed reaction product of polyisocyanurates and polyhydroxl compounds, processed usually with a blowing agent to form a rigid foam having a predominantly closed cell structure.

(i) "Cellulose" means vegetable fiber such as paper, wood, and cane.

(j) "Cellulose fiber fiberboard" means insulation composed principally of cellulose fibers usually derived from paper, paperboard stock, cane, or wood, with or without binders.

(k) "Cellulose fiber loose-fill" means a basic material of recycled wood-based cellulosic fiber made from selected paper, paperboard stock, or ground wood stock, excluding contaminated materials which may reasonably be expected to be retained in the finished product, with suitable chemicals introduced to provide properties such as flame resistance, processing and handling characteristics. The basic cellulosic material may be processed into a form suitable for installation by pneumatic or pouring methods.

(l) "Commercial Item Descriptions" are a series of simplified item descriptions under the Federal specifications-and-standards program used in the acquisition of commercial off-the-shelf and commercial type products.

(m) "Conditioned" means heated and/or mechanically cooled.

(n) "Federal agency" means any department, agency, or other instrumentality of the Federal government; any independent agency or establishment of the Federal government including any government corporation; and the Government Printing Office.

(o) "Fiberglass insulation" means insulation which is composed principally of glass fibers, with or without binders.

(p) "Floor insulation" means a material, primarily designed to resist heat flow, which is installed between the first level conditioned area of a building and an unconditioned basement, a crawl space, or the outside beneath it. Where the first level conditioned area of a building is on a ground level concrete slab, floor insulation includes such a material installed around the perimeter of or on the slab. In the case of mobile homes, floor insulation also means skirting to enclose the space between the building and the ground.

(q) "Foam-in-place insulation" foam is rigid cellular foam produced by catalyzed chemical reactions that hardens at the site of the work. The term includes spray-applied and injected applications such as spray-in-place foam and pour-in-place.

(r) "Foundation insulation" means a material, primarily designed to resist heat flow, which is installed in foundation walls between conditioned volumes and unconditioned volumes and the outside or surrounding earth, at the perimeters of concrete slab-on-grade foundations, and at common foundation wall assemblies between conditioned basement volumes.

(s) "Glass fiber reinforced polyisocyanurate/polyurethane foam" means cellular polyisocyanurate or cellular polyurethane insulation made with glass fibers within the foam core.

(t) "Invitation For Bids" is the solicitation for prospective suppliers by a purchaser requesting their competitive price quotations.

(u) "Loose-fill insulation" means insulation in granular, nodular, fibrous, powdery, or similar form, designed to be installed by pouring, blowing or hand placement.

(v) "Mineral fiber insulation" means insulation (rock wool or fiberglass) which is composed principally of fibers manufactured from rock, slag or glass, with or without binders.

(w) "Perlite composite board" means insulation board composed of expanded perlite and fibers formed into rigid, flat, rectangular units with a suitable sizing material incorporated in the product. It may have on one or both surfaces a facing or coating to prevent excessive hot bitumen strike-in during roofing installation.

(x) "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, Federal agency, State, municipality, commission, political subdivision of a State, or any interstate body.

(y) "Phenolic insulation" means insulation made with phenolic plastics which are plastics based on resins made by the condensation of phenols, such as phenol or cresol, with aldehydes.

(z) "Plastic rigid foam" means cellular polyurethane insulation, cellular polyisocyanurate insulation, glass fiber reinforced polyisocyanurate/polyurethane foam insulation, cellular polystyrene insulation, phenolic foam insulation, spray-in-place foam and foam-in-place insulation.

(aa) "Postconsumer recovered paper" means:

(1) Paper, paperboard and fibrous wastes from retail stores, office buildings, homes and so forth, after they have passed through their end-usage as a consumer item including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards and used cordage; and

(2) All paper, paperboard and fibrous wastes that enter and are collected from municipal solid waste.

(bb) "Practicable" means capable of being used consistent with: performance in accordance with applicable specifications, availability at a reasonable price, availability within a reasonable period of time, and maintenance of a satisfactory level of competition.

(cc) "Procurement item" means any device, good, substance, material, product, or other item, whether real or personal property, which is the subject of any purchase, barter, or other exchange made to procure such item.

(dd) "Procuring agency" means any Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract.

(ee) "Purchasing" means the act of and the function of responsibility for the acquisition of equipment, materials, supplies, and services, including: buying, determining the need, selecting the supplier, arriving at a fair and reasonable price and terms and conditions, preparing the contract or purchase order, and follow up.

(ff) "Purchasing activities" means all activities included in the purchasing function.

(gg) "Recovered materials" means waste material and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process.

(hh) "Request for Proposal" is a request for an offer by one party to another of terms and conditions with references to some work or undertaking; the initial overture or preliminary statement for consideration by the other party to a proposed agreement.

(ii) Rock wool insulation" means insulation which is composed principally from fibers manufactured from slag or natural rock, with or without binders.

(jj) "Specification" means a description of the technical requirements for a material, product, or service that includes the criteria for determining whether these requirements are met. In general, specifications are in the form of written commercial designations, industry standards, and other descriptive references.

(kk) "Spray-in-place insulation" means insulation material that is sprayed onto a surface or into cavities and includes cellulose fiber spray-on as well as plastic rigid foam products.

(ll) "Spray-in-place foam" is rigid cellular polyurethane or polyisocyanurate foam produced by catalyzed chemical reactions that hardens at the site of the work. The term includes spray-applied and injected applications.

(mm) "Wall insulation" means a material, primarily designed to resist heat flow, which is installed within or on the walls between conditioned areas of a building and unconditioned areas of a building or the outside, as well as common wall assemblies between separately conditioned units in multiple unit structures.

Subpart B—Specifications

§ 248.10 Revisions.

(a) Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies were required to revise their specifications, by May 8, 1986, to eliminate any exclusion of recovered materials and any requirement that items be manufactured from virgin materials.

(b) Within one year after the effective date of this guideline, each procuring agency must assure that its specifications for building insulation products require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of these items.

§ 248.11 Recommendations.

(a) Procuring agencies should continue to reference Commercial Item Descriptions or appropriate standards when purchasing building insulation products, after such Commercial Item Descriptions and industry standards (and specifications which are referenced) have been reviewed to be certain that the use of recovered materials is allowed.

(b) Procuring agencies should include minimum content standards or substantially equivalent methods to prefer recovered materials content in their invitations for bids and requests for proposals when purchasing building insulation products or causing the purchase of building insulation products in any contract.

(c) If a procuring agency determines that a building insulation product containing recovered materials cannot meet reasonable performance standards, then the agency can exclude the product on a case-by-case basis. Procuring agencies should document such determinations, and the documentation should reference the particular tests used to judge performance. Procuring agencies should also reference such documentation in subsequent solicitations for the specific item to avoid repetition of previously documented findings.

(d)(1) Procuring agencies should assure that language in new specifications for new building insulation products, and for existing products which are introduced with recovered materials content, allow recovered materials content. Methods to monitor the introduction of new or adapted products are detailed in §§ 248.21 and 248.24 of this part.

(2) As new building insulation products containing or capable of containing recovered materials are identified, minimum content standards or equivalent preferences for recovered material content should be inserted in invitations for bids and requests for proposals whenever such products could be offered.

Subpart C—Affirmative Procurement Program

§ 248.20 General.

Within one year after the date of publication of this guideline as a final rule, each procuring agency which procures building insulation products must establish an affirmative program for procuring such items containing recovered materials to the maximum extent practicable. The program must meet the requirements of section 6002(i) of RCRA, including the establishment of a preference program; a promotion program; procedures for obtaining estimates and certification of recovered materials content and for verifying the estimates and certifications; and an annual review and monitoring program. This subpart provides recommendations for implementing section 6002(i). Note

that a procuring agency's responsibility to procure building insulation products containing recovered materials to the maximum extent practicable is not negated when the agency contracts with another person to specify or to supply the products.

§ 248.21 Preference program.

(a)(1) EPA recommends that procuring agencies establish minimum recovered material content standards for building insulation products commercially available with recovered materials content, subject to the limitations described in paragraphs (a)(2) and (c) of this section, so as to achieve procurement of building insulation products containing recovered materials to the maximum extent practicable.

(2) In accordance with RCRA section 6002(i), EPA recommends the establishment of minimum postconsumer recovered paper content standards for building insulation products made with cellulose fiber.

(3) EPA recommends that minimum content standards:

(i) Be based on insulation material type,

(ii) Be based on the weight of component parts,

(iii) Refer only to the core insulation material and exclude from consideration any facing, binding, or other materials surrounding or attached to the core, and

(iv) Include any insulation material that is used in composite products.

(4) EPA recommends that the following minimum content standards be used:

TABLE 1.—RECOMMENDED MINIMUM CONTENT STANDARDS FOR INSULATION

Material type	Percent by weight
Cellulose loose-fill and spray-on	75 percent postconsumer recovered paper
Perlite composite board	23 percent postconsumer recovered paper
Plastic rigid foam, polyisocyanurate/polyurethane:	
Rigid foam	9 percent recovered material
Foam-in-place	5 percent recovered material
Glass fiber reinforced	6 percent recovered material
Phenolic rigid foam	5 percent recovered material
Rock wool	50 percent recovered material

Note.—The minimum content standards are based on the weight of material (not volume) in the insulating core only.

(5) EPA recommends that procuring agencies revise their minimum content standards as necessary to reflect current market availability of building insulation containing recovered materials.

(6) EPA recommends that procuring agencies which have established minimum content standards in accordance with paragraph (a)(1) of this section use the following approach in the design phase when it is contemplated that the agency will contract for construction, alteration, or repair of buildings, where the contractor will be required to supply building insulation products:

(i) Place an affirmative responsibility upon the "designing architect" (i.e., the architect or engineer, whether an employee or contractor, who is responsible for project design) to include as a design consideration the public policy preference for the use of building insulation products containing recovered materials.

(ii) Require that the designing architect select the type of building insulation to be procured. If more than one type of insulation which meets the agency's minimum content standards is suitable, the type with the highest minimum content standard should be preferred.

(iii) Require that the designing architect justify in writing the architect's selection of building insulation types not on the procuring agency's minimum content standards list and review these justifications to assure that they are consistent with RCRA section 6002. When the designing architect chooses a type of building insulation for which the procurinq agency has not established a minimum content standard, the procuring agency should use the procedures described in paragraph (b) of this section.

(iv) Require that the designing architect determine whether the selected types of building insulation are practicably available in products that meet the procuring agency's minimum content standards and further require that, if the designing architect determines that the selected building insulation products are not practicably available in products that meet the procuring agency's minimum content standards, the architect must advise the procuring agency in writing as to the recovered materials content that is practicably available.

(v) If the selected type of building insulation is available in products that meet the procuring agency's minimum content standards, specify in its solicitation the type(s) of building insulation required and the minimum recovered materials content established by the procuring agency in accordance with paragraph (a)(1) of this section for that type of insulation.

(vi) If the type of building insulation selected is not practicably available in products that meet the procuring agency's minimum content standards, specify in its solicitation the type(s) of insulation required and a minimum recovered materials content for that insulation equal to the percentage of recovered materials content that is practicably available.

(b) EPA recommends that procuring agencies use the case-by-case approach for individual procurements of insulation when the procuring agency has not established a minimum content standard for the type of insulation to be procured. Further, EPA recommends that procuring agencies document any decisions to procure such products to assure that the decision is consistent with RCRA section 6002.

(1) In the case of invitations for bid (IFBs), EPA recommends that procuring agencies give preference to bidders offering to supply building insulation products containing recovered materials; and that all other things being equal, the bidder offering the highest percentage of recovered material be awarded the contract.

(2) In the case of requests for proposal (RFPs), EPA recommends that procuring agencies include as an evaluation factor for award, a criterion which rewards the offeror for the quantity of recovered material in building insulation products offered.

(c) The recommendations in paragraphs (a) and (b) of this section, as well as any other substantially equivalent preference program that an agency may adopt, are subject to the following limitations listed in section 6002(c)(1) of RCRA:

(1) Unsatisfactory level of competition;

(2) Unavailability within a reasonable period of time;

(3) Inability to meet the performance standards in the applicable specifications;

(4) Unavailability at a reasonable price.

(d) Procuring agencies must examine their procurement policies and procedures (exclusive of published regulations) and eliminate those which would inhibit or preclude the purchase of building insulation products containing recovered materials.

§ 248.22 Promotion program.

EPA recommends that procuring agencies use the following methods, at a minimum, to promote their preference programs:

(a) Place a statement in procurement solicitations, in the *Commerce Business Daily*, or in similar publications describing the preference program.

(b) Describe the preference program in solicitations for or which include building insulation.

(c) Discuss the preference program at bidders' conferences.

(d) Inform industry trade associations about the preference program.

(e) Publicize preferences for building insulation products made with recovered materials in all product-related information services and publications (e.g., Department of Housing and Urban Development publications and product-related services developed in compliance with section 521 of the National Housing Act, such as: National Building Codes, Bulletins, Materials Releases, Engineering Bulletins, and Use of Materials Information).

(f) Issue press releases describing the affirmative procurement program to recycling industry, architectural, and building trade publications.

§ 248.23 Estimates, certification, and verification.

Each procuring agency must develop estimation, certification and verification procedures:

(a) When a vendor supplies a building insulation product, the contracting officer must require the vendor to estimate the total percentage of recovered material contained in that insulation product. EPA recommends that procuring agencies maintain records of these estimates for three years by type of product, quantity purchased, and price paid.

(b)(1) When a procurement solicitation requires a minimum recovered materials content, contracting officers must require that contractors certify, prior to delivery or installation, that the building insulation products supplied under the contract meet or exceed the minimum content standard set forth in the solicitation.

(2) When using the case-by-case approach, contracting officers must require contractors to certify, prior to delivery or installation, that the building insulation products supplied meet or exceed the minimum percentage of recovered materials offered by the contractor in response to the solicitation.

(c)(1) EPA recommends that procuring agencies develop verification procedures for certifications and estimates of recovered materials content in building insulation products that require access only to manufacturers' records of recovered materials and comparable virgin materials used in each batch. Verification need not include review of records of other ingredients, which could include confidential business information.

(2) EPA recommends that the average of recovered materials used in a specific insulation product over a one-month period be used, if necessary, for verification of estimates of recovered materials content actually utilized in insulation products supplied to a procuring agency.

(3) EPA recommends that procuring agencies encourage their contractors to obtain the percentage of recovered material content, by batch number, from the manufacturer on a routine basis.

§ 248.24 Annual review and monitoring.

(a) Each procuring agency must conduct an annual review and monitoring of the effectiveness of its affirmative procurement program.

(b) EPA recommends that the annual review include the following items:

(1) An estimate of the quantity of building insulation with recovered material content purchased and the total quantity of building insulation products purchased.

(2) An assessment of the effectiveness of the promotion program.

(3) An assessment of any remaining barriers to purchase of insulation with recovered content to determine whether they are internal (e.g., resistance to use) or external (e.g., unavailability).

(4) A review of the range of estimates and certifications of recovered materials content in building insulation products provided by vendors during the year to determine whether minimum content standards should be raised or lowered, or whether a change from the case-by-case approach to the minimum content standard approach is necessary.

(5) A program to gather statistics. Procuring agencies should monitor their procurements to provide data on the following:

(i) The percentages of recovered materials content in the products procured or offered;

(ii) Comparative price information on competitive procurements;

(iii) The quantity of each item procured over a fiscal year;

(iv) The availability of the insulation products to procuring agencies;

(v) Type of performance tests conducted, together with the type of building insulation product containing recovered materials content that failed the tests, the percentages of total virgin products and products containing recovered materials content supplied that failed each test, and the nature of the failure;

(vi) Agency experience with the performance of the procured products.

(c) Procuring agencies should prepare a report on their annual review and monitoring of the effectiveness of their procurement programs and make these reports available to the public. The reports should contain the following information:

(1) If the case-by-case approach or a substantially equivalent alternative is being used, a discussion of how the procuring agency's approach procures building insulation products containing recovered materials to the maximum extent practicable. The basis for this discussion should be a review of the data compiled on recovered materials content, price, availability, and performance, as well as a comparison of estimates and certifications provided by the vendors.

(2) If the minimum content standards approach is being used, a discussion of whether the minimum content standards in use should be raised, lowered, or remain constant for each item. The basis for this discussion should be a review of the data compiled on recovered materials content, price, availability, and performance, as well as a comparison of estimates and certifications provided by the vendors.

(3) Documentation of specification revisions made during the year.

§ 248.25 Implementation.

(a) Federal agencies were required to review and revise their specifications for procurement items by May 8, 1986.

(b) Procuring agencies are required to revise their specifications as set forth in § 248.10(b), and to establish affirmative procurement programs within one year of the date of publication of this guideline as a final rule.

(c) Procuring agencies must begin procurement of building insulation products, in compliance with RCRA Section 6002, one year from the date of publication of this guideline as a final rule.

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Friday
February 17, 1989

Part III

Department of Transportation

Federal Highway Administration

49 CFR Part 390 et al.

Private Carriage of Passengers; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 390, 391, 392, 393 and 395

[FHWA Docket No. MC-88-15]

RIN 2125-AB62

Private Carriage of Passengers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA is requesting comments on proposed new minimum requirements for private motor carriers of passengers and the drivers of private commercial motor vehicles of passengers while operating in interstate commerce. Private motor carriers of passengers are those persons who are engaged in enterprises other than transportation, and who provide transportation of passengers, by motor vehicle, that is within the scope of and in the furtherance of those enterprises. These minimum requirements are being proposed in response to the Motor Carrier Safety Act of 1984 and comments received to an advance notice of proposed rulemaking (ANPRM) published on January 23, 1985 (50 FR 2998, Docket MC-114). The proposed rules will require private motor carriers of passengers and their drivers to operate under the Federal Motor Carrier Safety Regulations (FMCSRs), as proposed herein.

DATE: Written comments must be received on or before June 19, 1989.

ADDRESS: All written comments should refer to the docket number that appears at the top of this document and should be submitted to the Office of the Chief Counsel, Room 4232, HCC-10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m., to 3:30 p.m., e.t., Monday through Friday, except on legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carriers, (202) 366-2981, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366-1350, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m., to 4:15 p.m., e.t., Monday through Friday, except on legal holidays.

SUPPLEMENTARY INFORMATION:

Background

This proposed rule is being issued under the authority of section 204 of the Motor Carrier Safety Act of 1984 (the Act) (Pub. L. 98-554, 49 U.S.C. 2503). Section 204 of the Act defines the term "commercial motor vehicle" as any self-propelled or towed vehicle used on highways in interstate commerce to transport passengers or property if (a) such vehicle has a gross vehicle weight rating of 10,001 or more pounds; (b) such vehicle is designed to transport more than 15 passengers, including the driver; or (c) such vehicle is used in the transportation of materials found by the Secretary of Transportation (the Secretary) to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. App. 1801-1812 (1982)) in a quantity requiring placarding under regulations issued by the Secretary under such Act. This section of the Act defines interstate commerce as "trade, traffic, or transportation in the United States which is between a place in a state and a place outside of such state (including a place outside of the United States) or is between two places in a state through another state or a place outside of the United States."

The purposes of the Act are to (1) promote the safe operation of commercial motor vehicles; (2) minimize dangers to the health of operators of commercial motor vehicles and other employees whose employment directly affects motor carrier safety; and (3) assure increased compliance with traffic laws and with the commercial motor vehicle safety and health rules, regulations, standards, and orders issued pursuant to this Act.

Under the current FMCSR, for-hire motors carriers of passengers and property and private carriers of property are required to meet minimum safety standards for the safe operation and maintenance of commercial motor vehicles in interstate commerce. These standards are enforced by State and local personnel and Federal safety investigators nationwide.

The Congress found that it is in the public interest to enhance commercial motor vehicle safety and, thus, help to reduce highway fatalities, injuries, and property damage. By having more uniform commercial motor vehicle controls and strengthened enforcement, the number of fatalities and injuries as well as the level of property damage related to commercial motor vehicle operations would be reduced. During the last 2 years, the FHWA contracted for a study of private motor carriers of passengers. The FHWA has used this study to prepare the draft regulatory evaluation and regulatory flexibility analysis which formed the basis for this proposed rule. A copy of FHWA's evaluation has been placed in the public docket. The evaluation and analysis concluded that highway safety would be enhanced by regulating operations of private motor carriers of passengers.

Comprehensive accident data pertaining to private motor carriers of passengers is not available. This is primarily due to the fact such carriers were not subject to the requirements of the FMCSRs, including the accident reporting provisions. Nevertheless, based on accident statistics from the FHWA, the National Safety Council, and the National School Transportation Association, compiled by the contractor who performed the study, the FHWA estimates that there are approximately 67,500 vehicles in this unregulated class and there would be an accident rate of 1.33 accidents per million vehicle miles traveled (VMT) for private motor carriers of passengers. Further, the contractor estimated that each such vehicle would, on average, travel 10,000 miles per year in interestate and intrastate commerece. These estimates translate into approximately 891 accidents, on average, each year for this currently unregulated class.

A search was also made of the National Transportation Safety Board (NTSB) in-depth accident studies. Recently, the NTSB studied three accidents involving private motor carriers of passengers operating in interstate commerce.[1] These three accidents involved 14 deaths and 87 persons injured. In one accident, both driver error and mechanical defects were cited as possible causes of the accident. The other two accidents both involved tire failures; one due to a blowout, the other to poor traction capability. In addition, the NTSB is currently investigating a multiple-fatality accident that occurred in Carrollton, Kentucky, on May 14, 1988. This accident involved a private carriage of passengers in which there were 27 fatalities and 34 injuries.

Of the accidents in the sample collected by the contractor 54 percent were attributable in whole or in part to driver error or incapacity of some variety, 4 percent were attributable to driver fatigue and 4 percent to improper towing. Together, for this sample, the

[1] National Transportation Safety Board, Highway Accident Report, Nos. NTSB-HAR-81-4, NTSB-HAR-84-06, NTSB-HAR-85-01, Washington, DC 20594. Copies of the report are available for review in the public docket.

driver-associated accidents accounted for 63 fatalities and 238 injuries. From this data, it can be concluded that additional safety measures directed at drivers, driving the motor vehicle, and general operational safety precautions are warranted. The FHWA also contacted several of the larger States to gather further accident data on intrastate private motor carriers of passengers. Among their intrastate motor vehicle passenger accidents, the States contacted were unable to distinguish commercial from general motor vehicles involved in accidents. Comments are requested from States and others which can submit accident data on intrastate private motor carriage of passengers.

The FHWA's accident data in 1983 (the most recent accident data report available) for interstate for-hire motor carriers of passengers (which the FHWA currently regulates) shows that this group has an accident rate of 0.50 accidents per million VMT. The fatality and injury rates are 0.0659 and 0.82 per million VMT, respectively. The MC–50B accident reports filed by these carriers cover "regular" and "charter" operations for-hire of motor carriers of passengers.

The FHWA believes that private carriers of passengers, having been unregulated at the Federal level as a class, would be less apt to be in conformity with safety standards as stringent as those that apply to for-hire motor carrier of passengers. Since the States' regulations of motor carriers are similar to the Federal regulations, most States have excluded private motor carriers from their safety regulations. This means that there is often no means to ensure that these vehicles are safely operated and maintained. Motor carriers that are covered by our regulations are subject to roadside safety inspections by State enforcement personnel (in 1988, 1.5 million inspections were conducted nationwide), reviews and ratings of their safety procedures by Federal safety investigators, and accident reporting requirements to identify problem carriers.

The FHWA believes there exists an opportunity to improve the safety operations of private motor carriers of passengers. The imposition of safety standards on private carriers of passengers should reduce highway fatalities, injuries, and property damage, as well as reduce the potential for such accidents.

The FHWA recognizes that this group of motor carriers consists of a wide variety of entities. The FHWA, therefore, is proposing that private motor carriers of passengers be classified into two distinct classes. The distinguishing factor among the classes is the relationship of the driver of the vehicle to the motor carrier in each class.

Information which provides a rationale for a particular position on a question is very important, as is data which estimates the cost impacts and benefits of the action under consideration. The FHWA is seeking data, information, and answers to adequately consider the merits of how the regulation of private carriage would affect each interested party's position.

The Commercial Motor Vehicle Safety Act of 1986 (1986 Act) (Title XII, Pub. L. 99–570) was passed by Congress and signed by the President on October 27, 1986. It is designed to remove unsafe and unqualified drivers from our Nation's highways and to ensure that all drivers possess the knowledge and skills necessary to safely operate the types of vehicles they drive.

The Act is very broad in scope and has defined the term "commerce" to mean—

(A) trade, traffic, and transportation within the jurisdiction of the United States between a place in a State and a place outside of such State (including a place outside the United States); and

(B) trade traffic, and transportation in the United States which affects any trade, traffic, and transportation described in subparagraph (A). (49 U.S.C. App. 2716)

Additionally, the 1986 Act defines "commercial motor vehicle" as a motor vehicle used in commerce to transport *passengers* or property.

(A) if the vehicle has a gross vehicle weight rating of 26,001 or more pounds or such a lesser gross vehicle weight rating as the Secretary determines appropriate by regulation but not less than a gross vehicle weight rating of 10,001 pounds;

(B) if the vehicle is designed to transport more than 15 passengers, including the driver; or

(C) if such vehicle is used in the transportation of materials found by the Secretary to be hazardous for the purposes of the Hazardous Materials Transportation Act.

The FHWA has already indicated that the 1986 Act applies to private motor carriers of passengers. In the final rule implementing the commercial driver license standards; requirements and penalties, the FHWA stated: "Congress clearly intended the Act to apply to the broadest set of employers involved in trade, traffic, and transportation in all sectors of the economy. The only persons who may be excluded from the Act are those operators who use a motor vehicle, which otherwise meets the commercial motor vehicle definition, strictly and exclusively to transport personal possessions or family members for nonbusiness purposes." (52 FR 20579).

The 1986 Act requires that the drivers of vehicles designed to transport more than 15 passengers (including the driver): (1) Have a single driver's license with a single driver's record; (2) notify his/her employer and State of licensure issuance of certain moving traffic violations and for a commercial motor vehicle driving history; (3) be disqualified from driving such a vehicle if the driver commits certain criminal or traffic violations; and (4) pass a knowledge test and a skills test based on the type of vehicle they will be licensed to drive. The single license requirement, the notification requirements, and the disqualification provisions became effective July 1, 1987. The FHWA issued the minimum testing standards on July 15, 1988 (53 FR 27628, Docket MC 87–18). All drivers including drivers of commercial motor vehicles operated by private carriers of passengers must obtain a new or renewed State driver's license based on these standards by April 1992.

The FHWA does not intend that the proposed Private Carriage of Passengers regulations affect Motor Carrier Safety Assistance Program funding for any State that selects to exempt the intrastate operations of these affected groups from the proposed requirements contained within.

Comments

The FHWA received six comments on the matter of regulating private carriage of passengers under the FMCSRs in response to a 1985 ANPRM in **Federal Register** (50 FR 2998, Docket No. MC–114). Three comments were from representatives of State law enforcement agencies, two were from representatives of State Departments of Transportation, and one comment was received from the United Bus Owners of America (UBOA).

The UBOA advocates that private motor carriers of passengers and their drivers be subject to the FMCSRs in its entirety. The Commissioner of Safety for the State of New Hampshire wrote in support of regulating all private motor carriers of passengers and their drivers. However, he suggested that the minimum age requirement (21 years for interstate commerce drivers) and the medical certificate requirement not be mandated for drivers of two-axle private motor vehicles of passengers.

Maine's State Police Traffic Division stated that all of the FMCSRs should apply to private motor carriers of passengers and their drivers except for

the insurance requirements (49 CFR Part 387). It suggested a phase-in of those FMCSRs standards which require written documentation. The DOT for the State of Wisconsin advocated that private motor carriers of passengers and their drivers be subject to certain parts of the FMCSRs. These are the Qualifications of Drivers, 49 CFR Part 391; Parts and Accessories Necessary for Safe Operation, 49 CFR Part 393; and Inspection, Repair, and Maintenance, 49 CFR Part 396. The Maryland State Police Department advocated the phase-in of the application of the FMCSRs to private motor carriers of passengers and their drivers. It suggested eliminating the hours of service (49 CFR Part 395) paperwork requirement but retaining the paperwork requirement for inspection, repair and maintenance (49 CFR Part 396).

Discussion

A private motor carrier of passengers is a person who is engaged in an enterprise other than motor vehicle transportation, and who provides transportation of passengers, by motor vehicle, that is within the scope of, and in the furtherance of that enterprise. In addition, to be covered by the proposed rule, a motor vehicle used to transport passengers must be designed to transport more than 15 passengers, including the driver, and be used in interstate commerce.

Examples of some private motor carriers of passengers involved in interstate transportation operations are: (1) Boy Scout and Girl Scout organizations bus transportation across State boundaries, (2) private church bus transportation or church members across State boundaries, (3) a business transporting its workers in a bus from one manufacturing plant in one State to another manufacturing plant in another State, and (4) travel clubs using their own or leased buses on an interstate trip.

The FHWA recognizes that some of these entities are not engaged in any business enterprise. Many are nonprofit or not-for-profit organizations or volunteer groups who travel as an organization using a vehicle and/or driver affiliated with the organization. This operation is quite different from that which the general public considers, and the FHWA has historically regulated, as a motor carrier.

In this proposed rule the FHWA recognizes not only the difference among the operations that can be defined as private carriers of passengers but also the differences between this group and the currently regulated, for-hire carriers of passengers. The intent of this proposed rule is to apply the FMCSRs as uniformly as possible to all similar operations and minimize unnecessary regulatory and paperwork burdens.

Because of this diversity and divergence from the population group currently regulated by the FMCSRs, the FHWA proposes to classify the population into two distinct groups:

I. *Private motor carriers of passengers with employees hired as drivers.* This group is defined as those carriers that have purchased or have leased vehicles and hired a person or persons specifically to drive these vehicles. Company buses used to shuttle employees between manufacturing plants and privately-owned buses used to transport professional sports teams or performers between States are two examples of private motor carriers of passengers with employees hired as drivers.

For the purpose of this proposed rulemaking, "hired" means to be involved in an activity or work in which compensation is paid for services rendered.

II. *Limited private motor carriers of passengers.* This group contains carriers that transport their employees or members interstate in their own or leased vehicles driven by a person who is a volunteer or employed by the carrier in another capacity and who receives little or no remuneration for the driving. Church groups in which the minister, or another employee of the group drives the church-owned vehicle or a school teacher driving the school's football team, are two examples. A Boy Scout troop in which one of the parents drives a troop-owned vehicle or a church group in which one of the members of the congregation drives the vehicle and receives no remuneration are also examples of this group.

The relationship of the driver to the motor carrier was chosen by the FHWA as the most equitable factor in defining private carriers of motor carriers since this relationship best appropriates the employment relationship of drivers and regulated for-hire carriers. It also provides a parallel with the exemptions currently included in the FMCSRs regarding intermittent, casual, or occasional drivers (49 CFR 391.63). Comments are requested on the proposal to differentiate entities within the broad definition of private carriers of passengers and on the factor (driver/motor carrier relationship) used by the FHWA to make this differentiation. The FHWA is also interested in receiving comments on the applicability of these definitions to all possible types of private carriers of passengers. Is there some entity that would not fit into one of these groups?

There has been some confusion in the past whether drivers of recreational vehicles are subject to the FMCSRs and/or the CDL requirements. Such drivers are not subject to these requirements when the vehicle is being used for personal purposes, such as a family vacation.

Commercial motor vehicles operated by agencies of the Federal or the various State and/or local governments have been exempted from the safety regulations except for reporting interstate accidents as required by 49 CFR 394 (See 53 FR 18042, dated May 19, 1988). The FHWA proposes to continue the exemption for Federal, State, and local governments. Comments are requested on this proposal as well as on what additional steps the FHWA might take to foster compliance with the regulations by governments. Again it should be emphasized that the interstate movements of these groups are the ones covered by this proposal.

The FMCSRs are contained in Title 49, Code of Federal Regulations, Parts 390 through 399 and Part 382 and can be divided into seven main areas:

(1) Driver qualifications (Part 391)—age; employment applications; driver qualification files; skill and knowledge qualifications; and physical qualifications;

(2) Operation of the vehicle (Part 392)—general vehicle safety, equipment, inspection, and use; prohibition against the use of drugs and other substances;

(3) Parts and accessories necessary for safe operation (Part 393)—lights, brakes, windows, fuel systems, tires, etc;

(4) Accident reporting (Part 394)—reports that must be made to FHWA; recordkeeping requirements;

(5) hours of service (Part 395)—driving and on duty time limitations; record of duty status preparation and exemptions;

(6) Vehicle inspection and maintenance (Part 396)—recordkeeping of maintenance procedures; pre-and-post trip inspections;

(7) Commercial Drivers License (Part 383)—a valid, single license to operate a class of commercial motor vehicle.

Part 390 includes general definitions, and Parts 397, 398, and 399 apply only to hazardous materials carriers, transportation of migrant workers, and employee health and safety, respectively.

The full text of the FMCSRs is available from the Government Printing Office (GPO) as well as from many motor carrier industry trade associations and publishing firms. Those persons wishing to obtain a copy of the

FMCSRs from the GPO may contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC, 20402, telephone (202) 275–3648. A copy of the FMCSRs is available for review in the FHWA docket room (see section titled, ADDRESS).

Proposed Requirements

The FHWA is proposing to apply the FMCSRs to the two groups of private carriers of passengers in varying degrees and to phase in the requirements. The proposed driver qualification and driver hours of service requirements are discussed separately for each group. The FHWA believes that vehicle and operational requirements should be identical for both groups and consistent with the requirements for other regulated entities. The FHWA is also proposing that the paperwork/documentation requirements for driver qualifications and hours of service vary, for the groups.

As previously mentioned, the requirements of the Act regarding commercial driver's license (CDL) are to be applicable to all drivers who operate a commercial motor vehicle that is designed to transport more than 15 passengers, including drivers in both interstate and intrastate operations, including drivers for private carriers of passengers. Therefore, drivers in both groups are subject to the CDL requirements which are contained in 49 CFR Part 383.

Private Motor Carriers with Employees Hired as Drivers (Group I)

The FHWA believes this class of operations most closely resembles the for-hire operations. Persons are specifically hired to drive a vehicle on a regular basis either over a fixed route or to a variety of destinations for more than 10 percent of that employee's time. For this reason, the FHWA is proposing that the FMCSRs would apply in their entirety to this group with a one-time waiver, as described below, for currently employed drivers and equipment. The requirements regarding background and character of drivers (application for employment (49 CFR 392.21), investigation and inquiries (49 CFR 391.23), notifications of previous employment (49 CFR 383.35), and examinations and tests (road test (49 CFR 391.31 and 49 CFR 392.33)) and written test (49 CFR 391.35 and 49 CFR 391.37)) would not apply to those drivers regularly employed by a motor carrier on the date this rule becomes final as long as the person continues to be regularly employed as a driver for that motor carrier. The purposes of these requirements are to ascertain a drivers employment, experience, and driving record. This would not be necessary for drivers already employed by a private carrier of passengers. Such a waiver is consistent with prior regulation of driver groups for the first time.

Members of this group would be defined as motor carriers for the purposes of receiving safety fitness ratings issued by the FHWA included under to 49 CFR Part 395. Section 215 of the Motor Carrier Safety Act of 1984 directs the Secretary of Transportation, in cooperation with the Interstate Commerce Commission, to establish a procedure to determine the safety fitness of owners and operators of commercial motor vehicles, including persons seeking new or additional motor carrier operating authority. This is an established procedure described under 49 CFR Part 385 which involves an on-site visit by a Federal safety investigator to review a motor carrier's safety procedures and practices. The FHWA would appreciate specific comments regarding possible enforcement concerns of Group I private motor carriers of passengers, especially in conducting safety reviews. What can be done to improve the efficiency of safety reviews for the carriers? Should FHWA allow these carriers to perform their own reviews or mail documentation to FHWA or a State so that an off-site rview could be conducted?

Limited Private Motor Carriers of Passengers (Group II)

Since the drivers of the vehicles for these carriers are not specifically hired as drivers, the majority of the driver qualification requirements included in the FMCSRs would not apply to these entities. As discussed earlier, these drivers will be subject to the CDL testing and licensing standards. Those standards (Part 383) require each driver who applies for a CDL and wants to operate in interstate commerce to certify that he/she at least meets the following qualifications: (1) Is at least 21 years old; (2) Can read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries; (3) Is physically qualified to drive a motor vehicle in accordance with Subpart E—Physical Qualifications and Examinations of Part 391; and (4) Is not disqualified to drive a motor vehicle under the rules in § 391.15 (i.e., loss of driving privileges by reason of revocation, suspension, withdrawal, or denial of operator's license). The FHWA believes that these requirements will be adequate to ensure that drivers are properly qualified for the level and type of driving of those drivers.

The FHWA believes that the interstate operations of these entities will be intermittent. As previously cited, only 4 percent of accidents in the accident data base were related to hours of service. The FHWA believes, however, that the driving and on-duty limitation contained in the hours-of-service regulations are appropriate for the private movement of passengers. The drivers of these operations, however, generally will not, be totally familiar with the specific recordkeeping requirements regarding hours of service requirements, that is, the record of duty status, commonly known as the log book. Furthermore, the record retention requirements placed on the motor carrier would be unnecessary given the intermittent nature of these operations. Thus, while imposing the driving and on-duty limitations to Group II carriers, the FHWA does not propose that these carriers and their drivers be subject to the recordkeeping requirements of Part 395—Hours of Service of Drivers.

The FHWA believes random roadside inspections by State enforcement personnel and the CDL requirements are sufficient to ensure the safe operation of these vehicles and is proposing not to subject the Group II carriers to safety reviews, including assigning them a motor carrier identification number. The FHWA appreciates comments on the proposal including specific comments on how to ensure that these carriers are in fact meeting the requirements other than through random roadside checks and CDL enforcement. The FHWA also would like comments on how to identify the motor carrier responsible for a vehicle's violations and accident reports without an identification number.

The National Governor's Association (NGA) and the FHWA have developed and begun to implement a project on truck and bus accident data uniformity. The FHWA believes that once implemented nationwide, the NGA project which is in a multi-State pilot stage, should produce sufficient data on bus accidents. At this time, however, the reporting of accidents of Part 394 would be required of all private carriers of passengers. The FHWA requests comments on whether Group II motor carriers should be required to submit accident reports to FHWA.

Vehicle Requirements

Under the FMCSRs it is the responsibility of the motor carrier to maintain the vehicle in safe operating condition and together with the driver, to identify and correct all defects before

the vehicle is used in interstate commerce. In addition, 49 CFR Part 393, Parts and Accessories Necessary for Safe Operation, and 49 CFR Part 396, Inspection, Repair and Maintenance, provide detailed safety requirements for commercial motor vehicle components and the inspection of these components. The FHWA published revisions to Parts 393 and 396 on December 7, 1988 (53 FR 49380 and 49402). The revision to Part 396 establishes an annual vehicle inspection requirement effective December 7, 1989.

Motor vehicles are also subject to the safety standards for new vehicles known as the Federal Motor Vehicle Safety Standards, (FMVSS), promulgated by the National Highway Traffic Safety Administration (NHTSA) (49 CFR Part 571). A copy of the FMVSS are available for review in the docket room and may be purchased from the Government Printing Office.

The FHWA believes that vehicle standards contained in the FMCSRs and FMVSS should be applicable to all private motor carriers of passenger operations. Therefore, the FHWA is proposing that within one year from the effective date of this rule all motor carriers and drivers would be required to meet the pre-trip, post-trip and annual inspection requirements of Part 396 for their vehicles subject to this proposed rule. These vehicles would also be subject to random roadside vehicle inspections beginning one year from the date of publication of the final rule.

The FHWA is proposing that all commercial motor vehicles in both groups meet the applicable vehicle standards in place at the time of manufacture for the specific vehicle type. As noted earlier, new commercial motor vehicles are also subject to the FMVSS. Generally, the FMVSS and the FMCSRs are complementary—the FMVSS address standards for new vehicles while the FMCSRs address standards for vehicles in use in interstate commerce. One area where they differ is in the standards for fuel systems. The FMVSS only address passenger vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less and for school buses with a GVWR greater than 10,000 pounds (49 CFR 571.301). The FMCSRs (49 CFR 393.67) sets construction and strength requirements for components of the fuel system.

The FHWA does not intend to require vehicles currently owned by private motor carriers of passengers that were manufactured to the FMVSS standards to also be subject to the different vehicle fuel system standards for use in vehicles contained in 49 CFR 393.67, Liquid fuel tanks. Nor does the FHWA intend to require private motor carriers of passengers to replace equipment owned by the motor carrier on the date of publication of the final rule which may not meet the standards contained in the FMCSRs or the FMVSS if the equipment has been maintained and meets the manufacturer's original standards. Therefore, the FHWA is proposing that the fuel systems of commercial motor vehicles owned by private motor carriers of passengers as of the date of publication of the final rule of this proposed rule be in compliance in accordance with either 49 CFR 393.67 (for vehicles manufactured for use in interstate commerce) or 49 CFR 571.301 (for small buses and school buses) in effect at the time of manufacture of the vehicle. The FHWA believes that all buses currently operated have been manufactured to FMVSS or FMCSRs standards and that the proposal will not require the retrofitting of vehicles already owned by private carriers of passengers. The FHWA would like comments and information on this proposal.

The FHWA believes that buses operating in interstate commerce and manufactured to standards contained in either the FMCSRs or the FMVSS should be maintained to those standards at a minimum and be in a safe, working condition. This proposal is based on the premise that current owners of such vehicles have and will continue to maintain them in a safe condition. Therefore, the FHWA does not anticipate that there will be any major retrofitting required. As stated earlier, the FMCSRs and the FMVSS are complementary and both standards generally provide for grandfathering of vehicles when new safety standards are issued. The FHWA intends to continue this policy.

However, the FHWA recognizes the possibility of a vehicle being manufactured to standards other than those contained in either the FMCSRs or the FMVSS. An example of this situation is a bus that was manufactured prior to the establishment of FMVSS and was not operated in interstate commerce (and therefore not subject to the FMCSRs). In such situations, if any exists, there is the possibility of extensive retrofitting to bring the vehicle in compliance with the requirements of the FMCSRs. Since the FMVSS were established in 1968, the FHWA does not believe there are many vehicles in this situation that operate in interstate commerce. Comments are requested on such situations or other situations which may require major retrofitting.

The FHWA believes that some private motor carriers of passengers may need to perform maintenance on certain parts and accessories where repairs have been deferred or perform minor retrofitting to bring their vehicles in compliance with the requirements of Part 393. For example, Section 393.90, Buses, standee line or bar, requires a specified line and sign to indicate that passengers cannot occupy any space forward of the line while the bus is being operated. Another provision of Part 393 which may require a motor carrier to perform some retrofitting is § 393.89, Buses, drive shaft protection. This section requires a bracket at the end of the drive shaft. The FHWA anticipates that most of the vehicles operated by private motor carriers of passengers already meet these requirements and therefore would not have to perform such retrofitting. Comments on this issue are also requested.

The FHWA is inviting comment to determine whether there is a need for, or the feasibility of, retrofitting older passenger vehicles used by these groups. We would also appreciate any informational data that would assist in establishing the cost of retrofitting those vehicles.

A private motor carrier of passengers may continue to operate a vehicle not subject to either 49 CFR 393.67 or 49 CFR 571.301 at the time of its manufacture with existing fuel tanks provided the vehicle was owned by the private motor carrier of passengers on the date of publication of the final rule and the fuel tanks maintained to a safe level and the vehicle meets the other requirements of the FMCSRs. Vehicles purchased by private motor carriers of passengers for use in interstate commerce after the date of publication of the final rule would need to meet the vehicle safety standards in 49 CFR Part 393 in their entirety, including the fuel system standards.

The FHWA intends to conduct an educational program to inform these private motor carriers of passengers of the requirements once the final rule is issued. The FHWA requests comments on what level of education is needed and the form this educational program should take.

These vehicle standards are proposed to be effective one year from the date of publication of the rule. The other rules proposed in this NPRM are effective within one year, without any additional phase-in period. The FHWA believes that this rule will adequately ensure the safety of passengers of these vehicles as well as the traveling public without

placing an undue burden on these motor carriers.

Figure 1 depicts the proposed application of the FMCSRs as they would affect each group along with the currently regulated carriers. Currently the FMCSRs requirements apply to all for-hire motor carriers and their drivers operating in interstate transportation. Proposed Group I motor carriers and their drivers would be required to meet the same requirements. Those motor carriers and their drivers contained in Group II classification would be required to comply with the requirements of 49 CFR Part 383 (the Commercial Driver's License Standards; Requirements and Penalties), and the applicable requirements of Parts 392, 393, 394, 395 and 396.

FIGURE 1.—APPLYING THE FEDERAL MOTOR CARRIER SAFETY REGULATIONS (FMCSRs) TO PRIVATE CARRIERS OF PASSENGERS

(Note: Rules would apply to interstate transportation. All requirements, except Part 383 effective within 1 year of the final rule)

Requirements (49 CFR)	For-hire Carriers of Passengers [1] (currently regulated)	Private Carriers of Passengers	
		Group I (hired drivers)	Group II (volunteers or occasional drivers)
Part 383—Commercial Drivers' License	Yes	Yes	Yes.
Part 391—Driver Qualifications	Yes	Yes, but current drivers waived from pre-employment checks.	No, must only meet CDL requirements (Part 383).
Part 392—Operation of Vehicles	Yes	Yes	Yes.
Part 393—Parts & Accessories	Yes	Yes, but currently owned vehicles must meet original manufacturer's standards.	Yes, but currently owned vehicles must meet original manufacturer's standards.
Part 394—Accident Reporting	Yes	Yes	Yes.
Part 395—Hours of Service	Yes	Yes	Yes, but no recordkeeping required.
Part 396—Inspection & Maintenance	Yes	Yes	Yes.

[1] All other sections of FMCSRs also apply, 387.21, 390.21, 397.21. Defined as driving more than 10 percent of time.

Section-by-Section Proposal

This section presents the specific proposed changes to be incorporated into the existing parts of the FMCSRs.

Drivers proposed to be covered by this rule are subject to the current requirements implementing the Act regarding commercial drivers' licenses; therefore, revisions to 49 CFR Part 383 are not necessary.

Part 390—General

This part describes who is subject to the FMCSRs and contains the definitions used in other parts of the FMCSRs.

The proposed rule would modify the definition of "motor carrier" to include "private motor carrier of passengers." The definitions in Part 390 would also be modified to add the definition of a "limited private motor carrier of passengers." This definition is needed to define the carriers which fall into the Group II category discussed in this NPRM. These changes would subject private motor carriers of passengers to tha FMCSRs and would define the Group II carriers that would be excluded from certain requirements. Section 390.21 is also being modified to require private motor carriers of passengers to mark their motor vehicles. A "limited private motor carrier of passengers" would be exempt from obtaining a DOT motor carrier identification number (§ 390.21(b)(3)).

Part 391—Qualification of Drivers

This part contains the requirements pertaining to qualifications of drivers.

Section 391.2(c) is added to exempt those persons who drive soley for a limited private motor carrier of passengers from having to be medically examined, to obtain a certificate of medical examination, and to carry a medical examiner's certificate on his/her person. While these persons must be medically qualified to drive in interstate commerce consistent with the CDL requirements (Part 383), they need not obtain a medical examiner's certificate. A new paragraph (§ 391.61(b)) is added to allow current drivers of private motor carriers of passengers to be waived from certain driver checks by the employer. This proposal does not require major retrofitting of any equipment if it has been maintained and meets the standards for newly manufactured vehicles in place at the time of manufacture.

Part 392—Driving of Motor Vehicles

This part contains the provisions of the FMCSRs regarding the operations of commercial motor vehicles. Section 392.1 is changed to add "driver" in order to specify that volunteer or unpaid drivers are subject to the rule if operating for a limited private motor carrier of passengers.

Part 393—Parts and Accessories Necessary for Safe Operation

This part contains the majority of the vehicle equipment design and performance standards for commercial motor vehicles operating in interstate commerce. Section 393.1 would be redesignated as § 393.1(a) and revised to add "drivers" to the entities which would need to comply with the part. This change is needed to ensure that volunteer drivers and limited private motor carriers of passengers are subject to the vehicle standards.

Section 393.1(b) would be added to specify that private motor carriers of passengers do not have to replace or retrofit the fuel systems on vehicles which they own on the date of publication of the final rule. The fuel systems, however, would be maintained to the standard (FMVSS and FMCSRs) for which the systems were originally manufactured. This section would also require new vehicles purchased or leased for interstate commerce after the final rule publication date to meet requirements of Subpart E. All other requirements of Part 393 will apply to limited private carriers of passengers. This does not require retrofitting of any equipment if it has been maintained and meets the original manufacturer's standards.

Part 394—Notification and Reporting of Accidents

Part 394 of the FMCSRs establishes the requirement that all interstate motor carriers comply with the notification and accident reporting requirements of that part. Part 394 defines the criteria for reportable accidents; calls for the immediate notification in case of a fatal accident; states who, when, how, and what to report in case of a reportable accident; how to report accident-related deaths that occur after a report has been submitted; and requires the reporting

motor carrier to assist in investigations and special studies.

As discussed previously, the FHWA does not have direct accident data on interstate private motor carriers of passengers, and accident data on intrastate private motor carriers of passengers are not readily available from individual States. To identify unsafe private carriers of passengers and for the future evaluation and analysis of these proposed safety standards for interstate private motor carriers of passengers and their drivers, it is essential that accident data be collected. Therefore, all interstate private motor carriers of passengers would be required to file accident reports with the FHWA on reportable accidents and would be required to meet the other requirements found in Part 394 of this subchapter.

As a result of an applicability change in 49 CFR 390.3, all private motor carriers of passengers would be subject to this part. No revisions are needed to this part.

The FHWA will continue to monitor the progress made with uniform accident reports from the States from the NGA pilot program. If that information becomes an effective alternative to motor carrier supplied accident data, the FHWA will consider elimination of this provision of the proposed rule.

Part 395—Hours of Service of Drivers

Part 395 establishes maximum driving and on-duty time (working in addition to driving). A driver cannot drive more than 10 hours following 8 consecutive hours off duty. A driver may not drive after being on duty for more than 15 hours following 8 consecutive hours off duty. A driver may not drive after being on duty more than 60 hours in any 7 consecutive days. A driver may not drive after being on duty more than 70 hours in any 8 consecutive days if the carrier operates every day in the week. These standards are the responsibility of both the motor carrier and the driver. The FHWA proposes that all private motor carriers of passengers be subject to the hours of service requirements. Drivers for limited private motor carriers of passengers would not be required to prepare the driver's record of duty status. Comments are requested on this proposal and on the need to ensure that these drivers do not exceed the 10 hour maximum driving rule, or operating a motor vehicle after having been on duty more than 15 hours. Section 395.8(1), Exemptions, would be modified to exclude limited private carriers of passengers from the recordkeeping requirements.

Part 396—Inspection, Repair and Maintenance

This part requires that all vehicles must be inspected, repaired and maintained in a safe condition in accordance with the vehicle standards contained in Part 393.

As a result of an applicability change in 49 CFR 390.3, all private motor carriers of passengers would be subject to this part. No revisions are needed to this part.

Economic Impact Evaluation

The impact of this proposal will not result in an annual effect on the economy of $100 million, a major increase in costs or prices, or have a significant adverse effect on the nation's economy. The FHWA has determined that this document does not contain a major rule under Executive Order 12291. However, because of the public interest in commercial motor vehicle safety that this rule addresses, it is considered a significant regulation under the regulatory policies and procedures of the Department of Transportation. The safety benefits and opportunities for benefits to be derived from this rule will offset any cost. A draft regulatory evaluation has been prepared and is available for review in the public docket. Based on the information available to the FHWA at this time, this action, if promulgated, will not have a significant economic impact on a substantial number of small entities.

In its draft regulatory evaluation the FHWA estimates that this rule will impose societal costs of $3 million while creating benefits of $35 million, each year. Thus the ratio of benefits to costs is 11 to 1. Even if the analysis has errors induced by lack of data, the benefits will far exceed the costs.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Federalism Assessment

This proposed regulation amends certain parts of the FMCSRs pertaining to the scope and applicability of the FMCSRs to interstate transportation by private motor carriers of passengers as authorized by the Motor Carrier Safety Act of 1984. Nothing in this document directly preempts any State law or regulation. The FMCSRs establish minimum safety regulations which, at the current time, may be supplemented by the States, except for the adoption of inconsistent regulations. The statutory basis for Federal regulation of interstate commerce has been outlined above. Accordingly, it is certified that the policies contained in this document have been assessed in light of the principles, criteria, and requirements of the Federalism Executive Order.

List of Subjects in 49 CFR Parts 390, 391, 392, 393, and 395

Commercial drivers license standards requirements and penalties, Highway safety, Highway and roads, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements, Driver's hours of service.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: February 10, 1989.

Robert E. Farris,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend Title 49, Code of Federal Regulations, Subtitle B, Chapter III, Parts 390, 391, 392, 393, and 395, as follows:

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS: GENERAL

1. The authority citation for Part 390 continues to read as follows:

Authority: 49 U.S.C. App. 2503 and 2505; 49 U.S.C. 3102 and 3104; 49 CFR 1.48.

§ 390.3 [Amended]

2. Section 390.3(f)(7) is removed.

3. In § 390.5, the definition of *"motor carrier"* is revised and a definition of "limited private motor carrier of passengers" is added to read as follows:

§ 390.5 Definitions.

* * * * *

"Limited private motor carrier of passengers" means a private motor carrier of passengers which does not employ a person specifically to operate a commercial motor vehicle in interstate commerce as a principal duty, but who assigns or directs persons to drive for the motor carrier. A driver who operates a commercial motor vehicle in interstate commerce or is on duty for such operations for more than 10 percent of his/her time shall be considered to drive as a principal duty.

"Motor carrier" means a for-hire motor carrier or a private motor carrier of passengers or property. The term "motor carrier" includes a motor carrier's agents, officers and representatives as well as employees

responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories. For purposes of subchapter B, the definition of *"motor carrier"* includes the terms *"employer"*, *"private motor carrier of passengers"* and *"exempt motor carrier."*

* * * * *

PART 391—[AMENDED]

4. The authority citation for Part 391 continues to read as follows:

Authority: 49 U.S.C. App. 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

5. Section 391.2 paragraph (d) is added to read as follows:

§ 391.2 General exemptions.

* * * * *

(d) *Limited private motor carriers of passengers.* The following rules do not apply to a person who drives solely for a limited private motor carrier of passengers: Sections 391.41, 391.43, and 391.45 as they require a person to be medically examined, to obtain a certificate of medical examination, and to carry a medical examiner's certificate on his/her person.

* * * * *

6. Section 391.61 is amended by designating the present text as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 391.61 Drivers who were regularly employed before January 1, 1971.

* * * * *

(b) Private motor carriers of passengers. The provisions of § 391.21 (relating to applications for employment), § 391.23 (relating to investigations and inquiries), § 391.31 (relating to road tests), and § 391.35 (relating to written examinations) do not apply to a driver who has been a regularly employed driver (as defined in § 395.2(f) of this subchapter) of a private motor carrier of passengers as of *(date of publication of the final rule)* as long as the driver continues to be a regularly employed driver of that private motor carrier of passengers. Such a driver is qualified to drive a motor vehicle if the driver fulfills the requirements of paragraphs (b)(1) through (9) of § 391.11 (relating to qualifications of drivers).

PART 392—[AMENDED]

7. The authority citation for Part 392 continues to read as follows:

Authority: 49 U.S.C. App. 2505; 49 U.S.C. 3102; 49 CFR 1.48.

8. Section 392.1 is revised to read as follows:

§ 392.1 Scope of the rules in this part.

Every motor carrier and driver shall be instructed in and comply with the rules in this part.

PART 393—[AMENDED]

9. The authority citation for Part 393 continues to read as follows:

Authority: 49 U.S.C. App. 2505; 49 U.S.C. 3102; 49 CFR 1.48.

10. Section 393.1 is amended by revising and redesignating the present text as paragraph (a) and by adding paragraph (b) to read as follows (in effect, § 393.1 is revised):

§ 393.1 Scope of the rules in this part.

(a) *General.* Except as provided in paragraph (b) of this section, every employer, employee, motor carrier, and driver shall comply and be conversant with the requirements and specifications of this part. No employer or motor carrier shall operate a commercial motor vehicle, or cause or permit it to be operated, unless it is equipped in accordance with the requirements and specifications of this part.

(b) *Private motor carriers of passengers.* (1) Except as provided in paragraphs (b) (2) and (3), the rules in Subpart E—Fuel Systems, are applicable to all commercial motor vehicles operated in interstate commerce by a private motor carrier of passengers.

(2) The fuel system of a commercial motor vehicle subject to 49 CFR 571.301 and owned by a private motor carrier of passengers on (*the date of publication of this final rule*) shall be in compliance with Federal Motor Vehicle Safety Standard No. 301; Fuel System Integrity (49 CFR 571.301) in lieu of § 393.67, Liquid fuel tanks.

(3) A private motor carrier of passengers may continue to operate a vehicle not subject to either 49 CFR 393.67 or 49 CFR 571.301 at the time of its manufacture with existing fuel tanks provided the vehicle was owned by the private motor carrier of passengers on the date of publication of the final rule and the fuel tanks are maintained to a safe level.

PART 395—[AMENDED]

11. The authority citation for Part 395 continues to read as follows:

Authority: 49 U.S.C. 3102; 49 U.S.C. App. 2505; and 49 CFR 1.48.

12. Section 395.8(l)(3) is added to read as follows:

§ 395.8 Driver's record of duty status.

* * * * *

(l)(3) Limited private motor carriers of passengers. The rules in this section do not apply to a driver for a limited private motor carrier of passengers or to limited private motor carriers of passengers.

[FR Doc. 89–3647 Filed 2–1–89; 8:45am]

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February 17, 1989

Part IV

Environmental Protection Agency

Dinoseb Pesticide Products; Procedures for Submission of Claims for Indemnification and Requests for Disposal; Amended and Final Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP-150003A; FRL-3523-3]

Dinoseb Pesticide Products; Procedures for Submission of Claims for Indemnification and Requests for Disposal; Amended and Final Notice

AGENCY: Environmental Protection Agency.

ACTION: Final notice; procedures for requesting indemnification and disposal for pesticide products containing Dinoseb.

SUMMARY: This Notice amends an April 15, 1987, **Federal Register** Notice by announcing that EPA is again accepting claims for indemnification and/or requests for disposal for all suspended and cancelled dinoseb-containing pesticides under sections 15 and 19 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 m and q (prior to the FIFRA amendments of 1988). On June 9, 1988, the EPA Administrator issued a Final Order which concluded the cancellation hearing on dinoseb, cancelled the registrations of all remaining dinoseb products, and provided for limited use of existing stocks under certain specified conditions. This Notice provides information on eligibility and procedures to owners of dinoseb stocks who may wish to seek indemnification for losses suffered as a result of regulatory actions taken by EPA and/or Federal disposal assistance.

DATES: Claims and requests filed in response to this Notice for products which may not be used on caneberries in Washington and/or Oregon, must be submitted by June 19, 1989, to be considered. Claims and requests for products which may be used on caneberries in Washington and/or Oregon should not be submitted until after June 15, 1989. These latter claims/requests must be submitted before August 15, 1989, to be considered.

ADDRESS: All claims and requests filed in response to this Notice should be mailed to: Resource Management and Evaluation Branch (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Attention: Stanley Cook.

FOR FURTHER INFORMATION CONTACT:

By mail: Stanley Cook, Resource Management and Evaluation Branch (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 1002, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, 1-800-DIN-OSEB (in Maryland call 1-800-331-3704).

SUPPLEMENTARY INFORMATION: EPA is issuing this amended Notice because all suspended dinoseb registrations have now been cancelled, and holders of stocks of these products may be eligible for indemnification and/or Federal disposal assistance. This Notice discusses how claims for indemnification and requests for Federal disposal should be prepared and submitted to EPA. It also instructs persons who responded to the April 15, 1987, Notice how to affirm, amend, or withdraw a previously submitted claim and/or request, or to submit a claim for indemnification and/or request for disposal assistance for previously ineligible products.

This Notice establishes two time periods with separate deadlines for owners to submit claims for indemnification and/or requests for disposal. Owners of products which may not be used in 1989 on caneberries must file claims/requests during the first time period. Owners of products which may be used on caneberries must file claims/requests during the second time period. Procedures for filing claims/requests are discussed in Unit II. of this Notice. Unit II. B. lists products for which claims/requests may be submitted during one of these two time periods.

This Notice also discusses the interim storage, transportation, and disposal of dinoseb stocks. EPA has awarded contracts to two waste management firms for the disposal of dinoseb. It is the responsibility of the holder to store the dinoseb safely and transport it to EPA's designated facility when EPA is ready to receive the stocks.

I. Background

A. Legal Standard

Section 6 of FIFRA authorizes the EPA Administrator to take certain actions to prohibit sale, distribution, and use of pesticide products that pose unreasonable adverse effects to human health or the environment. If use of a pesticide poses a risk that outweighs the benefits of continued use, the pesticide's registration may be cancelled and/or suspended. If action is necessary to prevent an imminent hazard to human health or the environment, the Administrator may announce his intent to suspend a pesticide registration at the same time he issues a Notice of Intent to Cancel. If an emergency exists which does not permit the Administrator to hold a hearing before suspending a pesticide registration, he may issue an Emergency Suspension Order which immediately halts all use, sale, and distribution of the pesticide. Adversely affected persons may request, within certain time frames, a hearing to challenge EPA's suspension. After an opportunity for a expedited hearing, a Final Suspension Order can be issued. Also in accordance with section 6 of FIFRA, a Notice of Intent to Cancel and deny registrations provides that a pesticide product would be cancelled 30 days after publication of the cancellation notice or its receipt by the registrant unless the registrant or other adversely affected person requests a hearing to contest the cancellation of that registration.

Prior to its amendment in December 1988, section 15 of FIFRA required the Administrator to make indemnity payments to owners of pesticides suspended and cancelled under section 6 who suffered losses by reason of the Agency's actions. The statute provided that indemnification is payable to any person under the following conditions:

1. The Administrator suspended the registration to prevent an imminent hazard.

2. The registration was subsequently cancelled.

3. The person owned some quantity of the pesticide immediately before the suspension.

4. The person suffered losses by reason of the suspension or cancellation.

Under section 15(b), the amount of indemnity payment was to be determined on the basis of the cost of the pesticide owned by the person immediately before the suspension, but could not exceed the pesticide's fair market value at that time.

Also prior to the 1988 amendments, section 19(a) of FIFRA and the regulations promulgated pursuant to it at 40 CFR Part 165 required Administrator to accept at convenient locations for safe disposal those pesticides the registrations of which have been suspended and cancelled as specified in section 6(c), if requested by the owner of the pesticide. However, before the owner of a pesticide requests such acceptance, he/she must make every reasonable effort to return the material to the manufacturer, distributor, or other agents capable of relabeling, recovering, recycling, or reprocessing the material (See 40 CFR 165.4).

Both sections 15 and 19 of FIFRA were substantially amended by Pub. L. 100-532, the FIFRA Amendments of 1988, which was given into law by the President on October 25, 1988. EPA does

not believe that the 1988 amendments are applicable to its current dinoseb indemnification and disposal program. Accordingly, all references in this Notice to sections 15 and 19 of FIFRA refer to the law as it existed prior to the 1988 amendments.

B. Dinoseb History

Based on information about the adverse human health and environmental risks posed by dinoseb-containing pesticide products, on October 7, 1986, the Administrator issued an Emergency Suspension Order for all registrations of pesticides containing the active ingredient dinoseb. It immediately prohibited all further sale, distribution, and use of dinoseb products. Notice of this action was published in the **Federal Register** of October 14, 1986 (51 FR 36634). Although four registrants requested a hearing concerning whether the suspension of dinoseb products should remain in effect, these requests were withdrawn on October 30, 1986, resulting in immediate entry of a Final Suspension Order.

Also on October 7, 1986, the Administrator issued a Notice of Intent to Cancel and deny registrations of all dinoseb-containing pesticide products, published in the **Federal Register** of October 14, 1986 (51 FR 36650). Upon the expiration of the applicable 30-day period, many dinoseb registrations were cancelled by operation of law. However, several registrants requested hearings contesting the EPA's cancellation action. These registrations were suspended, but not cancelled, pending the outcome of an administrative hearing.

Prior to issuance of a Final Cancellation Order, certain actions were taken which resulted in modification of the Suspension Order on dinoseb. First, EPA was petitioned under Subpart D of 40 CFR Part 164 to modify the Final Suspension Order to permit use of dinoseb on certain crops. Following an administrative hearing, on March 30, 1987, the Administrator issued a Decision and Final Order Modifying the Final Suspension of Pesticide Products which Contain Dinoseb. This order and the FIFRA section 18 emergency exemptions which implemented it allowed limited use of FIFRA during the 1987 and 1988 growing seasons on dry peas, lentils, and chickpeas in Washington and Idaho. A subsequent order permitted use on the same crops in certain counties of Oregon.

Second, following a complaint filed in the U.S. District Court for the District of Oregon by a number of user groups, the Suspension Order on dinoseb was enjoined on April 15, 1987, with respect to certain crops in the Pacific Northwest. *Love v. Thomas*, 668 F. Supp. 1143 (D. Oregon 1987), *affirmed in part* 838 F. 2d 1059 (9th Cir. 1988). In particular, the District Court ruling enjoined the Suspension Order as it applied to dinoseb use on caneberries, cucurbits, green peas, and snap beans in the States of Idaho, Oregon, and Washington.

On June 9, 1988, the Administrator issued a Final Cancellation Order on dinoseb, cancelling all remaining registrations. However, the Order provided for limited use of existing stocks of dinoseb on specific crops in the Pacific Northwest during the 1988 and 1989 growing seasons. The Order permitted existing stocks of all cancelled dinoseb products which were previously labeled for use on peas, lentils, or chickpeas to be sold, distributed, and used for weed control in dry peas, lentils, chickpeas, and green peas in the States of Idaho, Oregon, and Washington during the 1988 use season. In addition, the Order permitted existing stocks of all cancelled dinoseb products previously labeled for use on caneberries (blackberries, boysenberries, loganberries, and raspberries) to be sold, distributed, and used for cane control in these crops in the States of Oregon and Washington for the 1988 and 1989 use seasons. The 1989 caneberry use in Washington and Oregon is the only allowable use remaining at this time.

The Final Cancellation Order was challenged in the same District Court of Oregon, which initially issued a preliminary injunction partially staying the Order. However, the Court ultimately concluded it did not have jurisdiction to review the Order and, in the alternative, entered judgment sustaining the Administrator's decision. *Northwest Food Processors* v. *Thomas*, N–88–641–RE (D. Oregon Sept. 25, 1988). The Northwest Food Processors Association previously filed a petition in the Ninth Circuit Court of Appeals seeking review of the cancellation order and has also appealed the Federal District Court decision to the Ninth Circuit Court.

C. April 15, 1987 Federal Register Notice

EPA issued a notice, published in the **Federal Register** on April 15, 1987 (52 FR 12352), announcing that pursuant to sections 15 and 19 of FIFRA it was accepting claims for indemnification and/or requests for disposal assistance for dinoseb pesticide products that were suspended and cancelled. The April 15, 1987 Notice described procedures and set a deadline of July 14, 1987 for filing claims and/or requests for eligible products. As described in the April 15, 1987 Notice, eligibility did not extend to suspended dinoseb registrations which had not been cancelled (i.e., those registrations for which registrants had requested a cancellation hearing). Although such products were not eligible for indemnification and disposal assistance at that time, EPA requested holders of these ineligible products to provide the Agency with certain basic information, such as location and quantity of their stock. EPA requested this information to be able to estimate the total quantity and location of all dinoseb products which could become eligible for indemnification and disposal assistance if the registrations of such products were eventually cancelled.

In response to the April 15, 1987 Notice, EPA received over 1200 submissions. About one-third of these were for products eligible at that time for indemnification and disposal assistance, and the others were for products that were not eligible. All submissions were assigned claim or file numbers and information from the aggregate was used to estimate the total amount and location of dinoseb stocks. EPA has been reviewing these submissions and has contacted some people regarding their claims/requests. EPA has made a number of offers to pay indemnification to owners, and is processing these claims as the acceptance agreements are returned by the owners. The Agency will be contracting all other people who responded to the April 15, 1987 Notice regardless of whether their products were eligible or ineligible for indemnification or disposal at the time of their initial submission. EPA appreciates the cooperation of holders of suspended-only products who responded to the April 15, 1987 Notice. The information helped expedite the dinoseb indemnification and disposal program.

After the publication of the April 15, 1987 Notice, and prior to issuance of a Final Cancellation Order, several registrants who had requested a cancellation hearing withdrew their requests and, in so doing, their dinoseb registrations were cancelled by operation of law. Once cancelled, owners of such products were eligible to seek indemnification and disposal assistance. For example, the registrations of Uniroyal Chemical Company dinoseb products were cancellations on June 19, 1987 when Uniroyal withdrew from the hearing. At that point, dinoseb products registered by Uniroyal became eligible for indemnification and disposal assistance. However, many owners of Uniroyal

products may not have been aware of the cancellation and their subsequent eligibility. This Notice serves, in part, to announce that owners of Uniroyal products registered by other companies who withdrew from the hearing after the April 15, 1987 Notice was issued are now eligible to file claims for indemnification and requests for disposal and must file claims/requests as outlined in Unit II. of this Notice.

II. Requirements for Indemnification and Disposal

A. Who is Eligible to File Claims for Indemnification and Requests for Disposal?

1. General

All federally registered dinoseb products, including products with Special Local Need registrations (under section 24(c) of FIFRA), have been suspended and cancelled. Accordingly, owners of these cancelled dinoseb products including registrants, manufacturers, distributors, retailers, and users may submit claims for indemnification and requests for disposal, provided that the cancellation occurred after the October 7, 1986 Emergency Suspension Order and the other conditions specified in this Unit are met.

2. Effect of Intrastate Registration

At the time of the October 7, 1986 Emergency Suspension Order, certain products containing dinoseb were being marketed under State pesticide registrations with applications for Federal registrations pending before EPA in accordance with EPA regulations at 40 CFR 162.17. Applications for these intrastate products were pending on October 7, 1986, when EPA issued a concurrent Notice of Intent to Deny all pending applications for Federal registration of these products.

The denial of Federal registration for these intrastate products was analogous to cancellation. A U.S. Claims Court decision in *Gro-Green Products, Inc.* vs. *United States*, 3 Cl. Ct. 639 (1983), held that in similar circumstances a claimant who held stocks of an intrastate pesticide product containing silvex was entitled to indemnification. Accordingly, persons with dinoseb products that were previously marketed under pending intrastate applications may also be eligible for indemnification and disposal, and must submit any claim during the first time period established in Unit II. E.

3. Effect of Section 18 Emergency Exemptions, the District Court Rulings and the Final Cancellation Order

The Final Cancellation Order superceded all sale, distribution, and use of dinoseb under the section 18 emergency exemptions or the District Court rulings. However, as discussed above, the Final Cancellation Order permitted the sale, distribution, and use of dinoseb for certain crops in 1988 and 1989. Persons who used dinoseb under the section 18 emergency exemptions, the District Court rulings, or the existing stocks provision (for uses other than on caneberries) in the Cancellation Order, and who have not submitted a claim for indemnification, must now do so. Further, if they have previously submitted a claim/request or information they must now affirm, amend, or withdraw it. Such amended claims/requests must reflect any product that was used or sold for one of these uses. However, if a dinoseb product may be used on caneberries during the 1989 use season, they should not submit a claim or amend a claim until the second time period as discussed in Unit II. E.

Owners/holders of dinoseb should remember that products for which existing stocks may still lawfully be sold or used under the Cancellation Order include *any* products labeled for caneberry uses, whether or not they were cancelled prior to issuance of the Order. Such products must be used only in full compliance with all of the stringent use restrictions required under the Order, and supplemental labeling containing all of the use restrictions must accompany the product when it is sold or distributed. Holders of these products may use, sell, or distribute their dinoseb stocks in Oregon and/or Washington during the 1989 caneberry use season in conformity with the Cancellation Order. Owners/holders who previously submitted claims/requests on these products and who subsequently use, sell, or distribute some or all of their stock must amend their claim accordingly and notify EPA during the second time period as discussed in Unit II. E.

4. Ownership requirement

Any person who owned some quantity of a registered dinoseb pesticide product immediately before the registration of that product was suspended, or who subsequently received a permissible assignment of the original owner's claim or a power of attorney from the original owner to file the claim, may claim indemnification for the product. Claims/requests may be filed by persons representing, in some legal capacity, the product owners at the time of suspension or cancellation.

A "power of attorney" is a document which appoints someone other than the actual product owner (the registrant, for example) as an agent of the product owner. In this instance, such a document merely gives an agent the authority to submit an indemnification claim and receive payment on the owner's behalf. The claim remains that of the pesticide owner.

EPA encouraged registrants to recall their products from distributors and retailers, so that the dinoseb products would be consolidated. If a registrant recalled its products, the registrant could obtain assignment of the original owner's claim. The document of assignment transfers the pesticide owner's right of indemnification to the other person. The pesticide owner thereafter has no legal interest in the claim. Samples of a "power of attorney" and assignment documents are provided in an Appendix to the Dinoseb Claim Form. Forms are available from the regional offices listed in Unit II. D. of this Notice.

The Federal Anti-Assignment of Claims Act would ordinarily bar an assignment of a claim that occurred before the claim was allowed. As stated in the April 15, 1987 Notice, EPA plans to waive this prohibition against "early" assignments with regard to otherwise valid claims for indemnification under section 15 of FIFRA. However, EPA intends to waive this prohibition only with respect to an assignee who took back the product as part of a recall or a seller who subsequently accepted returned stocks from purchasers.

Owners such as end-users and dealers/distributors who have acquired stocks of dinoseb products since October 7, 1986, will not be eligible for indemnification for such stocks even if the products were acquired in a lawful manner because these people did not own the product on the date of suspension. EPA will not waive the Anti-Assignment of Claims Act prohibition against assignment of indemnification claims for these products because waiver of this prohibition would not be consistent with the purposes of the Act. Claims for indemnification belong only to the person who owned such stocks on October 7, 1986 and may not be assigned to anyone else unless such assignment is part of a recall or return of stocks to suppliers.

EPA suggests that any dealer or user who acquired stocks of dinoseb products after October 7, 1986, which

he/she cannot or does not intend to lawfully sell or use should attempt to return such stocks to the party who owned them on October 7, 1986. Only that party is eligible to receive any indemnity payment for remaining stocks. Likewise, any person who intends to acquire dinoseb for the lawful use permitted under the Final Cancellation Order should be cautioned that he/she would not be eligible for indemnification for that particular stock, if any is unused at the end of the 1989 use season, because he/she was not its owner on October 7, 1986. However, even if it is not possible to return remaining stocks of a cancelled pesticide product to the original owner, the new holder may submit a request for Federal disposal assistance if the stocks are otherwise eligible.

EPA requires information from the claimant on the current ownership and location of the product, as well as the ownership at the time of suspension. For purposes of determining who owned the product at the time of suspension, the operative date is October 7, 1986.

5. Loss Requirement

The amount of indemnity payment is to be determined on the basis of the cost of the pesticide owned by the person immediately before suspension, but can not exceed the pesticide's fair market value at that time. Owners can recover indemnification only for losses suffered. Therefore, anyone who legally sold or used any dinoseb products after October 7, 1986 (e.g., as legally permitted under section 18, the District Court injunctions, or the Final Cancellation Order) must make appropriate adjustments on his/her claim. The total amount of "loss" sustained by the owner for a given amount of a dinoseb product must be reduced by the proceeds of any sale or distribution of that product. Any owner who uses a given amount of a dinoseb product has eliminated those "losses" that might otherwise have been sustained as a result of suspension and cancellation of the amount of product. A claimant is not entitled to an indemnity payment for any amount of dinoseb product for which losses were recovered through sale or use.

B. What Products Are Eligible for Indemnification and Disposal?

The following lists include all dinoseb products that are now eligible for indemnification and Federal disposal assistance. List A contains products for which no caneberry uses are permitted, and for which EPA is now accepting claims/requests. Claims/requests for products in List A must be submitted during the first time period specified in Unit II. E. List B contains products which may be used on caneberries in Washington and/or Oregon during the 1989 caneberry season. Claims/requests for products on List B should not be submitted to EPA until the second time period specified in Unit II. E.

Most pesticide product labels contain an EPA registration number (usually designated as "EPA Reg. No. 999999–9999") and an EPA establishment number (usually designated as "EPA Est. No. 99999"). The owner should locate the EPA registration number and use that for identifying his/her product(s) and for completing the form. The owner should not use the EPA establishment number for identifying his/her product(s). That number is not sufficiently specific to be useful for the dinoseb indemnification and disposal program. Some product labels list a registration number that begins with the letters "SLN" and then a two letter State abbreviation, followed by a 6-digit number. These are called section 24(c) or Special Local Need registrations and are legitimate EPA registration numbers. In rare cases, pesticide product labels do not contain an EPA registration number. These are probably "intrastate" products that have never received a Federal registration number. For these, the owner should use the State registration number provided on the label to identify the product(s) and note on the form that no EPA registration number is present on the label.

LIST A—PRODUCTS THAT MAY NOT BE USED ON CANEBERRIES IN WASHINGTON AND/OR OREGON

Company Name/ Registration No.	Product Name
AFC Company:	
037177–8221	AFC Contact Weed Killer.
AG-Chem:	
037790–8343	Salvo.
Agway:	
008590–26	Agway Toxi-Film Premerge.
A.H. Marks and Company, Ltd.:	
015440–1	Technical DNBP.
Ansul:	
006308–3010	Ancrack Herbicide.
006308–3011	Ancrack Herbicide.
006308–3012	Ancrack Herbicide.
006308–3013	Ancrack Herbicide.
006308–3014	Ancrack Herbicide.
Apollo Enterprises:	
013166–13	Dinitro 3.
Baird and McGuire, Inc.:	
SLN NV–810005	Baird's Contact Weed Killer.
Bakersfield AG:	
011369–8775	Bac Dinitro Weed Killer.
011369–8793	Bac Contact Weed Killer.
SLN CA–780171	Bac Weed Killer.
BFC Chemicals:	
045639–118	Tuco Enide Dinitro E.C.

LIST A—PRODUCTS THAT MAY NOT BE USED ON CANEBERRIES IN WASHINGTON AND/OR OREGON—Continued

Company Name/ Registration No.	Product Name
Blue Spruce:	
001439–175	Chemox PEG.
001439–190	Chemox PE–R Pre-merge Type.
001439–231	Chemox PE Pre-merge Type.
001439–235	Chemox 289.
Brea AG Service:	
036998–4464	Brea Contact Weed Killer.
Britz Fertilizer:	
010951–9810	Britz Contact Weed Killer.
Brown & Bryant:	
011373–6981	Beebee Weed Killer-D.
Cedar Chemical Corporation:	
056077–3	Dinoseb Technical.
056077–4	Dinitro Weed Killer.
056077–11	Selective Weed Killer.
056077–13	Premerge 3.
056077–14	Premerge.
056077–15	Dinitro 3 Weed Killer.
056077–16	Premerge Plus.
056077–21	Technical DNBP.
056077–23	General Weed Killer (Technical).
056077–24	DN–289.
056077–25	Dinoseb.
Cleveland Chemical:	
008867–25	Premerge Dinitro Weed Killer.
Cornell University:	
038655–10431	NYS—Dewey—(DNBP) Premerge.
Cropmate Company:	
001145–95	Amoco Premerge Dinitro.
Crystal Chemical Company:	
SLN CA–780085	Dinitro NCS.
DH Industries:	
003797–4	Right-A-Way Weed Killer Semi-Concentrate.
Dow Chemical U.S.A.:	
SLN AZ–770033	Dow Selective Weed Killer.
SLN AZ–800032	Dow Selective Weed Killer.
SLN AR–800013	Premerge 3 Dinitro Amine Herb.
SLN CA–780160	Premerge 3 Dinitro Amine Herb.
SLN FL–790016	Premerge 3 Dinitro Amine Herb.
SLN IN–770002	Premerge 3 Dinitro Amine Herb.
SLN MD–790014	Premerge 3 Dinitro Amine Herb.
Drexel Chemical Company: (*New No./ Old No.*)	
019713–23/006308–73.	Ancrack.
019713–28/006308–79.	Dynamyte 300.
019713–33/006308–89.	Dynamyte T.
019713–82/ inapplicable.	Dynamyte 3.
019713–110/ inapplicable.	DNBP Technical.
SLN AR–830013	Ancrack Herbicide.
SLN DE–830001	Ancrack Herbicide.
SLN ID–830012	Drexel Dynamyte 3.
SLN LA–840004	Ancrack Herbicide.
SLN OK–830016	Ancrack Herbicide.

List A—Products That May Not Be Used On Caneberries in Washington and/or Oregon—Continued

Company Name/ Registration No.	Product Name
SLN TN-840001	Ancrack Herbicide.
SLN WA-830016	Drexel Dynamyte 3.
Feed Service:	
010914-9304	R-15 Deseccan.
010914-9305	R-15 Deseccan.
FMC Corporation:	
000279-1841	Niagara Sinox-W Code 8.
000279-1854	Sinox G 100.
000279-1859	Niagara Sinox PE Code 10.
000279-3898	Sinox Plus.
SLN WA-770043	Niagara Sinox Plus Code 31218.
Gowan:	
010163-28	Prokil General WS Premerge.
010163-6122	Prokil General Weed Killer.
Griffin:	
001812-118	Premerge Dinitro Weed Killer.
Helena:	
005905-7584	Spark.
005905-7585	Spark.
005905-7586	Spark.
005905-7587	Spark.
005905-7588	Spark.
005905-7593	Spark.
005905-7599	Spark.
005905-7600	Spark.
005905-7601	Spark.
005905-7602	Spark.
005905-7887	Spark.
005905-7888	Spark.
005905-7889	Spark.
005905-7890	Spark.
005905-7891	Spark.
005905-7892	Spark.
005905-7893	Spark.
005905-7894	Surge Growth Stimulant.
005905-7895	Spark.
Hi-Plains:	
035965-3007	Spur 440.
Ida Incorporated:	
045115-47	Dinitro 3 Dinitro Weed Killer.
J.R. Simplot Company:	
007001-4378	Contact Weed Killer.
007001-7746	Contact Weed Killer.
011682-11	Sim-Chem Dinitro Weed Killer.
Kaw Valley:	
044215-87	Miller Dinitro Weed Killer.
044215-88	Chemox General Weed Killer.
044215-89	Tide Weed Pre-merge Type.
044215-90	Baird's N-D Herbicide.
044215-125	AGSCO Skin-Set A Herbicide for Potato Vine Killing.
SLN CA-790013	Tide Weed-Aside Pre-Emerge Type.
Landia Chemical Company:	
009859-5637	Scathe Peanut Herbicide.
Laroche Incorporated:	
003442-669	USS Premerge Dinitro.
Micro Chem. Company:	
004841-50	Premerge Dinitro Weed Killer.
Micro-Flo:	
051036-68	Premerge Dinitro Weed Killer.
Mid America Chemical Company, Inc.:	
SLN CA-790227	Dinitro Contact Weed Killer.
SLN CA-790228	Fireball Dinitro Weed Killer.
Pacific Supply:	
000483-142	Dinitro P.E.
Platte Chemical:	
034704-176	Clean Crop Dinitro-GS 3 Weed Killer.
034704-244	Clean Crop Dinitro 3-B Herbicide.
034704-245	Clean Crop Dinitro 5-B Herbicide.
034704-246	Clean Crop Technical DNBP.
034704-253	Clean Crop Contact Weed Killer.
034704-3860	Clean Crop Top-Kill.
Puregro:	
001202-244	Puregro Preharvest Desiccant.
SLN CA-780043	Puregro Contact Weed Killer.
SLN ID-840013	Puregro Preharvest Desiccant.
Retzloff:	
007472-7	DNBP-3s Herbicide.
Riverside/Terra:	
009779-1	Dinitrol.
009779-186	Brand Premerge.
Rockwood:	
010226-3751	Rockwood Brand Desiccant.
Royster Company:	
004904-334	Chem-Pest Dinitro Weed Killer.
Russell Chemical:	
011159-7329	Dynitox 300.
Santa Paula:	
043906-7330	Russell Chemical Contact WK.
SLN CA-760016	Santa Paula Chemical Contact.
Schall:	
003468-10	Schall Contact Weed Killer.
Security Lawn:	
000769-365	Premerge Dinitro Weed Killer.
S.N.P.E.:	
035134-1	Dinoseb.
011682-12	Sim-Chem Vine Killer.
Soil Service:	
006973-3597	Super Contact Weed Killer.
Southern Agric. Ins.:	
000829-197	Dinitro General Weed Killer.
Staples CW Incorporated:	
001345-4	Premerge Dinitro.
Stauffer:	
000476-1971	Dinitro P.E. Weed Killer.
Steven Industries:	
002459-213	Master Brand Premerge.
Superior:	
003122-7195	Superior Yellow Top.
Thompson-Hayward Chemical Company:	
SLN CA-780177	Contact Weed Killer.
Toxo Spray Dust, Inc.:	
SLN CA-790209	Toxo Contact Weed Killer.
Trans Chemic:	
009618-13	TCI-DNBP.
Uniroyal Chemical Company, Inc.:	
000400-75	Dyanap.
000400-100	Dyanap (H.W.).
000400-138	Uniroyal Dinoseb-1.
000400-139	Uniroyal Dinoseb-3.
000400-147	Ethyl DNBP.
000400-153	DNBP.
000400-190	TH Dinitro Technical.
000400-235	DE Pester Dinitro Weed Killer.
000400-302	Klean Krop.
000400-327	Salvage Dinitro Weed Killer.
SLN AL-810028	Uniroyal Dinoseb 3.
SLN AR-800018	Uniroyal Dinoseb 3.
SLN AR-840004	Uniroyal Dinoseb 3.
SLN ID-830010	Uniroyal Dinoseb 3.
SLN ID-830013	Uniroyal Dinoseb 3.
SLN ID-840003	Uniroyal Dinoseb 3.
SLN ID-840006	Uniroyal Dinoseb 3.
SLN LA-800034	Uniroyal Dinoseb 3.
SLN MS-800045	Uniroyal Dinoseb 3.
SLN MO-810021	Uniroyal Dinoseb 3.
SLN OR-830002	Uniroyal Dinoseb 3.
SLN OR-830031	Uniroyal Dinoseb 3.
SLN OR-840004	Uniroyal Dinoseb 3.
SLN TN-810014	Uniroyal Dinoseb 3.
SLN WA-830014	Uniroyal Dinoseb 3.
SLN WA-830015	Uniroyal Dinoseb 3.
SLN WA-840021	Uniroyal Dinoseb 3.
SLN WA-840045	Uniroyal Dinoseb 3.
SLN WA-840046	Uniroyal Dinoseb 3.
Universal Cooperative:	
001386-478	Unico Dinitro PE Weed Killer.
001386-582	Unico Dinitro T.
Valley Chemical:	
001063-3299	Beanweda.
Van Waters and Rogers:	
000550-70	Guardsman Premerge Dinitro.
Vertac Chemical:	
039511-4	Dinoseb Technical.
039511-10	Dinitro Weed Killer.
039511-85	Selective Weed Killer.
039511-87	Premerge 3.
039511-88	Premerge.
039511-89	Dinitro 3 Weed Killer.
039511-90	Premerge Plus.
039511-112	Technical DNBP.
039511-114	General Weed Killer (Technical).
039511-115	DN-289.
039511-116	Dinoseb.
039511-6817	Selective Weed Killer.
039511-6818	Selective Weed Killer.
039511-6819	Selective Weed Killer.
039511-6820	Selective Weed Killer.
039511-6821	Selective Weed Killer.
039511-6822	Selective Weed Killer.
039511-6823	Premerge.
039511-6824	Premerge.
039511-6825	Premerge.
039511-6826	Premerge.
039511-6827	Premerge.
039511-6828	Premerge.
039511-6829	Premerge.
039511-6830	Premerge.
039511-6831	Premerge.
039511-6832	Premerge.
039511-6833	Premerge.
039511-6834	Premerge.
039511-6835	Premerge.

LIST A—PRODUCTS THAT MAY NOT BE USED ON CANEBERRIES IN WASHINGTON AND/OR OREGON—Continued

Company Name/ Registration No.	Product Name
039511-6836	Premerge.
039511-6837	Premerge.
039511-6838	Premerge.
039511-6839	Premerge.
039511-6849	General Weed Killer.
039511-6850	General Weed Killer.
039511-6851	General Weed Killer.
039511-6853	General Weed Killer.
SLN AL-820004	Premerge 3 Dinitro Amine Herb.
SLN AR-820026	Premerge 3 Dinitro Amine Herb.
SLN CA-810014	Premerge 3 Dinitro Amine Herb.
SLN CA-820107	Premerge 3 Dinitro Amine Herb.
SLN IL-820020	Premerge 3 Dinitro Amine Herb.
SLN IN-820005	Premerge 3 Dinitro Amine Herb.
SLN MO-820007	Premerge 3 Dinitro Amine Herb.
SLN NC-820004	Premerge 3 Dinitro Amine Herb.
SLN NC-820017	Premerge 3 Dinitro Amine Herb.
SLN VA-820007	Premerge 3 Dinitro Amine Herb.
SLN VA-820026	Premerge 3 Dinitro Amine Herb.
Western Farm Service:	
011656-5767	Contact Weed Killer.
SLN CA-780094	Contact NCS.
SLN CA-780122	Western Farm Service Contact Weed Killer.
SLN CA-780137	Western Farm Service Contact Weed Killer.
White House:	
003951-112	Eagle River DNBP Technical.
Wilbur Ellis:	
002935-353	Red Top Weed Killer.
002935-6592	Red Top Weed Killer.
002935-6593	Red Top Weed Killer.
002935-6594	Red Top Weed Killer.
002935-6636	Red Top Dinitro Weed Killer.
002935-6661	Red Top Dinitro Weed Killer.
SLN CA-760004	Red Top Contact Weed Killer.
SLN ID-770024	Red Top Contact Weed Killer.
SLN ID-820004	Red Top Contact Weed Killer.
SLN MT-810021	Red Top Contact Weed Killer.
SLN OR-760012	Red Top Contact Weed Killer.
SLN OR-780048	Red Top Contact Weed Killer.
SLN OR-810044	Red Top Contact Weed Killer.
SLN WA-760013	Red Top Contact Weed Killer.
SLN WA-770043	Red Top Contact Weed Killer.
SLN WA-800068	Red Top Contact Weed Killer.
SLN WA-830025	Red Top Contact Weed Killer.
Wilson Lee and Company:	
009220-1	Dinitro (DNBP) Weed Killer.
Woods:	
000682-5596	Crop King Dy-All.

The names of products which may be used on caneberries in Washington and/or Oregon during the 1989 caneberry season are provided on List B. Claims for products on List B should not be submitted to EPA until the second time period specified in Unit II. E.

As noted in the footnote to List B, owners of dinoseb products previously registered under FIFRA section 24(c) for use in only one State on any crop other than caneberries may or may not be permitted to submit claims/requests during the first period discussed in Unit II. E., depending on whether the product also bears general labeling for use on one or more caneberry crops. If a product is registered under section 24(c) and does not bear any labeling for use on a caneberry crop, the owner may submit a claim during the first period.

LIST B—PRODUCTS THAT MAY BE USED ON CANEBERRIES IN WASHINGTON AND/OR OREGON

Company name/ registration no.	Product name
Arizona Agro:	
001526-480	GWK.
001526-494	Dinitro Weed Killer.
Cedar Chemical Corp.:	
056077-5	Dinitro Weed Killer 5.
056077-12	General Weed Killer.
056077-17	Dinitro General.
Crystal Chemical Co.:	
SLN CA-770538 [1]	Dinitro General Herbicide.
SLN CA-780036 [1]	Do.
SLN CA-780200 [1]	Do.
Dow Chemical U.S.A.:	
SLN CA-760132 [1]	Dow General Weed Killer.
SLN CA-780137 [1]	Do.
SLN CA-790043 [1]	Do.
SLN ME-780004 [1]	Do.
SLN NY-780026 [1]	Do.
SLN PA-790017 [1]	Do.
SLN WA-790071 [1]	Do.
Drexel Chemical Co. (new No./old No.):	
019713-29/ 006308-80.	Dynamyte 5.
019713-78/ inapplicable.	Dynamyte 2.5.
019713-203/ 001022-442.	Premerge Dinitro Weed Killer.
SLN ID-860020 [1]	Dynamyte 5.
SLN NV-860008 [1]	Do.
SLN WA-840062 [1]	Dynamyte 5 Dinitro Weed Killer.
FMC Corp.:	
000279-1855	Niagara Sinox General.
000279-2836	Niagara Sinox Plus Code 31218.
000279-4037	Sinox General.
SLN CA-780199 [1]	Sinox 0.5 E.C.
SLN OR-780053 [1]	Niagara Sinox Plus Code 31218.
SLN WA-790079 [1]	Sinox General Contact Weed Killer.
Helena:	
005905-217	Helena Hel-Fire.
SLN SC-820002 [1]	Do.
Ida Inc.:	
045115-28	Dinitro 2.5.
045115-52	IDA Inc. Dinitro 5.
J.R. Simplot Co.:	
007001-77	Best Contact Weed Killer.
007001-327	Oxy Dinitro Weed Killer.
011682-11	Sim-Chem Dinitro Weed Killer.
SLN CA-760034 [1]	Best Contact Weed Killer.
SLN CA-780137 [1]	Do.
SLN OR-810072 [1]	Do.
SLN OR-790023 [1]	Do.
SLN WA-790038 [1]	Do.
Micro-Flo:	
051036-54	Fasco Dinitro Weed Killer.
Puregro:	
011202-205	Puregro General Weed Killer.
Union Carbide:	
000264-363	E Z Flow Vega-Kill.
Uniroyal:	
000400-140	Uniroyal Dinoseb-5.
000400-158	Uniroyal Dinoseb-3.3.
000400-174	Dinitro Weed Killer #5.
SLN ID-830031 [1]	Uniroyal Dinoseb 5
SLN ID-830032 [1]	Do.
SLN OR-830028 [1]	Do.
SLN OR-830029 [1]	Do.
SLN OR-840003 [1]	Do.
SLN WA-790068 [1]	Do.
SLN WA-810102 [1]	Do.
SLN WA-820042 [1]	Do.
SLN WA-820066 [1]	Do.
Vertac Chemical:	
039511-11	Dinitro Weed Killer 5.
039511-86	General Weed Killer.
039511-91	Dinitro General.
SLN CA-860038 [1]	Vertac General Weed Killer.
SLN IL-820019 [1]	Dow General Weed Killer.
SLN ME-820001 [1]	Do.
SLN OR-820022 [1]	Do.
SLN OR-820023 [1]	Do.
SLN OR-820024 [1]	Do.
SLN OR-820025 [1]	Do.
SLN PA-820012 [1]	Do.
SLN WA-810075 [1]	Dinitro Weed Killer 5.
SLN WA-820006 [1]	Dow General Weed Killer.
SLN WA-820007 [1]	Do.
SLN WA-820008 [1]	Dinitro Weed Killer 5.
SLN WA-820009 [1]	Do.
Western Farm Service:	
11656-1	Contact Weed Killer.

[1] Owners of dinoseb products previously registered under FIFRA section 24(c) for use in only one State on any crop other than caneberries may or may not be permitted to submit claims/requests during the first period discussed in Unit II. E., depending on whether the product also bears general labeling for use on one or more caneberry crops. If a product is registered under section 24(c) and does not bear any labeling for use on a caneberry crop, the owner may submit a claim during the first time period.

Using these lists, the person filing the claim should find the product(s) for

which he/she is claiming indemnification and/or requesting disposal assistance, and complete the claim form (including the product registration number) as described in Unit II. C. If the registration number on the product label is not present on this list, and the owner is sure he/she has a dinoseb product, he/she should file the claim or request using whatever number is present on the label. The absence of a product registration number may be explained by a registration transfer from one company to another. In such a case, the new registration legally encompasses all former registrations and, as long as the registration was transferred to another company and was subsequently suspended and cancelled under section 6(c) of FIFRA, the owner may be entitled to an indemnity payment and/or disposal assistance with respect to that product even though the product now goes by another EPA registration number.

C. What Information Must be Submitted?

1. Claim Form and Supporting Documentation

EPA has prepared an updated form for filing claims/requests and an instruction sheet to accompany it. The form and instructions distributed in conjunction with the April 15, 1987 Notice have been revised to reflect changes in the eligibility and labeling of certain products that have occurred since the April 15, 1987 Notice. The revised materials can be obtained from the EPA regional offices listed in Unit II. D. of this Notice.

It is the responsibility of the person submitting an indemnity claim to submit the required documentation to support the claim. The instructions accompanying the claim form indicate what type of supporting documentation is acceptable for each element of the claim. For example, all individuals filing claims must submit evidence of the cost to the claimant in either producing or acquiring the product. The cost is limited to the direct cost of the product and does not include such incidental items as transport or storage costs. For registrants/manufacturers holding inventories of a labeled and packaged product that could not be sold, production records showing cost of production, or invoices showing the purchase cost will be acceptable. Distributors, wholesalers, retailers, and users should submit purchase invoices, purchase receipts, or notarized affidavits.

If disposal or reprocessing has already occurred, evidence of legal disposal is also required. Records to be used as such evidence should be kept in sufficient detail so that EPA could track the history of individual dinoseb products for which indemnification is being sought. Such evidence must include invoices or waste manifests from facilities permitted to handle dinoseb wastes. In such a case, indemnity payments may be granted for the cost of the product but not for the cost of disposal or reprocessing.

The form also provides a way to request disposal of a product, whether or not indemnification is requested. All information requested on the form regarding quantity, unit number and size, and other facts pertinent to disposing of excess product must be submitted in order for the product to be eligible for Federal disposal.

A claimant is not entitled to an indemnity payment for a dinoseb product for which he/she has already recovered losses through sale or use. If an owner of a dinoseb product has sold or used any existing stocks (for example, for use consistent with the Final Cancellation Order, for other lawful uses during past use seasons, for a non-pesticidal purpose, for use in another country, or other purposes), the owner must reflect the effect of this sale or use in completing the claim form, since it will lower the amount of indemnification for which he/she is eligible. Any claim against the Federal government must be offset by the amount received from sale or use of the dinoseb product because the owner has eliminated those "losses" he/she might otherwise have sustained as a result of suspension and cancellation of that amount of product.

Any person submitting a claim as a legal representative of another person must submit evidence which establishes his/her authority to file the claim and receive payment in satisfaction of the claim on behalf of the owner of the product. A person submitting a claim as an assignee must submit evidence of assignment of the claim and demonstrate that such assignment occurred as part of a recall of the products in question.

If at any time a claimant decides to withdraw a claim and/or request, he/she must certify in writing that the product has been properly disposed of; lawfully sold, distributed, or used in accordance with the Cancellation Order, emergency exemptions, or the injunctions by the District Court of Oregon; recycled; or exported.

2. Business Records Verification

Manufacturers, registrants, distributors, and any other claimants that normally maintain business records are permitted to consolidate the supporting information required to accompany the claim form and to verify the contents of the claim by submitting an auditor's report or a schedule supported by an independent certified accountant's statement verifying the validity of the schedule. Each element of the claim, such as cost per unit of product or quantity of product owned at the time of suspension, must be reviewed and verified by the independent auditor if verification for the complete contents of the claim is being provided through the report or statement. If the independent review is being conducted for only one element of the claim, such as a manufacturer's cost of production per unit of product, supporting documentation must be submitted for all other elements of the claim. EPA retains the right to request submission of the information that formed the basis for the audits or reports in order to verify the validity of the information submitted.

3. Composite Claim Lists

Registrants or suppliers who have recalled a product from their customers and who are assignees or representatives of those customers may submit composite lists for separate elements of the claim form identifying the product, product owner, quantities and units of pesticides, and other pertinent information indicated on the claim form. Documentation of the assignment, power of attorney, or other legal authorization from each original owner of the product listed in such composite list must be submitted. The legal documentation should identify the parties and product involved. If the pesticide is still owned by anyone other than the person completing the claim form, proof of each element of the claim must be submitted on behalf of the owner. For example, if a registrant has recalled material and is filing the claim by power of attorney for the owner, the registrant must submit verification of ownership at the time of suspension, the quantity of product returned to the registrant by the owner, and the cost of the product to the owner. If, on the other hand, the registrant is filing the claim as an assignee, the registrant should provide the information and verification required by the claim form.

4. *Confidential Business Information*

As a general matter, businesses may assert claims of business confidentiality covering part of the information submitted through the claim form, in the manner described in 40 CFR 2.203(b).

Any such assertions of confidentiality of business information must be supported by documentation of the reasons why disclosure of the information is likely to cause substantial harm to the competitive position of the business. The information covered by the assertion will be disclosed by EPA only to the extent allowed by FIFRA section 10, and by means of the procedures set forth in 40 CFR Part 2. If no such assertion and supporting documentation accompany the information when it is received by EPA, it may be made available to the public by EPA without further notice to the business (See 40 CFR 2.203(a)(2)). EPA has determined that it will not afford confidential treatment to certain information requested on the claim form because it must be disclosed to contractors to arrange for disposal of the dinoseb pesticides. Confidentiality claims should not be applied to: the type, composition, and quantity of pesticide product, the unit size of containers, and the product's location. If EPA receives any confidentiality claims for this information, the claim for indemnification and/or request for disposal will not be considered and will be returned to the claimant.

5. *EPA Investigations*

EPA plans to conduct random investigations of claims/requests submitted for the purpose of establishing their veracity. In verifying claims/requests, EPA may seek to enter premises to examine any dinoseb pesticide products being stored pending disposal to assure that they are being stored appropriately (i.e., in conformance with the regulations and guidelines described in Unit III.), to examine records relevant to the claim, or to conduct whatever other examinations are necessary to audit the claim.

6. *Signing Claim Required*

The claimant or authorized representative must sign the claim form. Signing the form constitutes agreement to the following:

a. That all statements made and information provided in the claim are true and correct to the best of the claimant's knowledge, and that the amount of the claim is an accurate statement of the cost of the product.

b. That the claimant had no knowledge of facts which, in themselves, showed that the dinoseb pesticide did not meet Federal registration requirements.

c. That acceptance by the claimant of any payment made by EPA constitutes full satisfaction and final settlement of the claim.

d. That by submission of the claim, the claimant grants permission to authorized agents of the Federal government to enter premises where records or products are retained to conduct whatever inspections, audits, or examinations are necessary to verify the contents of the claim.

e. That by submission of the claim, the claimant waives any claim for confidential treatment of certain types of information, including the type, composition, and quantity of pesticide product, the unit size of containers, and the product's location.

f. That the claimant has received no other payment for the cost of the pesticides for which indemnification is claimed and that should claimant receive such other payment, claimant agrees to promptly reimburse the Federal government, in such amount up to and including the full amount of the indemnification payment made under this program.

g. That ownership of and responsibility for pesticide products for which indemnification payments are made under this program remains with the claimants and/or holders of the material unless and until EPA accepts the material for disposal under section 19 of FIFRA.

h. That neither payment of indemnification under section 15 of FIFRA nor acceptance of pesticides for disposal under section 19 of FIFRA in any way constitutes a finding or warranty by the United States with respect to the proper or safe storage, packaging, handling, transport, or disposal of such products by the owners or holders of the products or by agents, employees, or other persons acting in their behalf.

i. That if the claim is filed by an assignee, the United States may assert against the assignee any defenses, or right of set-off or counterclaim, applicable against the person who assigned the claim.

D. Where Can a Claim Form be Obtained?

Copies of the claim form can be obtained from EPA regional offices. The regional office contact person for dinoseb indemnification and disposal information/claim forms, addresses, telephone numbers, and the States located within each EPA region are as follows:

EPA Regional Offices

1. Region I, Dr. Harold Kazmaier, John F. Kennedy Federal Building, Rm. 2311, Boston, MA 02203 (617–565–3276) (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont).

2. Region II, Ernest Regna, Woodbridge Avenue, Edison, NJ 08837 (201–321–6765) (New Jersey, New York, Puerto Rico, and the Virgin Islands).

3. Region III, Donald Lott, 841 Chestnut Building, Philadelphia, PA 19107 (215–597–9870) (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia).

4. Region IV, Bill Pfister, 345 Courtland St., NE., Atlanta, GA 30365 (404–347–3222) (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee).

5. Region V, John Ward, 230 Dearborn St., Chicago, IL 60604 (312–353–2192) (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin).

6. Region VI, Van Kozak, 1445 Ross Ave., Dallas, TX 75202 (214–655–7239) (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas).

7. Region VII, James R. McDonald, 726 Minnesota Ave., Kansas City, KS 66101 (913–236–2835) (Iowa, Kansas, Missouri, and Nebraska).

8. Region VIII, Ed Stearns, 999 18th St., Suite 500, Denver, CO 80202–2405 (303–293–1745) (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming).

9. Region IX, Thomas Broz, 215 Fremont St., San Francisco, CA 94105 (415–974–8919) (Arizona, California, Hawaii, Nevada, American Samoa, and Guam).

10. Region X, Jon Heller, 1200 6th Avenue, Seattle, WA 98101 (206–442–1970) (Alaska, Idaho, Oregon, and Washington).

E. Where and When Must the Claim/Request be Filed?

All claims for indemnification and requests for disposal for any dinoseb products whose registration is listed in this Notice as having been suspended and cancelled must be submitted to EPA in Washington, DC at the address listed under the "ADDRESS" section at the beginning of this Notice. Because the Final Cancellation Order permits the limited sale, distribution, and use of existing stocks of certain dinoseb products for vegetative cane control in caneberries (blackberries, boysenberries, loganberries, and raspberries) in the States of Washington and Oregon during the 1989 use season, the Agency is establishing two time periods for submission of indemnification claims and requests for disposal assistance.

EPA is not accepting claims/requests for products that can be used on caneberries until after the 1989 season because it would be unable to compute the losses suffered by owners until these opportunities for sale and use of the products have expired. Therefore, owners of products that can legally be used on caneberries should not submit claims and/or requests for disposal until the beginning of the second time period.

The first time period extends from February 17, 1989 to June 19, 1989. Owners of dinoseb products which may not be used on caneberries in Washington and Oregon must submit claims for indemnification and requests for disposal assistance during this period. The second time period extends from June 15, 1989 to August 15, 1989, and owners of dinoseb products which may be used on caneberries in Washington and Oregon during the 1989 use season must submit claims for indemnification and requests for disposal assistance during this second time period. Unit II. B. of this Notice lists products according to whether or not they are labeled for use on caneberries.

Claims submitted by owners of products that were eligible for indemnification at the time of the April 15, 1987 Notice but which may be used on caneberries in Washington and/or Oregon will not be processed until after June 15, 1989.

As explained previously, EPA will be contacting all people who submitted information on their dinoseb products, but whose products were ineligible at the time of the April 15, 1987 Notice. If none of the information has changed, the owners will be able to affirm the information in their prior submission and formally submit their claims/requests by returning a signed summary claim sheet and certification form during the first or second time period, depending on whether their products may be used on caneberries.

In addition, EPA has decided to afford owners of products eligible at the time of the April 15, 1987 Notice but who failed to submit a claim and/or request for disposal assistance in response to the April 15, 1987 Notice, a second opportunity to do so now. These people should determine whether their product may be used on caneberries, and thus whether to respond during the first or second period. All claims/requests must be submitted by August 15, 1989. All claims/requests received after August 15, 1989 will be denied. EPA does not plan to provide another opportunity to file or submit claims for indemnification or requests for disposal assistance for dinoseb stocks.

If a claim/request is filed within the prescribed time period, but EPA requests supporting documentation not included with the original claim/request, an appropriate period will be allowed for submission of the additional information required for consideration of the claim/request.

A claim/request may be amended at any time before final action by EPA. All amendments must be submitted in writing and signed by the claimant or his/her authorized agent or legal representative.

Further, in order to expedite the disposal of dinoseb products, EPA requests persons who will be submitting requests for disposal assistance during the time period June 15, 1989 through August 15, 1989, but who have not yet submitted information or a request for disposal assistance to so notify EPA Headquarters disposal staff immediately by telephone (1–800–DIN–OSEB (in Maryland call 1–800–331–3704)).

F. How Will Claims be Processed?

Upon receipt of a claim, EPA will assign it a claim number and all correspondence regarding the claim will reference that number. All claimants will be notified of any additional information or verification required for consideration of the claim. If a claimant is unable to provide the documentation required for consideration of his/her claim within the prescribed time period, the claim will be denied. EPA plans to conduct random audits of claims, including field inspections, and may reject claims if investigators are not permitted to enter the claimant's premises or are otherwise impeded in conducting an audit.

EPA's determinations regarding eligibility of claims and amounts of indemnity payable shall be administratively final.

III. Interim Storage, Transportation And Disposal of Dinoseb Stocks

EPA encourages all registrants and manufacturers that are capable of recalling or reprocessing their dinoseb pesticide products to do so. However, if the product is reprocessed, the amount of indemnity to which that person is entitled may be affected.

EPA has awarded contracts to two waste management firms for the disposal of dinoseb. It is the responsibility of the holders to handle and store the material safely. The conditions required for proper handling of dinoseb pesticides may be governed by FIFRA or the Resource Conservation and Recovery Act (RCRA), as well as by pertinent state and local laws and requirements. The determination of whether FIFRA or RCRA applies depends on the intent of the holder (See 40 CFR 261.2(a)(2)(i) and 261.33, 40 FR 637 (Jan. 24, 1985)). Simply stated, if unused dinoseb pesticide stocks are being held with the intent of legally using, recycling, selling, or distributing them, then they may still be considered pesticide products and should be stored in accordance with FIFRA. However, once the stocks are being held with the clear intent of disposing of them, then they may be considered solid or hazardous wastes and must be stored, transported, and disposed of in accordance with RCRA and any other applicable laws and regulations governing wastes. The procedures for handling, storing, and disposing of dinoseb under FIFRA and RCRA are described in more detail in the following units.

A. Interim Storage

In general, the FIFRA procedures for storage described in 40 CFR 165.10 recommend that the material be stored on pallets or similar raised platforms in a dry, well-ventilated, and separate room, building, or covered area with a concrete floor, where fire protection is provided. Movement or handling should be kept to an absolute minimum.

Containers should be stored with the label plainly visible. Containers should be checked regularly for corrosion and leaks. If a dinoseb container is found to be leaking or damaged, the container should be transferred to a sound, suitable, larger container (preferably a steel salvage drum) and the overpack container should be properly relabeled. Alternately, the contents of the damaged container may be transferred to a new container (i.e., repackaged) and then properly labeled. Before repackaging however, the owner/holder should contact the appropriate EPA regional office to learn of any applicable State or local requirements. Overpacking or repackaging will not generally jeopardize the award of a claimant's indemnity payment, provided that the claimant or holder adequately documents such repackaging and the outside of the package is clearly marked with information to identify the contents. Additional guidance is provided in a short document on overpacking and repackaging dinoseb, available from the pesticide disposal staff at EPA headquarters (1–800–DIN–OSEB (in Maryland call 1–800–331–3704)).

However, if a person is holding unused stocks with the clear intent of disposing of the stocks, he/she must comply with the requirements under

Subtitle C of RCRA as specified in 40 CFR Parts 124, 261 through 266, and 270. These requirements may differ from the storage requirements of FIFRA. Additionally, a storage permit may be required (See 40 CFR 270.13 through 270.15).

In general, the dinoseb storage area must be maintained to mitigate the threat or the potential threat of release. In case of an emergency (several leaking containers or a spill), the owner/holder should immediately contact the appropriate EPA regional office listed in Unit II. D. In the event of a release, the released product becomes a waste (unless it is capable of being recycled) which is subject to regulation under Subtitle C of RCRA. In particular, the person storing the dinoseb product that has been spilled must clean up the spill and properly store, treat, or dispose of any resultant materials in accordance with the appropriate hazardous waste rules. Dry, absorbent materials such as absorptive clay, sand, sawdust, vermiculite, oil-dry, kitty litter, dry rags, or paper should be kept on hand for use as appropriate for the emergency cleanup of spills or leaks. Materials that are used for this purpose and become contaminated with dinoseb may themselves be hazardous wastes and must be managed as such. If the holder of the product takes no action after a spill or release, EPA will take appropriate action, including any enforcement action. In addition, the holder of the product may also be subject to liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA).

EPA may perform inspections of materials in storage to determine if the above conditions have been met. Further technical advice may be obtained from the EPA regional office contacts listed in Unit II. D of this Notice. In addition, information on the storage provisions under FIFRA are available from the pesticide disposal staff at EPA headquarters at 1-800-DIN-OSEB (in Maryland call 1-800-331-3704), and on the storage requirements under RCRA from the RCRA Hotline at 1-800-424-9346 or (202) 382-3000.

B. Disposal

Disposal of certain unused pesticide products may be subject to regulation as hazardous waste under RCRA. Under the existing hazardous waste rules, unused dinoseb product that has become a "waste" is regulated when discarded in commercial grade, technical grade, or off-specification form or if dinoseb is the sole active ingredient in the formulation (hazardous waste designation "P020") (See 40 CFR 261.33(e)). Discarded formulations containing dinoseb as one of a number of active ingredients are presently not considered to be hazardous wastes unless they exhibit a characteristic of hazardous waste. A formulation is considered hazardous if it has one or more of the following characteristics:

1. It is easily combustible.
2. It dissolves metals or other materials, or burns the skin.
3. It shows Extraction Procedure toxicity (contains high concentrations of heavy metals or specific pesticides that could be released into ground water).
4. It is unstable or undergoes rapid or violent chemical reaction with water or other materials. (See 40 CFR 261.20 through 261.24 for additional information about these characteristics).

Persons accumulating or possessing dinoseb in less than the quantities specified in these regulations (1 kilogram or about 2 pounds per month) may be conditionally exempt from RCRA regulation. However, State hazardous waste storage and disposal requirements may still apply.

Under the hazardous waste rules, empty containers with minimal dinoseb residues as defined in 40 CFR 261.7 are exempt from regulation under RCRA. Specifically, containers that once contained dinoseb are considered to be empty if they are triple-rinsed with an appropriate solvent (or cleaned by a method of equivalent effectiveness) or the container's inner liner has been removed (See 40 CFR 261.7(b)(3)). However, the rinsate that is generated from this operation may be considered a hazardous waste under RCRA and must be managed in accordance with the appropriate management standards unless the person conducting the operation is a farmer. Specifically, a farmer disposing of such rinsate from a dinoseb container that was used on his/her own farm is not subject to regulation under RCRA for those wastes provided he/she triple rinses each emptied dinoseb container and disposes of the dinoseb residues on his/her own farm in a manner consistent with the disposal instructions on the product label (See 40 CFR 262.70). Additional information can be obtained from the RCRA Hotline (1-800-424-9346 or (202) 382-3000).

C. Transportation of Dinoseb Stocks

EPA has awarded contracts to two waste management firms for the disposal of dinoseb. It is the responsibility of the holder to handle and store the material safely and transport it to EPA's designated facility when the Agency is ready to receive the stocks. EPA is preparing guidance for dinoseb owners/holders on transportation requirements. Holders should note, however, that proper transportation to EPA's acceptance site is the responsibility of the holder and that transportation costs will be borne by the holder (See 40 CFR 165.5). Information obtained from holders responding to the April 15, 1987 Notice has facilitated much progress on certain technical and procedural issues including the recent award of contracts for disposal. Such early progress should expedite the ultimate disposal of all dinoseb stocks for which EPA will be responsible. Additional information on scheduling shipments and transporting stocks to the EPA-designated acceptance site is forthcoming. Any disposal of dinoseb independent of the federal disposal program must be conducted in accordance with all relevant local, State and Federal requirements. Documentation must be provided by submitting certificates of destruction or other proof of proper disposal to the pesticide disposal staff at EPA headquarters.

Dated: February 13, 1989.

Victor J. Kimm,

Acting Assistant Administrator, Office of Pesticides and, Toxic Substances.

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federal register

Friday
February 17, 1989

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121 and 135

Fire Protection Requirements for Cargo or Baggage Compartments; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 25430, Amdt. Nos. 121-202 and 135-31]
RIN 2120-AC04

Fire Protection Requirements for Cargo or Baggage Compartments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments upgrade the fire safety standards for cargo or baggage compartments in certain transport category airplanes used in air carrier, air taxi, or commercial service. Ceiling and sidewall liner panels that are not constructed of aluminum or glass fiber reinforced resin must be replaced with improved panels prior to a specified date. These standards are the result of research and fire testing and are intended to increase airplane fire safety.

EFFECTIVE DATE: March 20, 1989.

FOR FURTHER INFORMATION CONTACT: Gary L. Killion, Manager, Regulations Branch, ANM-114, Transport Airplane Directorate, Aircraft Certification Service, FAA, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2114.

SUPPLEMENTARY INFORMATION:

Background

On October 28, 1987, the FAA issued Notice of Proposed Rulemaking (NPRM) 87-11 (52 FR 42512; November 5, 1987). This notice proposed to upgrade the fire safety standards for cargo or baggage compartments in certain transport category airplanes used in air carrier, air taxi, or commercial service.

During the early post-World War II period, it was recognized that timely detection of a fire by a crewmember while at his or her station and prompt control of the fire when detected were necessary for protection of the airplane from a fire originating in a cargo or baggage compartment. Because the requirements for detection and extinguishment varied depending on the type and location of the compartment, a classification system was established. Three classes were initially established and defined as follows:

Class A—A compartment in which the presence of a fire would be easily discovered by a crewmember while at his or her station, and of which all parts are easily accessible in flight. This is typically a small compartment used for crew luggage and located in the cockpit where a fire would be readily detected and extinguished by a crewmember. Due to the small size and location of the compartment, and the relatively brief time required to extinguish a fire, a liner is not needed to protect adjacent structure.

Class B—A compartment with sufficient access in flight to enable a crewmember to effectively reach any part of the compartment with the contents of a hand fire extinguisher and which incorporates a separate, approved smoke or fire detector system to give warning at the pilot or flight engineer station. A Class B compartment is typically much larger than a Class A compartment and can be located in an area remote from the cockpit. Because of the larger size of the compartment and the greater time interval likely to occur before a fire would be controlled, a liner meeting the flame penetration standards of § 25.855 and Part I of Appendix F of Part 25 must be provided to protect adjacent structure. A Class B compartment is typically the large cargo portion of the cabin of an airplane carrying a combination of passengers and cargo (frequently referred to as a "combi" airplane) or the relatively small baggage compartment located within the pressurized portion of an airplane designed for executive transportation.

Class C—As defined at the time of initial classification, any compartment that did not fall into either Class A or B was a Class C compartment. Class C compartments differ from Class B compartments primarily in that built-in extinguishing systems are required for control of fires in lieu of crewmember accessibility. The volumes of Class C compartments in currently used domestic jet transport category airplanes range from approximately 700 to 3,000 cubic feet.

Later, two additional classes were established and defined as follows:

Class D—A compartment in which a fire would be completely contained without endangering the safety of the airplane or the occupants. A Class D compartment is similar to a Class C compartment in that both are located in areas that are not readily accessible to a crewmember. In lieu of providing fire or smoke detection and extinguishment, Class D compartments are designed to control a fire by severely restricting the supply of available oxygen. Because an oxygen-deprived fire might continue to smolder for the duration of a flight, the capability of the liner to resist flame penetration is especially important. The volumes of Class D compartments in transport category airplanes currently used in domestic air carrier service range from approximately 225 to 1,630 cubic feet. Some airplanes designed for executive transportation and used in air taxi service also have relatively small (15-25 cubic feet) Class D compartments located outside the pressurized portions of the cabin.

Class E—A cargo compartment of an airplane used only for the carriage of cargo. In lieu of providing extinguishment, means must be provided to shut off the ventilating airflow to or within a Class E compartment. In addition, procedures, such as depressurizing the airplane, are stipulated to minimize the amount of oxygen available in the event a fire occurs in a Class E compartment.

The FAA conducted a series of full-scale tests at its Technical Center to investigate the capability of three liner materials to resist flame penetration under conditions representative of actual cargo or baggage compartment fires. The tests were conducted using simulated Class C and D compartments. Copies of Report No. DOT/FAA/CT-83/44, A Laboratory Test for Evaluating the Fire Containment Characteristics of Aircraft Class D Cargo Comparment Lining Material, dated October 1983, and Report No. DOT/FAA/CT-84/21, Suppression and Control of Class C Cargo Compartment Fires, dated February 1985, have been placed in the Rules Docket. Copies of these reports, which describe the FAA testing, are available for public inspection and are also available for purchase from the National Technical Information Service in Springfield, Virginia 22161. Although cargo or baggage is sometimes placed in compartments in preloaded containers, the tests were conducted with bulk-loaded baggage because cargo or baggage is frequently bulk-loaded directly into the compartments in actual service. In conjunction with those tests, the FAA developed a method of testing liner materials utilizing a 2 gallons-per-hour kerosene burner. The materials tested—glass fiber reinforced resin (rigid fiberglass) Kevlar and Nomex—comprise the primary liner materials currently used in domestic jet transport airplanes.

Although liners constructed of Kevlar or Nomex met the existing standards of Part 25, it was found from those tests that a fire could rapidly burn them under representative conditions. In addition to the fire hazards associated with the initial flame penetration, the ability of the compartment to restrict the supply of oxygen in the compartment would be hindered. That, in turn, could result in a fire of increased intensity. In contrast, the capability of liners constructed of glass fiber reinforced resin to resist

flame penetration was typically found to be very high regardless of the resin used. This is because the fiberglass remains after the resin burns out and serves as a flame arrester. As a result of those tests, new type certification standards were adopted for Class C or D cargo or baggage compartments in transport category airplanes (Amendment 25–60; 51 FR 18236; May 16, 1986). The newly adopted standards, which are applicable to airplanes for which application for type certificate is made after June 16, 1986, include new test methods for the ceiling and sidewall liner panels. In addition, the maximum volume of a Class D compartment is limited to 1,000 cubic feet.

Subsequent testing conducted at the Technical Center showed that liners constructed of aluminum were better in regard to flame penetration resistance than those of Kevlar or Nomex, although not generally as good as those constructed of glass fiber reinforced resin. On the other hand, nonglass fiber reinforced resin construction, such as blankets or battings, was found to be unsatisfactory because the supporting material would burn away rapidly. In the absence of the supporting material, the fiberglass would fall out of place.

Although Amendment 25–60 provides new standards for future transport category airplanes, it does not affect airplanes currently in service nor the airplanes that will be produced under type certificates for which application was made prior to June 16, 1986. Although the majority of the transport category airplanes currently used in U.S. air carrier, air taxi and commercial service utilize liners constructed of glass fiber reinforced resin for ceiling and sidewalls of cargo or baggage compartments, certain models use liners constructed of Kevlar or Nomex. In order to preclude the continued use of such materials, Notice 87–11 proposed to add a new § 121.314 and to amend § 135.169 to require improved standards for the cargo or baggage compartment liners in transport category airplanes used in such service.

Due to the additional burden of retrofitting existing airplanes, the standards proposed in Notice 87–11 differ somewhat from those provided by Amendment 25–60 for future designs. As proposed in Notice 87–11, existing installations with liners constructed of glass fiber reinforced resin would be acceptable without further tests. Previously approved installations utilizing aluminum ceiling or sidewall liner panels could also be retained; however, aluminum could not be used to replace other materials. Ceiling and sidewall panels constructed of other materials would have to be replaced with panels constructed of glass fiber reinforced resin or with materials tested using the apparatus and procedures recently adopted for Part 25. The acceptance criteria for such materials would be the same as for materials tested for compliance with Part 25.

The term "liner," as used in this final rule and in Amendment 25–60 also includes any design features which would affect the capability of the liner to safely contain a fire. In the case of glass fiber reinforced resin or aluminum panels, the materials of such features would have to have the fire integrity of the basic material; or the design features would have to be tested along with the basic panel material unless they have been previously found satisfactory. For example, joints that are constructed with fireproof fasteners and are not subject to gaps caused by distortion need not be tested. On the other hand, the test specimens would include joints constructed with nonfireproof fasteners or joints subject to distortion. Similarly, test specimens would include lamp lenses, if failure of the lenses would allow flames to pass; however, lamps need not be included in the test specimen if the lamp incorporates a fireproof body which would prevent the passage of flames.

Unlike the new standards of Part 25, the standards proposed in Notice 87–11 would not be applicable to compartments with volumes less than 200 cubic feet. The fire hazards associated with relatively small compartments are not as great due to the limited volume of oxygen and amount of combustible materials that would be contained in them. The present liners used in those compartments are, therefore, considered to provide an acceptable level of safety.

The new standards of Part 25 for future type designs include a maximum volume of 1,000 cubic feet for a Class D compartment. A corresponding requirement was not proposed in Notice 87–11 because the redesign and retrofit of airplanes with Class D compartments larger than 1,000 cubic feet was considered to be extremely burdensome and did not appear to be warranted due to a lack of adverse service experience. Recent service experience has shown, however, that additional new standards, such as requirements for fire or smoke detectors and extinguishment, may be needed for both Class B and Class D compartments. (The installation of such equipment would, in effect, make such compartments Class C.) The FAA is, therefore, considering further rulemaking in that regard. Nevertheless, such further rulemaking would not lessen the need for the new standards proposed in Notice 87–11.

Compliance with the standards proposed in Notice 87–11 would not be required for transport category airplanes type certificated on or before January 1, 1958, because their advanced age and limited numbers in Part 121 or 135 operation would make compliance impractical from an economic standpoint. That date was selected because the rule would include Boeing 707 and Douglas DC–8 vintage and later airplanes, and would exclude older airplanes, such as the Douglas DC–6's or DC–7's.

As proposed in Notice 87–11, all other transport category airplanes which are operated under the provisions of Part 121 or 135 would have to meet the new standards within two years after the effective date of the amendment. The two year compliance period is intended to allow operators and manufacturers time to select and qualify prospective liner materials and incorporate them with a minimum of disruption to fleet schedules or assembly lines.

Discussion of Comments

Comments were received from a diversity of commenters ranging from organizations representing various aircraft manufacturers and operators, to aviation trade unions. Commenters also included a foreign airworthiness authority and producers of candidate interior materials. Two commenters support the proposed new standards without qualification. The seven other commenters support the general intent of the rulemaking; however, they offer suggested changes and additions.

One commenter recommends that the proposed standards should apply to compartments smaller than 200 cubic feet, as well as to larger compartments. As noted above, the fire hazards associated with relatively small compartments are not as great due to the limited volume of oxygen and amount of combustible materials that would be contained in them. Furthermore, service experience does not indicate that improved liners are needed in such compartments.

The same commenter recommends that all Class D compartments should be upgraded to Class C compartments by providing fire detection and extinguishing means. This would be beyond the scope of Notice 87–11 and could not be adopted at this time. The FAA is, however, considering future rulemaking in that regard as noted above.

The commenter also recommends that all cargo compartments should be required to have liners. All cargo or baggage compartments, except Class A compartments, are presently required to have liners. By definition, a Class A compartment must be located such that the presence of a fire would be easily detected by a crewmember while at his or her station. In addition, all parts of a Class A compartment must be easily accessible in flight. Class A compartments are typically small compartments located in the cockpit and used for crew luggage. Due to the brief time needed to detect and extinguish a fire, a liner would serve no useful purpose in a Class A compartment.

One commenter is concerned that the language of proposed § 121.314 (a)(1) and (2) would imply that glass fiber reinforced resin construction does not necessarily satisfy the test requirements of Part III of Appendix F to Part 25. In contrast, another commenter is concerned that the language would imply that glass fiber reinforced resin construction would pass the new standards of Part 25. That commenter notes that some liners constructed of glass fiber reinforced resin do not meet the new standards and proposes that all constructions, including glass fiber reinforced resin, should be required to meet the new standards. The second commenter is correct in noting that glass fiber reinforced resin construction does not necessarily meet the new standards of Part 25. It was found, however, to be so likely to meet or exceed the new standards that the cost of conducting a test for each installation to show compliance with the new standards would not be justified. Glass fiber reinforced resin construction is, therefore, considered acceptable without further testing, insofar as compliance with § 121.314 is concerned.

Three commenters object to the statement in proposed § 121.314 that the term "liner" includes any design feature which would affect the capability of the liner to safely contain a fire. They assert that there are installation features of almost every existing cargo compartment which do not meet the new standards of Part 25. One of the three commenters draws a parallel to the recent rulemaking concerning cabin interior materials (Amendment 25–61; 51 FR 26208; July 21, 1986). In that regard, the commenter notes that the FAA exempted a number of interior components in that rulemaking because they would make an insignificant contribution to the flammability of the interior when compared to the large interior surfaces.

The commenters incorrectly assume that proposed § 121.314 would require all design features to be tested to show compliance with the new standards of Part 25. The design features are not considered as-separate entities insofar as compliance with the proposed standards is concerned. Rather, they are considered as part of the liner and then only to the extent that they would affect the capability of the liner to safely contain a fire. Design features which could fail without compromising the capability of the liner would not have to be considered at all. As parts of the liners, design features which would affect the capability of the liners to safely contain fires would be subject to the same exceptions for glass fiber reinforced resin and aluminum as the basic liner panel material.

The parallel made to the recent interior materials rulemaking is inappropriate. The purpose of the interior materials rulemaking is to minimize the contribution of the materials to a fire that is already burning in the cabin. A relatively small component would make an insignificant contribution to the flammability of the cabin. The purpose of the proposed cargo or baggage compartment liner standards, on the other hand, is to prevent a fire in a compartment from penetrating the compartment walls and spreading to other parts of the airplane. The consequences of flames penetrating a design feature in a liner are just as great as those of flames penetrating a portion of the basic liner material. In addition, it is pointless to have a liner with excellent capability to resist flame penetration if the joints or attachments can fail and allow the liner to fall out of place.

One commenter states they were advised by the FAA Technical Center that the test apparatus required for compliance with the new standards of Part 25 is not appropriate for testing joints, seams, fasteners, etc. While the test apparatus and procedures were originally developed using only basic liner panels, the Technical Center has since demonstrated that the test apparatus can be used effectively when the liner does incorporate joints, seams, fasteners, etc.

One commenter expresses concern that there would be a detrimental impact on the airlines' current maintenance programs which allow for temporary repair of liner damage with fire resistant tapes. Some current repair methods may, in fact, not meet the new standards and have to be replaced. Nevertheless, as in the case of design features, it is pointless to have a liner with excellent capability to resist flame penetration if a substandard repair were to fail in the event a fire occurred and leave an opening in the liner.

One commenter believes the proposed two-year compliance period should be extended to four years in order to provide sufficient time for operators to comply during major scheduled maintenance periods. The commenter asserts that such scheduled maintenance periods occur at three to five year periods and that airplanes would have to be removed from scheduled service to comply within the proposed two-year period. The FAA does not concur that airplanes would have to be removed from scheduled service to comply within two years. The existing liners are, in fact, routinely removed at intermediate times for inspection of structure surrounding the cargo or baggage compartments. Replacement liners could easily be installed during those inspections.

One commenter believes that the term "rigid fiberglass" does not accurately describe the materials in question. The commenter notes that the resistance of such materials to fire penetration is due to their being reinforced with fiberglass rather than their being "rigid" per se. The commenter further notes that resins used in laminates fabricated with such fiberglass reinforcement may be flexible or rigid and thereby produce flexible or rigid laminates. The commenter states that as long as the materials are fiberglass-reinforced laminates (as opposed to fiberglass batting, such as is used in thermal or accoustical insulation), they are highly resistant to fire penetration. The FAA concurs that "rigid fiberglass" is not an accurate description. The term "rigid fiberglass" has, therefore, been removed leaving only the term "glass fiber reinforced resin."

One commenter notes that the trademarks "Kevlar" and "Nomex" are the property of the commenter and serve as the exclusive designation for aramid fiber products manufactured by the commenter. The commenter is particularly concerned that the use of those terms in the NPRM implies that the impact is only on those products and that the organic materials of other manufacturers are not affected. The commenter is further concerned that the use of those terms implies that Kevlar or Nomex cannot be a component of the replacement materials used to comply with the proposed standards. The commenter also asserts fiberglass construction, as well as Kevlar and Nomex construction, failed to meet the new standards of Part 25.

The FAA regrets any implication that the products of the commenter are unsatisfactory by definition and that similar materials of other producers are satisfactory. Nevertheless, as noted in the preamble to Notice 87–11, Kevlar and Nomex are the only two materials, other than fiberglass and aluminum, that are widely used in the construction of the cargo or baggage compartment liners that are in service today. Furthermore, the liners used in the compartments of the Boeing 757 and 767, the Saab SF–340, and the Lockheed L–1011 are known to the aircraft industry and the general public as "Kevlar" or "Nomex." Because, as the commenter notes, there may be other such constructions which do, in fact, meet the new standards, the use of the generic term "aramid fiber products" in lieu of "Kevlar" and "Nomex" in the NPRM would have misled the public.

The FAA also regrets any implication that future materials identified as "Kevlar" or "Nomex" are unsuitable regardless of whether they meet the new standards of Part 25. Obviously, any material which meets those standards is acceptable regardless of the name given to it. The FAA is, however, concerned that the use of the same name for materials with such different performance characteristics could lead to the inadvertent use of the wrong material. In order to preclude a hazard through the inadvertent use of the "Kevlar" or "Nomex" construction that has been found unsatisfactory, the FAA strongly recommends that the commenter assign new or modified designations to the materials that do meet the new standards.

As noted above, glass fiber reinforced resin construction was found to be so likely to meet or exceed the new standards of Part 25 that the cost of conducting a test for each installation would not be justified.

The regulatory evaluation prepared for Notice 87–11 was based, in part, on the understanding that 44 Saab SF–340 airplanes would have to be modified to replace existing liners constructed of Kevlar and that all of the airplanes produced by Airbus Industrie already have liners constructed of materials which would meet the new standards. One commenter states that the SF–340 airplanes would not be affected because the volume of the largest cargo or baggage compartment in the Model SF–340 is 189 cubic feet. The commenter is, of course, correct in believing that compartments which are less than 200 cubic feet would not be affected. The comment that the largest compartment in the Model SF–340 is only 189 cubic feet in volume is, however, contrary to the manufacturer's SF–340 Aircraft Operation Manual which states that the volume of the baggage compartment is 225 cubic feet. A copy of the pertinent pages of that manual has been placed in the docket for this rulemaking. To be conservative, the regulatory evaluation prepared for this final rule is based on the assumption that the SF–340 airplanes would have to meet the new standards. Another commenter notes that the forward and aft cargo bay ceiling panels of 12 Airbus A–300B4 airplanes of U.S. registry would have to be replaced. This additional information is addressed in the new regulatory evaluation prepared for these amendments.

The regulatory evaluation prepared for Notice 87–11 was based on the assumption that there would be a slight increase in airplane weight due to the use of heavier materials needed to comply with the proposed new standards. One commenter submitted data showing that new materials which would meet the new standards and save about half the weight of glass fiber reinforced resin liners are available. This information is also addressed in the new regulatory evaluation prepared for these amendments.

Since the time Notice 87–11 was prepared, it has come to the attention of the FAA that the practice of incorporating certain provisions of Part 121 in Part 135 by reference may cause confusion. In order to preclude any confusion in this regard, Part 135 is amended to include the new standards explicitly rather than by reference. This is a nonsubstantive editorial change.

Except as noted above, Parts 121 and 135 are amended as proposed in Notice 87–11.

Regulatory Evaluation

The following is a summary of the final cost impact and benefit assessment of this regulation amending Parts 121 and 135 of the FAR. These amendments upgrade the fire safety standards for cargo or baggage compartment liner materials in certain transport category airplanes used in air carrier, air taxi, or commercial service. Transport category airplanes type certificated after January 1, 1958, will be required to have ceiling and sidewall panels constructed of either glass fiber reinforced resin, aluminum (only for liner installations approved prior to the effective date of this rule), or materials meeting the test requirements of Part 25, Appendix F, Part III.

The FAA issued a rule in 1986 mandating similar, but more stringent, standards for newly type certificated transport category airplanes, and a NPRM (52 FR 42512; November 5, 1987) proposing retrofitting cargo or baggage compartment liners in transport category airplanes already in service.

Several of the written comments received as of May 3, 1988, in response to the NPRM pertain to the economic impact of the proposal. Commenters include an organization representing air carriers, and a manufacturer of lining materials, as well as others.

One commenter objects to the inclusion of 44 Saab SF–340 airplanes in the initial regulatory evaluation's list of airplanes that would require modification. This commenter indicates that the Saab SF–340 would not be affected by the proposed standards, since its largest cargo or baggage compartment has only 189 cubic feet of volume, whereas the NPRM would only affect compartments larger than 200 cubic feet.

The FAA has not been able to corroborate this assertion. The manufacturer's SF–340 Aircraft Operations Manual states that the volume of the baggage compartment is 225 cubic feet. Therefore, the FAA assumes, for purposes of this evaluation, that all Saab SF–340 airplanes operating under Part 121 will require retrofit of their cargo or baggage compartment liners.

Another commenter notes that 12 Airbus A300–B4 airplanes of U.S. registry would require replacement of cargo bay ceiling panels, in addition to the airplanes listed in the initial regulatory evaluation as requiring modification.

The FAA disagrees with this comment. The manufacturer of the A300–B4 has indicated that it, and all other types of Airbus airplanes, have cargo compartment liners constructed of glass fiber reinforced resin, which would meet the proposed requirements.

The same commenter also indicates that the initial regulatory evaluation's estimate of the total cost of the proposed rule excludes additional costs of up to $47 million annually, resulting from the removal of aircraft from service to comply with the proposed rule within the specified two year compliance period.

The FAA disagrees that affected airplanes would need to be removed from service to comply with the proposed rule within two years. Existing liners are routinely removed more frequently than every two years, for inspection of structure surrounding the cargo or baggage compartments. Replacement liners could easily be installed during these inspections.

Therefore, compliance with the proposed rule within two years would not cause any additional costs due to removal of airplanes from service.

The commenter indicates as well that the initial regulatory evaluation does not take into account any additional costs due to the required replacement of design features, such as joints and fixtures, in addition to the large panel surface areas.

The FAA's initial cost projections for materials and labor were based on estimates of the costs of complete kits for replacing cargo or baggage compartment liners, including engineering and certification costs. The FAA believes that the costs of replacement of design features would not add significantly to the total cost of liner replacement since very few of these features would be likely to require replacement. Therefore, the FAA has not increased its estimates of the cost per aircraft of liner replacement in the final regulatory evaluation.

Many design features are mounted on the liner panels and could fail without compromising the fire containment characteristics of the liner itself. Such features would not require replacement. Furthermore, information available to the FAA indicates that support or attachment structure for cargo or baggage compartment liner panels in virtually all of the affected airplanes is constructed of aluminum, or the panels are mounted directly to the airframe structure with aluminum or steel fasteners. Since aluminum is an acceptable material for the construction of liners, according to the proposed rule, such support or attachment structures would not need to be tested or replaced. The FAA also considers that steel fasteners meet the new fire protection standards and that no further testing is needed for such fasteners.

Finally, another commenter indicates that new materials containing layers of organic fibers and fire blocking material could meet the proposed burnthrough requirements, while saving as much as one-half the weight of glass reinforced liners with similar impact resistance.

The FAA recognizes that materials may now exist or may be developed in the future that contain fire as effectively as glass fiber reinforced resin panels, but weigh less and provide cost savings from reduced fuel consumption. However, in order not to underestimate the costs of this rule, the FAA continues to assume in the final regulatory evaluation that all cargo or baggage compartment retrofits will employ the heavier glass fiber reinforced panels.

Total costs of these amendments are expected to be $21.3 million in 1987 dollars, or $15.5 million discounted present value, and are evaluated over the ten-year period following the expected 1991 compliance date. These costs include labor and material costs of installing cargo compartment liners in certain airplanes that do not already meet the standards set forth in the amendments, as well as the additional fuel consumed by these airplanes because of the slight increase in the weight of these new liners. Total costs can be broken down as follows:

	1987 dollars (in millions)	Present dollar value (in millions)
Cost retrofit	14.1	11.7
Cost of additional fuel	7.2	3.8
Total costs	21.3	15.5

Cost estimates have been adjusted from the initial regulatory evaluation to account for new projections of the composition and size of the fleet of affected airplanes, and are updated from 1986 to 1987 dollars. Airplanes expected to be effected by these amendments include certain Boeing 727, 737, 747, 757 and 767's, Lockheed L–1011's, and Saab SF–340's.

This rule will be cost beneficial if it succeeds in preventing only one accident. Comparing the potential benefit of avoiding airplane property loss alone (ranging from approximately $2.6 million to $23 million) against the costs of bringing all airplanes of a specific model into compliance, the benefit would greatly exceed the costs. Taking into account the overall costs and the benefits of preventing fatalities as well as property loss, should the only accident prevented involve the smallest airplane subject to the rule change (the Saab SF–340, with an average load of 20 passengers), the cost per fatality avoided would be $645 thousand. Economists generally agree that this figure is well below the $1 million criterion for "cost per life saved." Furthermore, if this rule succeeds in preventing an accident involving a larger or more fully loaded airplane, the cost per fatality avoided will be lower.

Regulatory Flexibility Act Determination

The FAA has identified 20 small entity air carriers that operate airplane models affected by this rule. All but three of these carriers operate only Boeing 727 and 737 airplanes among the affected airplanes, the least expensive models to bring into compliance. Should these air carriers operate as many as nine of these airplanes, the largest number allowed for an operator to be considered a small entity, then the annualized retrofit cost for each operator would be under $750. This is far less than the threshold value of $3,600 prescribed in FAA Order 2100.14A, *Regulatory Flexibility Criteria and Guidance*, for determining significant economic impact on unscheduled operators, and significantly lower than the $92,700 threshold value for scheduled operators. For these reasons, these amendments are not expected to result in a significant economic impact on a substantial number of small entities. Nonetheless, they are expected to provide a benefit for those small entities engaged in manufacturing cargo compartment liner material. The FAA believes, however, that this benefit will not be significant.

International Trade Impact Analysis

This rulemaking will have little or no impact on trade for either U.S. firms doing business in foreign countries or foreign firms doing business in the United States. Foreign air carriers, which are not affected by this rule, will not gain any competitive advantage over the domestic operations of U.S. carriers because they are prohibited from transporting passengers between origin-destination points within the United States.

In international operations, foreign air carriers may realize a slight cost advantage. However, the costs of this rule are extremely small in comparison to the overall cost of engaging in international air transportation. Therefore, no appreciable trade impact is expected to result from these amendments.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed earlier in the preamble, the FAA has determined

that this is not a major rule as defined in Executive Order 12291. The FAA has determined that this action is significant under DOT Regulatory Policies and Procedures (44FA 11034; February 26, 1979). In addition, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, since the magnitudes of the impacts are not significant. A regulatory evaluation of this action, including a Regulatory Flexibility Determination and a Trade Impact Assessment, has been prepared for this regulation and has been placed in the docket. A copy of this evaluation may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects

14 CFR Part 121

Aviation safety, Safety, Air carriers, Air transportation, Aircraft, Airplanes, Flammable materials, Transportation, Common carriers.

14 CFR Part 135

Aviation safety, Safety, Air carriers, Air transportation, Aircraft, Airplanes, Cargo, Hazardous baggage, Materials, Transportation, Mail.

Adoption of the Amendments

Accordingly, Parts 121 and 135 of the Federal Aviation Regulations (FAR) 14 CFR, Parts 121 and 135, are amended as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

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

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 49 CFR 1.47(a).

2. By adding new § 121.314 to read as follows:

§ 121.314 Cargo and baggage compartments.

(a) After March 20, 1991, each Class C or D compartment, as defined in § 25.857 of Part 25 of this Chapter, greater than 200 cubic feet in volume in a transport category airplane type certificated after January 1, 1958, must have ceiling and sidewall liner panels which are constructed of:

(1) Glass fiber reinforced resin;

(2) Materials which meet the test requirements of Part 25, Appendix F, Part III of this Chapter; or

(3) In the case of liner installations approved prior to March 20, 1989, aluminum.

(b) For compliance with this section, the term "liner" includes any design feature, such as a joint or fastener, which would affect the capability of the liner to safely contain a fire.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

3. The authority citation for Part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983), 49 CFR 1.47(a).

4. By amending § 135.169 by adding a new paragraph (d) to read as follows:

§ 135.169 Additional airworthiness requirements.

* * * * *

(d) Cargo or baggage compartments:

(1) After March 20, 1991, each Class C or D compartment, as defined in § 25.857 of Part 25 of this Chapter, greater than 200 cubic feet in volume in a transport category airplane type certificated after January 1, 1958, must have ceiling and sidewall panels which are constructed of:

(i) Glass fiber reinforced resin;

(ii) Materials which meet the test requirements of Part 25, Appendix F, Part III of this Chapter; or

(iii) In the case of liner installations approved prior to March 20, 1989, aluminum.

(2) For compliance with this paragraph, the term "liner" includes any design feature, such as a joint or fastener, which would affect the capability of the liner to safely contain a fire.

Issued in Washington, DC, on February 10, 1989.

T. Allan McArtor,

Administrator.

[FR Doc. 89–3729 Filed 2–16–89; 8:45 am]

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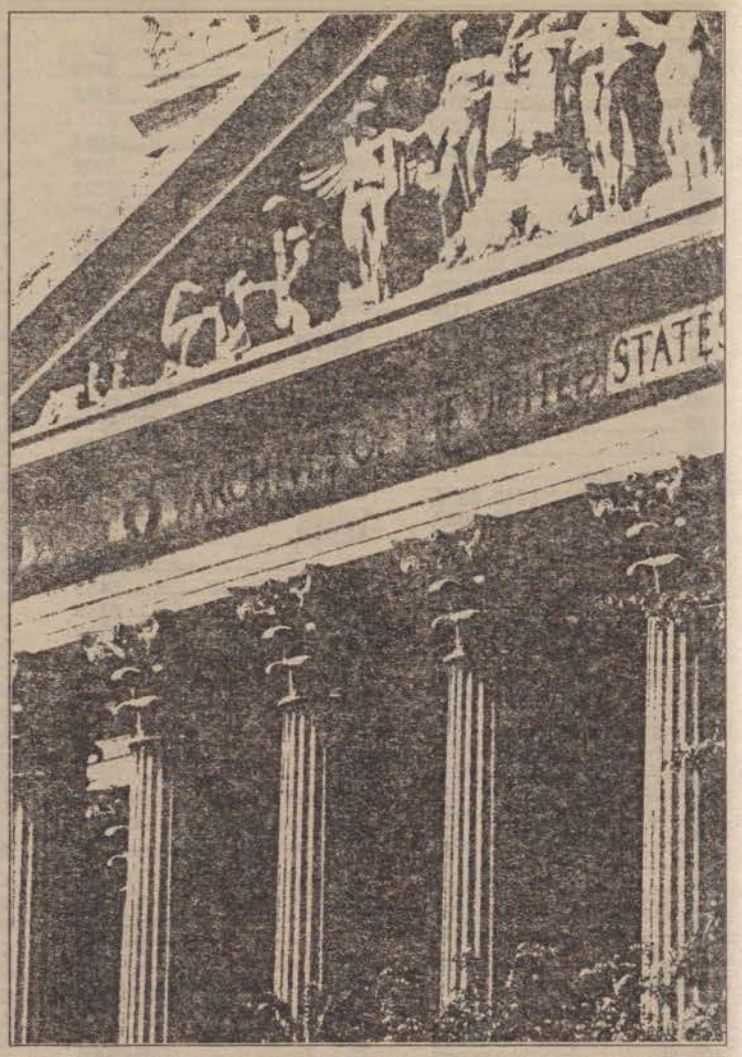

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